

# SENATE BILL No. 597

October 11, 1989, Introduced by Senators SHINKLE,  
SCHWARZ, EHLERS, SEDERBURG, J. HART, POSTHUMUS and  
DE GROW and referred to the Committee on Education  
and Mental Health.

A bill to amend sections 6 and 8 of Act No. 316 of the  
Public Acts of 1986, entitled  
"Michigan education trust act,"  
being sections 390.1426 and 390.1428 of the Michigan Compiled  
Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 6 and 8 of Act No. 316 of the Public  
2 Acts of 1986, being sections 390.1426 and 390.1428 of the  
3 Michigan Compiled Laws, are amended to read as follows:

4       Sec. 6. (1) The trust, on behalf of itself and the state,  
5 may contract with a purchaser for the advance payment of tuition  
6 by the purchaser for a qualified beneficiary to attend any of the  
7 state institutions of higher education to which the qualified  
8 beneficiary is admitted, without further tuition cost to the  
9 qualified beneficiary. In addition, an advance tuition payment

1 contract shall set forth in a clear, understandable manner all of  
2 the following:

3 (a) The amount of the payment or payments required from the  
4 purchaser on behalf of the qualified beneficiary.

5 (b) The terms and conditions for making the payment, includ-  
6 ing, but not limited to, the date or dates upon which the pay-  
7 ment, or portions of the payment, shall be due.

8 (c) Provisions for late payment charges and for default.

9 (d) The name and age of the qualified beneficiary under the  
10 contract. The purchaser, with the approval of and on conditions  
11 determined by the trust, may subsequently substitute another  
12 person for the qualified beneficiary originally named.

13 (e) The number of credit hours covered by the contract.

14 (f) The name of the person entitled to terminate the con-  
15 tract, which, as provided by the contract, may be the purchaser,  
16 the qualified beneficiary, or a person to act on behalf of the  
17 purchaser or qualified beneficiary, or any combination of these  
18 persons.

19 (g) The terms and conditions under which the contract may be  
20 terminated and the amount of the refund, if any, to which the  
21 person terminating the contract, or specifically the purchaser or  
22 designated qualified beneficiary if the contract so provides,  
23 shall be entitled upon termination.

24 (h) The assumption of a contractual obligation by the trust  
25 to the qualified beneficiary on its own behalf and on behalf of  
26 the state to provide for credit hours of higher education, not to  
27 exceed the credit hours required for the granting of a

1 baccalaureate degree, at any state institution of higher  
2 education to which the qualified beneficiary is admitted. The  
3 advance tuition payment contract shall provide for the credit  
4 hours of higher education that a qualified beneficiary may  
5 receive under the contract if the qualified beneficiary is not  
6 entitled to in-state tuition rates.

7 (i) The period of time from the beginning to the end of  
8 which the qualified beneficiary may receive the benefits under  
9 the contract.

10 (J) IF APPLICABLE, THE LIMITATIONS ON THE RIGHTS OF THE  
11 QUALIFIED BENEFICIARY SET FORTH IN SUBSECTION (6).

12 (K) ~~-(j)-~~ All other rights and obligations of the purchaser  
13 and the trust.

14 (L) ~~-(k)-~~ Other terms, conditions, and provisions as the  
15 trust considers in its sole discretion to be necessary or  
16 appropriate.

17 (2) The form of any advance tuition payment contract to be  
18 entered into by the trust shall first be approved by the state  
19 administrative board.

20 (3) The trust shall make any arrangements that are necessary  
21 or appropriate with state institutions of higher education in  
22 order to fulfill its obligations under advance tuition payment  
23 contracts, which arrangements may include, but need not be  
24 limited to, the payment by the trust of the then actual in-state  
25 tuition cost on behalf of a qualified beneficiary to the state  
26 institution of higher education.

1 (4) An advance tuition payment contract shall provide that  
2 the trust provide for the qualified beneficiary to attend a  
3 community or junior college in this state before entering a state  
4 institution of higher education if the beneficiary so chooses and  
5 that the contract may be terminated pursuant to section 8 after  
6 completing the requirements for a degree at the community or  
7 junior college in this state or before entering the state insti-  
8 tution of higher education.

