

SENATE BILL No. 547

September 12, 2017, Introduced by Senators COLBECK, PAVLOV and GREEN and referred to the Committee on Education.

A bill to amend 2000 PA 161, entitled "Michigan education savings program act," by amending sections 1, 2, 3, 7, 8, 12, 13, and 14 (MCL 390.1471, 390.1472, 390.1473, 390.1477, 390.1478, 390.1482, 390.1483, and 390.1484), sections 2 and 7 as amended by 2010 PA 6, sections 3 and 12 as amended by 2007 PA 153, and section 8 as amended by 2004 PA 387, and by designating sections 1 to 16 as part 1.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 1

Sec. 1. This ~~act~~-**PART** shall be known and may be cited as the "Michigan education savings program act".

Sec. 2. As used in this ~~act~~-**PART**:

(a) "Account" or "education savings account" means an account established under this ~~act~~-**PART**.

(b) "Account owner" means any of the following:

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1 (i) The individual who enters into a Michigan education
2 savings program agreement and establishes an education savings
3 account. The account owner may also be the designated beneficiary
4 of the account.

5 (ii) A state or local government agency or instrumentality, an
6 entity exempt from taxation under section 501(c)(3) of the internal
7 revenue code, an estate or trust, or a corporation that enters into
8 a Michigan education savings program agreement and establishes an
9 education savings account.

10 (c) "Board" means the board of directors of the Michigan
11 education trust described in section 10 of the Michigan education
12 trust act, 1986 PA 316, MCL 390.1430.

13 (d) "Department" means the department of treasury.

14 (e) "Designated beneficiary" means the individual designated
15 as the individual whose higher education expenses are expected to
16 be paid from the account.

17 (f) "Eligible educational institution" means that term as
18 defined in section 529 of the internal revenue code or a college,
19 university, community college, or junior college described in
20 section 4, 5, or 6 of article VIII of the state constitution of
21 1963 or established under section 7 of article VIII of the state
22 constitution of 1963.

23 (g) "Internal revenue code" means the United States internal
24 revenue code of 1986 in effect on January 1, 2002 or at the option
25 of the taxpayer, in effect for the current year.

26 (h) "Management contract" means the contract executed between
27 the treasurer and a program manager.

1 (i) "Member of the family" means a family member as defined in
2 section 529 of the internal revenue code.

3 (j) "Michigan education savings program agreement" means the
4 agreement between the program and an account owner that establishes
5 an education savings account.

6 (k) "Program" means the Michigan education savings program
7 established pursuant to this ~~act~~.**PART**.

8 (l) "Program manager" means an entity selected by the
9 treasurer to act as a manager of 1 or more of the savings plans
10 offered under the program.

11 (m) "Qualified higher education expenses" means qualified
12 higher education expenses as defined in section 529 of the internal
13 revenue code.

14 (n) "Qualified withdrawal" means a distribution that is not
15 subject to a penalty or an excise tax under section 529 of the
16 internal revenue code, a penalty under this ~~act~~,**PART**, or taxation
17 under **PART 1 OF** the income tax act of 1967, 1967 PA 281, MCL 206.1
18 to 206.532, and that meets any of the following:

19 (i) A withdrawal from an account to pay the qualified higher
20 education expenses of the designated beneficiary incurred after the
21 account is established.

22 (ii) A withdrawal made as the result of the death or
23 disability of the designated beneficiary of an account.

24 (iii) A withdrawal made because a beneficiary received a
25 scholarship that paid for all or part of the qualified higher
26 education expenses of the beneficiary to the extent the amount of
27 the withdrawal does not exceed the amount of the scholarship.

1 (iv) A withdrawal made because a beneficiary attended a
2 service academy to the extent that the amount of the withdrawal
3 does not exceed the costs of the advanced education attributable to
4 the beneficiary's attendance in the service academy.

5 (v) A transfer of funds due to the termination of the
6 management contract as provided in section 5.

7 (vi) A transfer of funds as provided in section 8.

