

HB 5317, As Passed Senate, December 13, 2001

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5317**

A bill to amend 2000 PA 161, entitled
"Michigan education savings program act,"
by amending sections 2, 3, 7, 8, 9, and 10 (MCL 390.1472,
390.1473, 390.1477, 390.1478, 390.1479, and 390.1480).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Account" or "education savings account" means an
3 account established under this act.

4 (b) "Account owner" means ~~the~~ ANY OF THE FOLLOWING:

5 (i) THE individual who enters into a Michigan education sav-
6 ings program agreement and establishes an education savings
7 account. The account owner may also be the designated benefi-
8 ciary of the account.

9 (ii) AN ENTITY EXEMPT FROM TAXATION UNDER SECTION 501(c)(3)
10 OF THE INTERNAL REVENUE CODE THAT ENTERS INTO A MICHIGAN

HB 5317, As Passed Senate, December 13, 2001

House Bill No. 5317

2

1 EDUCATION SAVINGS PROGRAM AGREEMENT AND ESTABLISHES AN EDUCATION
2 SAVINGS ACCOUNT.

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

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

7 (e) "Designated beneficiary" means the individual designated
8 as the individual whose higher education expenses are expected to
9 be paid from the account.

10 (f) "Eligible educational institution" means that term as
11 defined in section 529 of the internal revenue code or a college,
12 university, community college, or junior college described in
13 section 4, 5, or 6 of article VIII of the state constitution of
14 1963 or established under section 7 of article VIII of the state
15 constitution of 1963.

16 (g) "Internal revenue code" means the United States internal
17 revenue code of 1986 in effect on January 1, ~~1999~~ 2002 or at
18 the option of the taxpayer, in effect for the current year.

19 (h) "Management contract" means the contract executed
20 between the treasurer and the program manager.

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

23 (j) "Michigan education savings program agreement" means the
24 agreement between the program ~~manager~~ and an account owner that
25 establishes an education savings account.

26 (k) "Program" means the Michigan education savings program
27 established pursuant to this act.

HB 5317, As Passed Senate, December 13, 2001

House Bill No. 5317

3

1 (l) "Program manager" means the entity selected by the
2 treasurer to act as the manager of the program.

3 (m) "Qualified higher education expenses" means qualified
4 higher education expenses as defined in section 529 of the inter-
5 nal revenue code. ~~of 1986.~~

6 (n) "Qualified withdrawal" means a distribution that is not
7 subject to A penalty or ~~taxation~~ AN EXCISE TAX under SECTION
8 529 OF THE INTERNAL REVENUE CODE, A PENALTY UNDER this act, or
9 TAXATION UNDER the income tax act of 1967, 1967 PA 281, MCL 206.1
10 to 206.532, and that meets any of the following:

11 (i) A withdrawal from an account to pay the qualified higher
12 education expenses OF THE DESIGNATED BENEFICIARY incurred after
13 the account is established. ~~of the designated beneficiary.~~

14 (ii) A withdrawal made as the result of the death or dis-
15 ability of the designated beneficiary of an account.

16 (iii) A withdrawal made because a beneficiary received a
17 scholarship that paid for all or part of the qualified higher
18 education expenses of the beneficiary to the extent the amount of
19 the withdrawal does not exceed the amount of the scholarship.

20 (iv) A transfer of funds due to the termination of the man-
21 agement contract as provided in section 5.

22 (v) A transfer of funds ~~due to a change of beneficiary~~ as
23 provided in section 8.

24 (o) "Treasurer" means the state treasurer.

25 Sec. 3. (1) The Michigan education savings program is
26 established in the department of treasury.

HB 5317, As Passed Senate, December 13, 2001

House Bill No. 5317

4

1 (2) The treasurer shall solicit proposals from entities to
2 be the program manager to provide the services described in
3 subsection (5).

4 (3) The purposes, powers, and duties of the Michigan educa-
5 tion savings program are vested in and shall be exercised by the
6 treasurer or the designee of the treasurer.

7 (4) The state treasurer shall administer the Michigan educa-
8 tion savings program and shall be the trustee for the funds of
9 the Michigan education savings program.

10 (5) The treasurer may employ or contract with personnel and
11 contract for services necessary for the administration of the
12 program and the investment of the assets of the program includ-
13 ing, but not limited to, managerial, professional, legal, cleri-
14 cal, technical, and administrative personnel or services.