9 (5) An advance tuition payment contract may provide that, if  
10 after a number of years specified in the contract the contract  
11 has not been terminated or the qualified beneficiary's rights  
12 under the contract have not been exercised, the trust, after  
13 making a reasonable effort to locate the purchaser and qualified  
14 beneficiary or the agent of either, shall retain the amounts oth-  
15 erwise payable and the rights of the qualified beneficiary, the  
16 purchaser, or the agent of either shall be considered  
17 terminated.

18 (6) IF AN ADVANCE TUITION PAYMENT CONTRACT IS PURCHASED BY  
19 THE MICHIGAN HIGHER EDUCATION STUDENT LOAN AUTHORITY PURSUANT TO  
20 A LOAN MADE UNDER SECTION 4B OF THE HIGHER EDUCATION LOAN AUTHOR-  
21 ITY ACT, ACT NO. 222 OF THE PUBLIC ACTS OF 1975, BEING SECTION  
22 390.1154B OF THE MICHIGAN COMPILED LAWS, OR IS PURCHASED WITH A  
23 LOAN MADE BY ANOTHER LENDER AND THE MICHIGAN HIGHER EDUCATION  
24 STUDENT LOAN AUTHORITY PURCHASES OR OTHERWISE ACQUIRES A NOTE OR  
25 DEBT OBLIGATION EVIDENCING THE LOAN PURSUANT TO THAT SECTION, THE  
26 TRUST SHALL NOT MAKE TUITION PAYMENTS ON BEHALF OF THE QUALIFIED  
27 BENEFICIARY OR PROVIDE IN ANY OTHER MANNER FOR THE HIGHER

1 EDUCATION OF THE QUALIFIED BENEFICIARY UNTIL THE MICHIGAN HIGHER  
2 EDUCATION STUDENT LOAN AUTHORITY NOTIFIES THE TRUST IN WRITING  
3 THAT THE LOAN HAS BEEN FULLY REPAID.

4       Sec. 8. (1) An advance tuition payment contract shall  
5 authorize a termination of the contract when any 1 of the follow-  
6 ing occurs:

7       (a) The qualified beneficiary dies.

8       (b) The qualified beneficiary is not admitted to a state  
9 institution of higher education after making proper application.

10       (c) The qualified beneficiary certifies to the trust that he  
11 or she has decided to attend and has been accepted by a Michigan  
12 independent, degree-granting institution of postsecondary educa-  
13 tion recognized by the state board of education or, after he or  
14 she has a high school diploma or has reached the age of majority,  
15 he or she has decided not to attend a state institution of higher  
16 education and requests, in writing, before July 15 of the year in  
17 which the qualified beneficiary desires to terminate the con-  
18 tract, that the advance tuition payment contract be terminated.

19       (d) Other circumstances, determined by the trust and set  
20 forth in the advance tuition payment contract, occur.

21       (2) Except as provided in section 7(2)(b) and (3)(b), an  
22 advance tuition payment contract shall provide for a refund pur-  
23 suant to this section to a person to whom the refund is payable  
24 under the contract upon termination of the contract. If the  
25 qualified beneficiary has a high school diploma or has reached  
26 the age of majority, and attends an institution of higher  
27 education, the amount of a refund, except as provided in