8 (o) "Savings plan" or "plans" means a plan that provides
9 different investment strategies and allows account distributions
10 for qualified higher education expenses.

11 (p) "Service academy" means the United States military
12 academy, United States naval academy, United States air force
13 academy, United States coast guard academy, or United States
14 merchant marine academy.

15 (q) "Treasurer" means the state treasurer.

16 Sec. 3. (1) The Michigan education savings program is
17 established in the department of treasury. The program may consist
18 of 1 or more savings plans.

19 (2) The treasurer shall solicit proposals from entities to be
20 a program manager to provide the services described in subsection
21 (5).

22 (3) The purposes, powers, and duties of the Michigan education
23 savings program are vested in and shall be exercised by the
24 treasurer or the designee of the treasurer.

25 (4) The state treasurer shall administer the Michigan
26 education savings program and shall be the trustee for the funds of
27 the Michigan education savings program. The treasurer may use

1 program revenues to maintain or enhance the state's qualified
2 tuition programs.

3 (5) The treasurer may employ or contract with personnel and
4 contract for services necessary for the administration of each
5 savings plan under the program and the investment of the assets of
6 each savings plan under the program including, but not limited to,
7 managerial, professional, legal, clerical, technical, and
8 administrative personnel or services.

9 (6) When selecting a program manager, the treasurer shall give
10 preference to proposals from single entities that propose to
11 provide all of the functions described in subsection (5) and that
12 demonstrate the most advantageous combination, to both potential
13 participants and this state, of the following factors and the
14 management contract shall address these factors:

15 (a) Financial stability.

16 (b) The safety of the investment instruments being offered.

17 (c) The ability of the investment instruments to track the
18 increasing costs of higher education.

19 (d) The ability of the entity to satisfy the record-keeping
20 and reporting requirements of this ~~act~~-PART.

21 (e) The entity's plan for marketing the savings plan and the
22 investment it is willing to make to promote the savings plan.

23 (f) The fees, if any, proposed to be charged to persons for
24 opening or maintaining an account.

25 (g) The minimum initial deposit and minimum contributions that
26 the entity will require which, for the first year of the savings
27 plan, shall not be greater than \$25.00 for a cash contribution or

1 \$15.00 per pay period for payroll deduction plans.

2 (h) The ability of the entity to accept electronic
3 withdrawals, including payroll deduction plans.

4 (7) The treasurer shall enter into a contract with each
5 program manager which shall address the respective authority and
6 responsibility of the treasurer and the program manager to do all
7 of the following:

8 (a) Develop and implement the savings plan or plans offered
9 under the program.

10 (b) Invest the money received from account owners in 1 or more
11 investment instruments.

12 (c) Engage the services of consultants on a contractual basis
13 to provide professional and technical assistance and advice.

14 (d) Determine the use of financial organizations as account
15 depositories and financial managers.

16 (e) Charge, impose, and collect annual administrative fees and
17 service in connection with any agreements, contracts, and
18 transactions relating to individual accounts, exclusive of initial
19 sales charges, which shall not exceed 2.0% of the average daily net
20 assets of the account.

21 (f) Develop marketing plans and promotional material.

22 (g) Establish the methods by which funds are allocated to pay
23 for administrative costs.

24 (h) Provide criteria for terminating and not renewing the
25 management contract.

26 (i) Address the ability of the program manager to take any
27 action required to keep the savings plan or plans offered under the

1 program in compliance with requirements of this ~~act~~**PART** and its
2 management contract and to manage the savings plan or plans offered
3 under the program to qualify as a qualified tuition program under
4 section 529 of the internal revenue code.

5 (j) Keep adequate records of each account and provide the
6 treasurer with information that the treasurer requires related to
7 those records.

8 (k) Compile the information contained in statements required
9 to be prepared under this ~~act~~**PART** and provide that compilation to
10 the treasurer in a timely manner.

11 (l) Hold all accounts for the benefit of the account owner.

12 (m) Provide for audits at least annually by a firm of
13 certified public accountants.