15 (6) When selecting a program manager, the treasurer shall
16 give preference to proposals from single entities that propose to
17 provide all of the functions described in subsection (5) and that
18 demonstrate the most advantageous combination, to both potential
19 participants and this state, of the following factors and the
20 management contract shall address these factors:

21 (a) Financial stability.

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

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

25 (d) The ability of the entity to satisfy the record-keeping
26 and reporting requirements of this act.

HB 5317, As Passed Senate, December 13, 2001

House Bill No. 5317

5

1 (e) The entity's plan for marketing the program and the
2 investment it is willing to make to promote the program.

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

5 (g) The minimum initial deposit and minimum contributions
6 that the entity will require which, for the first year of the
7 program, shall not be greater than \$25.00 for a cash contribution
8 or \$15.00 per pay period for payroll deduction plans.

9 (h) The ability of the entity to accept electronic withdraw-
10 als, including payroll deduction plans.

11 (7) The treasurer shall enter into a contract with the pro-
12 gram manager which shall address the respective authority and
13 responsibility of the treasurer and the program manager to do all
14 of the following:

15 (a) Develop and implement the program.

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

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

21 (d) Determine the use of financial organizations as account
22 depositories and financial managers.

23 (e) Charge, impose, and collect annual administrative fees
24 and service in connection with any agreements, contracts, and
25 transactions relating to individual accounts which shall not
26 exceed 1.5% of the average daily net assets of the account.

HB 5317, As Passed Senate, December 13, 2001

House Bill No. 5317

6

- 1 (f) Develop marketing plans and promotional material.
- 2 (g) Establish the methods by which funds are allocated to
3 pay for administrative costs.
- 4 (h) Provide criteria for terminating and not renewing the
5 management contract.
- 6 (i) Address the ability of the program manager to take any
7 action required to keep the program in compliance with require-
8 ments of this act and its management contract and to manage the
9 program to qualify as a qualified ~~state~~ tuition program under
10 section 529 of the internal revenue code. ~~of 1986.~~
- 11 (j) Keep adequate records of each account and provide the
12 treasurer with information that the treasurer requires related to
13 those records.
- 14 (k) Compile the information contained in statements required
15 to be prepared under this act and provide that compilation to the
16 treasurer in a timely manner.
- 17 (l) Hold all accounts for the benefit of the account owner.
- 18 (m) Provide for audits at least annually by a firm of certi-
19 fied public accountants.
- 20 (n) Provide the treasurer with copies of all regulatory fil-
21 ings and reports related to the program made during the term of
22 the management contract or while the program manager is holding
23 any accounts, other than confidential filings or reports except
24 to the extent those filings or reports are related to or are a
25 part of the program. It is the responsibility of the program
26 manager to make available for review by the treasurer the results
27 of any periodic examination of the program manager by any state

HB 5317, As Passed Senate, December 13, 2001

House Bill No. 5317

7

1 or federal banking, insurance, or securities commission, except
2 to the extent that the report or reports are not required to be
3 disclosed under state or federal law.

4 (o) Ensure that any description of the program, whether in
5 writing or through the use of any media, is consistent with the
6 marketing plan developed by the program manager.

7 (p) Take any other necessary and proper activities to carry
8 out the purposes of this act.

9 Sec. 7. (1) Beginning October 1, 2000, education savings
10 accounts may be established under this act.

11 (2) Any individual OR ENTITY DESCRIBED IN SECTION 2(B)(ii)
12 may open 1 or more education savings accounts to save money to
13 pay the qualified higher education expenses of 1 or more desig-
14 nated beneficiaries. AN ACCOUNT OWNER SHALL OPEN ONLY 1 ACCOUNT
15 FOR ANY 1 DESIGNATED BENEFICIARY. EACH ACCOUNT OPENED UNDER THIS
16 ACT SHALL HAVE ONLY 1 DESIGNATED BENEFICIARY.

17 (3) To open an education savings account, the individual OR
18 ENTITY DESCRIBED IN SECTION 2(B)(ii) shall enter into a Michigan
19 education savings program agreement with the program. ~~manager.~~
20 The Michigan education savings program agreement shall be in the
21 form prescribed by the program manager and approved by the trea-
22 surer and contain all of the following:

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

25 (b) A designated beneficiary.

26 (c) The name, address, and social security number of the
27 designated beneficiary.

HB 5317, As Passed Senate, December 13, 2001

House Bill No. 5317

8

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

3 (4) Any individual OR ENTITY DESCRIBED IN SECTION 2(B)(ii)
4 may make contributions to an account.