1 subsection (4), shall be the lesser of the average tuition cost  
2 of all state institutions of higher education on the date of ter-  
3 mination of the contract, or the face amount of the payment or  
4 payments and any accrued investment income attributable to the  
5 payment or payments, if he or she is covered by alternative 1, as  
6 described in section 7(5), or the lowest tuition cost of all  
7 state institutions of higher education on the date of termination  
8 of the contract if he or she is covered by alternative 2 or does  
9 not attend an institution of higher education. The amount of a  
10 refund shall be reduced by an appropriate percentage if the pur-  
11 chaser entered into an advance tuition payment contract that pro-  
12 vided for a fixed number of credit hours less than the total  
13 number of credit hours required by a state institution of higher  
14 education for the awarding of a baccalaureate degree, by the  
15 amount transferred to a community or junior college on behalf of  
16 a qualified beneficiary when the contract is terminated as pro-  
17 vided in section 6(4), and by the amount transferred to a state  
18 institution of higher education on behalf of a qualified  
19 beneficiary. Termination of a contract and the right to receive  
20 a refund shall not be authorized under the contract if the quali-  
21 fied beneficiary has completed more than 1/2 of the credit hours  
22 required by the state institution of higher education for the  
23 awarding of a baccalaureate degree. However, this provision  
24 shall not affect the termination and refund rights of a graduate  
25 of a community or junior college. Pursuant to this subsection  
26 and except as provided by subsection (3), the trust shall make

1 refund payments in equal installments over 4 years and not later  
2 than August 15 of the year due.

3       (3) An advance tuition payment contract shall authorize a  
4 person, who is entitled under the advance tuition payment con-  
5 tract to terminate the contract, to direct payment of the refund  
6 to an independent degree-granting college or university located  
7 in this state or to a community or junior college located in this  
8 state. If directed to make payments pursuant to this subsection,  
9 the trust shall transfer to the designated institution an amount  
10 equal to the tuition due for the qualified beneficiary, but the  
11 trust shall not transfer a cumulative amount greater than the  
12 refund to which the person is entitled. If the refund exceeds  
13 the total amount of transfers directed to the designated institu-  
14 tion, the excess shall be returned to the person to whom the  
15 refund is otherwise payable.

16       (4) Notwithstanding any other section of this act, the  
17 amount of a refund paid upon termination of the advance tuition  
18 payment contract by a person who directs the trust pursuant to  
19 subsection (3) to transfer the refund to an independent  
20 degree-granting college or university located in this state shall  
21 not be less than the prevailing weighted average tuition cost of  
22 state institutions of higher education for the number of credit  
23 hours covered by the contract on the date of termination. In  
24 calculating the amount of a refund for an advance payment con-  
25 tract containing the restrictions provided by section 7(5), the  
26 prevailing weighted average tuition cost shall be based upon only  
27 those state institutions of higher education at which the

1 qualified beneficiary could have received sufficient credit hours  
2 for a baccalaureate degree.

3       (5) IF AN ADVANCE TUITION PAYMENT CONTRACT IS PURCHASED BY  
4 THE MICHIGAN HIGHER EDUCATION STUDENT LOAN AUTHORITY PURSUANT TO  
5 A LOAN MADE UNDER SECTION 4B OF THE HIGHER EDUCATION LOAN AUTHOR-  
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9 STUDENT LOAN AUTHORITY PURCHASES OR OTHERWISE ACQUIRES A NOTE OR  
10 DEBT OBLIGATION EVIDENCING THE LOAN PURSUANT TO THAT SECTION, THE  
11 ADVANCE TUITION PAYMENT CONTRACT IS SUBJECT TO ALL OF THE FOLLOW-  
12 ING REFUND CONDITIONS:

13       (A) IF THE LOAN RECIPIENT IS IN DEFAULT, AS DEFINED IN THAT  
14 SECTION, THE TRUST SHALL REFUND TO THE MICHIGAN HIGHER EDUCATION  
15 STUDENT LOAN AUTHORITY AN AMOUNT AS DESCRIBED IN THAT SECTION.

16       (B) IF THE ADVANCE TUITION PAYMENT CONTRACT IS TERMINABLE  
17 UNDER SUBSECTION (1), A REFUND PAYABLE UNDER THIS ACT SHALL BE  
18 PAYABLE TO OR ON BEHALF OF THE LOAN RECIPIENT OR QUALIFIED BENE-  
19 FICIARY AS IF THE LOAN RECIPIENT WERE THE PURCHASER OF THE  
20 ADVANCE TUITION PAYMENT CONTRACT.