14 (n) Provide the treasurer with copies of all regulatory
15 filings and reports related to the savings plan or plans offered
16 under the program made during the term of the management contract
17 or while the program manager is holding any accounts, other than
18 confidential filings or reports except to the extent those filings
19 or reports are related to or are a part of the savings plan or
20 plans offered under the program. It is the responsibility of the
21 program manager to make available for review by the treasurer the
22 results of any periodic examination of the program manager by any
23 state or federal banking, insurance, or securities commission,
24 except to the extent that the report or reports are not required to
25 be disclosed under state or federal law.

26 (o) Ensure that any description of the savings plan or plans
27 offered under the program, whether in writing or through the use of

1 any media, is consistent with the marketing plan developed by the
2 program manager.

3 (p) Take any other necessary and proper activities to carry
4 out the purposes of this ~~aet~~-PART.

5 Sec. 7. (1) Beginning October 1, 2000, education savings
6 accounts may be established under this ~~aet~~-PART.

7 (2) Any individual or entity described in section 2(b)(ii) may
8 open 1 or more education savings accounts to save money to pay the
9 qualified higher education expenses of 1 or more designated
10 beneficiaries. An account owner shall open only 1 account for any 1
11 designated beneficiary. Each account opened under this ~~aet~~-PART
12 shall have only 1 designated beneficiary.

13 (3) To open an education savings account, the individual or
14 entity described in section 2(b)(ii) shall enter into a Michigan
15 education savings program agreement with the program. The Michigan
16 education savings program agreement shall be in the form prescribed
17 by a program manager and approved by the treasurer and contain all
18 of the following:

19 (a) The name, address, and social security number or employer
20 identification number of the account owner.

21 (b) A designated beneficiary. A state or local government
22 agency or instrumentality, a person exempt from taxation as an
23 organization described in section 501(c)(3) of the internal revenue
24 code, or a corporation, as part of a scholarship program, may defer
25 naming a designated beneficiary consistent with the terms of the
26 applicable Michigan education savings program agreement.

27 (c) The name, address, and social security number of the

1 designated beneficiary.

2 (d) Any other information that the treasurer or program
3 manager considers necessary.

4 (4) Any individual or entity described in section 2(b) (ii) may
5 make contributions to an account.

6 (5) Contributions to accounts shall only be made in cash, by
7 check, by credit card, or by any similar method as approved by the
8 state treasurer but shall not be property.

9 (6) An account owner may withdraw all or part of the balance
10 from an account on 60 days' notice, or a shorter period as
11 authorized in the Michigan education savings program agreement.

12 (7) Distributions from an account shall be requested on a form
13 approved by the state treasurer. A program manager may retain from
14 the distribution the amount necessary to comply with federal and
15 state tax laws. Distributions may be made in the following manner:

16 (a) Directly to an eligible education institution.

17 (b) In the form of a check payable to both the designated
18 beneficiary and the eligible educational institution.

19 (c) In the form of a check payable to the designated
20 beneficiary or account holder.

21 (d) In the form of an electronic funds transfer to an account
22 specified by the designated beneficiary or account holder.

23 (8) Except as otherwise provided in this subsection for tax
24 years that begin before January 1, 2002, if the distribution is not
25 a qualified withdrawal, a program manager shall withhold an amount
26 equal to 10% of the distribution amount as a penalty and pay that
27 amount to the department for deposit into the general fund. For a

1 distribution made after December 31, 2001 that is not a qualified
2 withdrawal, if an excise tax or penalty is imposed under section
3 529 of the internal revenue code pursuant to section 530(d)(4) of
4 the internal revenue code, a penalty shall not be imposed under
5 this subsection for that distribution. If a distribution that is
6 not a qualified withdrawal is made after December 31, 2001 and an
7 excise tax or penalty is not imposed under section 529 of the
8 internal revenue code pursuant to section 530(d)(4) of the internal
9 revenue code on that distribution, a program manager shall withhold
10 an amount equal to 10% of the accumulated earnings attributable to
11 that distribution amount as a penalty and pay that amount to the
12 department for deposit into the general fund. The penalty under
13 this subsection may be increased or decreased if the treasurer and
14 the program manager determine that it is necessary to increase or
15 decrease the penalty to comply with section 529 of the internal
16 revenue code.