5 (5) Contributions to accounts shall only be made in cash, by
6 check, by money order, by credit card, or by any similar method
7 but shall not be property.

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

11 (7) Distributions from an account shall be used to pay for
12 qualified higher education expenses incurred after the account is
13 established and only in any of the following circumstances:

14 (a) The distribution is made directly to an eligible educa-
15 tion institution.

16 (b) The distribution is made in the form of a check payable
17 to both the designated beneficiary and the eligible educational
18 institution.

19 (c) The distribution is made after the designated benefi-
20 ciary submits documentation to show that the distribution is a
21 reimbursement for qualified higher education expenses that the
22 designated beneficiary has already paid and the program has a
23 process for reviewing the validity of the documentation prior to
24 the distribution.

25 (d) All of the following apply:

26 (i) The designated beneficiary certifies prior to the
27 distribution that the distribution will be expended for his or

HB 5317, As Passed Senate, December 13, 2001

House Bill No. 5317

9

1 her qualified higher education expenses within a reasonable time
2 after the distribution is made.

3 (ii) The program requires the designated beneficiary to pro-
4 vide documentation of payment of qualified higher education
5 expenses within 30 days after making the distribution and has a
6 process for reviewing the documentation.

7 (iii) The program retains an account balance that is large
8 enough to collect any penalty owed UNDER SUBSECTION (8) on the
9 distribution if valid documentation is not produced.

10 (8) ~~if a~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION
11 FOR TAX YEARS THAT BEGIN BEFORE JANUARY 1, 2002, IF THE distribu-
12 tion ~~that~~ is not a qualified withdrawal, ~~is made,~~ the program
13 manager shall withhold an amount equal to 10% of the distribution
14 amount as a penalty and pay that amount to the department for
15 deposit into the general fund. FOR A DISTRIBUTION MADE AFTER
16 DECEMBER 31, 2001 THAT IS NOT A QUALIFIED WITHDRAWAL, IF AN
17 EXCISE TAX OR PENALTY IS IMPOSED UNDER SECTION 529 OF THE INTER-
18 NAL REVENUE CODE PURSUANT TO SECTION 530(d)(4) OF THE INTERNAL
19 REVENUE CODE, A PENALTY SHALL NOT BE IMPOSED UNDER THIS SUBSEC-
20 TION FOR THAT DISTRIBUTION. IF A DISTRIBUTION THAT IS NOT A
21 QUALIFIED WITHDRAWAL IS MADE AFTER DECEMBER 31, 2001 AND AN
22 EXCISE TAX OR PENALTY IS NOT IMPOSED UNDER SECTION 529 OF THE
23 INTERNAL REVENUE CODE PURSUANT TO SECTION 530(d)(4) OF THE INTER-
24 NAL REVENUE CODE ON THAT DISTRIBUTION, THE PROGRAM MANAGER SHALL
25 WITHHOLD AN AMOUNT EQUAL TO 10% OF THE ACCUMULATED EARNINGS
26 ATTRIBUTABLE TO THAT DISTRIBUTION AMOUNT AS A PENALTY AND PAY
27 THAT AMOUNT TO THE DEPARTMENT FOR DEPOSIT INTO THE GENERAL FUND.

HB 5317, As Passed Senate, December 13, 2001

House Bill No. 5317

10

1 The penalty under this subsection may be increased or decreased
2 if the treasurer and the program manager determine that it is
3 necessary to increase or decrease the penalty to ~~constitute a~~
4 ~~greater than de minimis penalty for purposes of qualifying under~~
5 COMPLY WITH section 529 of the internal revenue code.

6 (9) The program shall provide separate accounting for each
7 designated beneficiary.

8 Sec. 8. (1) An account owner may designate another individ-
9 ual as a successor owner of the account in the event of the death
10 of the account owner.

11 (2) An account owner may change the designated beneficiary
12 of an account to a member of the family of the previously desig-
13 nated beneficiary as provided in the management contract or as
14 otherwise provided in this act.

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

19 (4) AN ACCOUNT OWNER MAY TRANSFER ALL OR A PORTION OF AN
20 ACCOUNT TO AN ACCOUNT IN A QUALIFIED TUITION PROGRAM UNDER SEC-
21 TION 529 OF THE INTERNAL REVENUE CODE, OTHER THAN THE PROGRAM
22 UNDER THIS ACT, ONCE EVERY 12 MONTHS, WITHOUT A CHANGE IN DESIG-
23 NATED BENEFICIARY.