17 (9) Each savings plan under the program shall provide separate
18 accounting for each designated beneficiary.

19 Sec. 8. (1) An account owner may designate another individual
20 as a successor owner of the account in the event of the death of
21 the account owner.

22 (2) An account owner may change the designated beneficiary of
23 an account to a member of the family of the previously designated
24 beneficiary as provided in the management contract or as otherwise
25 provided in this ~~act~~. **PART.**

26 (3) An account owner may transfer ownership of all or a
27 portion of an account to an individual or entity that is eligible

1 to be an account owner under this ~~act~~-PART.

2 (4) An account owner may transfer all or a portion of an
3 account to another education savings account. The designated
4 beneficiary of the account to which the transfer is made must be a
5 member of the family.

6 (5) An account owner may transfer all or a portion of an
7 account to an account in a qualified tuition program under section
8 529 of the internal revenue code, other than the program under this
9 ~~act~~, PART, once every 12 months, without a change in designated
10 beneficiary.

11 (6) Changes in designated beneficiaries and transfers under
12 this section are not permitted to the extent that the change or
13 transfer would constitute excess contributions or unauthorized
14 investment choices.

15 Sec. 12. Each program manager shall disclose the following
16 information in writing to each account owner of an education
17 savings account and any other person who requests information about
18 an education savings account:

19 (a) The terms and conditions for establishing an education
20 savings account.

21 (b) Restrictions on the substitutions of designated
22 beneficiaries and transfer of account funds.

23 (c) The person or entity entitled to terminate a Michigan
24 education savings program agreement.

25 (d) The period of time during which a designated beneficiary
26 may receive benefits under the Michigan education savings program
27 agreement.

1 (e) The terms and conditions under which money may be wholly
2 or partially withdrawn from an account or the program, including,
3 but not limited to, any reasonable charges and fees and penalties
4 that may be imposed for withdrawal.

5 (f) The potential tax consequences associated with
6 contributions to and distributions and withdrawals from accounts.

7 (g) Investment history and potential growth of account funds
8 and a projection of the impact of the growth of the account funds
9 on the maximum amount allowable in an account.

10 (h) All other rights and obligations under Michigan education
11 savings program agreements and any other terms, conditions, and
12 provisions of a contract or an agreement entered into under this
13 ~~act~~. **PART.**

14 Sec. 13. This ~~act~~ **PART** and any agreement under this ~~act~~ **PART**
15 shall not be construed or interpreted to do any of the following:

16 (a) Give any designated beneficiary any rights or legal
17 interest with respect to an account unless the designated
18 beneficiary is the account owner.

19 (b) Guarantee that a designated beneficiary will be admitted
20 to an eligible educational institution or, upon admission to an
21 eligible educational institution, will be permitted to continue to
22 attend or will receive a degree from the eligible educational
23 institution.

24 (c) Give residency status to an individual merely because the
25 individual is a designated beneficiary.

26 (d) Guarantee that amounts contributed to an account will be
27 sufficient to cover the qualified higher education expenses of a

1 designated beneficiary.

2 Sec. 14. (1) This ~~act~~**PART** does not create and shall not be
3 construed to create any obligation upon this state or any agency or
4 instrumentality of this state to guarantee for the benefit of an
5 account owner or designated beneficiary any of the following:

6 (a) The rate of interest or other return on an account.

7 (b) The payment of interest or other return on an account.

8 (2) The contracts, applications, deposit slips, and other
9 similar documents used in connection with a contribution to an
10 account shall clearly indicate that the account is not insured by
11 this state and that the money deposited into and investment return
12 earned on an account are not guaranteed by this state.

13 Enacting section 1. This amendatory act does not take effect
14 unless Senate Bill No. 544

15 of the 99th Legislature is enacted into law.