24 (5) ~~(4)~~ Changes in designated beneficiaries and transfers
25 under this section are not permitted to the extent that the
26 change or transfer would constitute excess contributions or
27 unauthorized investment choices.

HB 5317, As Passed Senate, December 13, 2001

House Bill No. 5317

11

1 Sec. 9. (1) ~~No~~ EXCEPT AS OTHERWISE PROVIDED IN THIS
2 SECTION, AN account owner or A designated beneficiary of any
3 account shall NOT direct the investment of any contributions to
4 an account or the earnings on an account.

5 (2) An ~~individual who establishes an~~ account OWNER may
6 select among different investment strategies designed exclusively
7 by the program manager ~~, only at~~ IN ALL OF THE FOLLOWING CIR-
8 CUMSTANCES TO THE EXTENT ALLOWED UNDER SECTION 529 OF THE INTER-
9 NAL REVENUE CODE:

10 (A) AT the time ~~the initial~~ ANY contribution is made ~~that~~
11 ~~establishes the account~~ TO AN ACCOUNT WITH RESPECT TO THE AMOUNT
12 OF THAT CONTRIBUTION.

13 (B) ONCE EACH CALENDAR YEAR WITH RESPECT TO THE ACCUMULATED
14 ACCOUNT BALANCE.

15 (C) WHEN AN ACCOUNT OWNER MAKES A CHANGE IN DESIGNATED BENE-
16 FICIARY OF AN ACCOUNT.

17 (3) The program may allow board members or employees of the
18 program, or the board members or employees of a contractor hired
19 by the program to perform administrative services, to make con-
20 tributions to an account.

21 (4) ~~(3) Neither an account owner nor a designated benefi-~~
22 ~~ciary may use an~~ AN interest in an account SHALL NOT BE USED BY
23 AN ACCOUNT OWNER OR A DESIGNATED BENEFICIARY as security for a
24 loan. Any pledge of an interest in an account has no force or
25 effect.

26 Sec. 10. (1) The ~~total contributions to~~ MAXIMUM ACCOUNT
27 BALANCE LIMIT FOR all of the accounts that name any 1 individual

HB 5317, As Passed Senate, December 13, 2001

House Bill No. 5317 as amended December 11, 2001 12

1 as the designated beneficiary shall not exceed a maximum of
2 ~~\$125,000.00~~ \$235,000.00.

3 (2) ~~Any amount in excess of the amount in subsection (1)~~
4 ~~with respect to a designated beneficiary shall be promptly with-~~
5 ~~drawn and is not a qualified withdrawal or shall be transferred~~
6 ~~to another account.~~ THE PROGRAM SHALL REJECT A CONTRIBUTION TO
7 ANY ACCOUNT FOR A DESIGNATED BENEFICIARY IF, AT THE TIME OF THE
8 CONTRIBUTION, THE TOTAL BALANCE OF ALL ACCOUNTS FOR THAT DESIG-
9 NATED BENEFICIARY

10

11

12 HAS REACHED THE MAXIMUM ACCOUNT BALANCE LIMIT UNDER
13 SUBSECTION (1). ACCOUNTS MAY CONTINUE TO ACCRUE EARNINGS IF THE
14 TOTAL BALANCE OF ALL ACCOUNTS FOR THAT BENEFICIARY

15

16

17 HAS REACHED THE MAXIMUM ACCOUNT BALANCE
18 LIMIT AND SHALL NOT BE CONSIDERED TO HAVE EXCEEDED THE MAXIMUM

19 ACCOUNT BALANCE LIMIT UNDER SUBSECTION (1). FOR PURPOSES OF THIS
SUBSECTION. THE TOTAL BALANCE OF ALL ACCOUNTS FOR THAT DESIGNATED
BENEFICIARY INCLUDES THE AMOUNT OF PAYMENT OR PAYMENTS REQUIRED FROM
A PURCHASER ON BEHALF OF A QUALIFIED BENEFICIARY MADE UNDER AN
ADVANCE TUITION PAYMENT CONTRACT AS PROVIDED IN THE MICHIGAN
EDUCATION TRUST ACT, 1986 PA 316, MCL 390.1421 TO 390.1444, IF THE
DESIGNATED BENEFICIARY IS ALSO THE QUALIFIED BENEFICIARY.

20 Enacting section 1. This amendatory act takes effect

21 January 1, 2002.