

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 599

A bill to create the Michigan education savings program; to provide for education savings accounts; to prescribe the powers and duties of certain state agencies, boards, and departments; to allow certain tax credits or deductions; and to provide for penalties and remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. This act shall be known and may be cited as the  
2 "Michigan education savings program act".

3       Sec. 2. As used in this act:

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

6       (b) "Account owner" means the individual who enters into a  
7 Michigan education savings program agreement and establishes an  
8 education savings account. The account owner may also be the  
9 designated beneficiary of the account.

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

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

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

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

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

17 (h) "Management contract" means the contract executed  
18 between the treasurer and the program manager.

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

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

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

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

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

4 (n) "Qualified withdrawal" means a distribution that is not  
5 subject to penalty or taxation under this act or the income tax  
6 act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and that meets  
7 any of the following:

8 (i) A withdrawal from an account to pay the qualified higher  
9 education expenses incurred after the account is established of  
10 the designated beneficiary.

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

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

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

19 (v) A transfer of funds due to a change of beneficiary as  
20 provided in section 8.

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

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

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

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

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

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

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

18 (a) Financial stability.

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

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

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

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

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

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

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

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

11 (a) Develop and implement the program.

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

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

17 (d) Determine the use of financial organizations as account  
18 depositories and financial managers.

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

23 (f) Develop marketing plans and promotional material.

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

26 (h) Provide criteria for terminating and not renewing the  
27 management contract.

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1 (i) Address the ability of the program manager to take any  
2 action required to keep the program in compliance with require-  
3 ments of this act and its management contract and to manage the  
4 program to qualify as a qualified state tuition program under  
5 section 529 of the internal revenue code of 1986.

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

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

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

13 (m) Provide for audits at least annually by a firm of certi-  
14 fied public accountants.

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

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

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

6 Sec. 4. The treasurer shall be responsible for the ongoing  
7 supervision of the management contract in consultation with the  
8 board.

9 Sec. 5. (1) The management contract shall be for a term of  
10 years specified in the management contract.

11 (2) The treasurer may terminate the management contract  
12 based on the criteria specified in the management contract.

13 Sec. 6. The treasurer may enter into contracts that it con-  
14 sider necessary and proper for the implementation of this  
15 program.

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

18 (2) Any individual may open 1 or more education savings  
19 accounts to save money to pay the qualified higher education  
20 expenses of 1 or more designated beneficiaries.

21 (3) To open an education savings account, the individual  
22 shall enter into a Michigan education savings program agreement  
23 with the program manager. The Michigan education savings program  
24 agreement shall be in the form prescribed by the program manager  
25 and approved by the treasurer and contain all of the following:

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

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1 (b) A designated beneficiary.

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

4 (d) Any other information that the treasurer or program man-  
5 ager considers necessary.

6 (4) Any individual may make contributions to an account.

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

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

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

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

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

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



1 (d) All of the following apply:

2 (i) The designated beneficiary certifies prior to the  
3 distribution that the distribution will be expended for his or  
4 her qualified higher education expenses within a reasonable time  
5 after the distribution is made.

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

10 (iii) The program retains an account balance that is large  
11 enough to collect any penalty owed on the distribution if valid  
12 documentation is not produced.

13 (8) If a distribution that is not a qualified withdrawal is  
14 made, the program manager shall withhold an amount equal to 10%  
15 of the distribution amount as a penalty and pay that amount to  
16 the department for deposit into the general fund. The penalty  
17 under this subsection may be increased or decreased if the trea-  
18 surer and the program manager determine that it is necessary to  
19 increase or decrease the penalty to constitute a greater than de-  
20 minimis penalty for purposes of qualifying under section 529 of  
21 the internal revenue code.

22 (9) The program shall provide separate accounting for each  
23 designated beneficiary.

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

1           (2) An account owner may change the designated beneficiary  
2 of an account to a member of the family of the previously  
3 designated beneficiary as provided in the management contract or  
4 as otherwise provided in this act.

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

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

13           Sec. 9. (1) No account owner or designated beneficiary of  
14 any account shall direct the investment of any contributions to  
15 an account or the earnings on an account.

16           (2) An individual who establishes an account may select  
17 among different investment strategies designed exclusively by the  
18 program manager, only at the time the initial contribution is  
19 made that establishes the account. The program may allow board  
20 members or employees of the program, or the board members or  
21 employees of a contractor hired by the program to perform admin-  
22 istrative services, to make contributions to an account.

23           (3) Neither an account owner nor a designated beneficiary  
24 may use an interest in an account as security for a loan. Any  
25 pledge of an interest in an account has no force or effect.

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1       Sec. 10. (1) The total contributions to all of the accounts  
2 that name any 1 individual as the designated beneficiary shall  
3 not exceed a maximum of \$125,000.00.

4       (2) Any amount in excess of the amount in subsection (1)  
5 with respect to a designated beneficiary shall be promptly with-  
6 drawn and is not a qualified withdrawal or shall be transferred  
7 to another account.

8       Sec. 11. (1) The program manager shall report distributions  
9 from an account to any individual or for the benefit of any indi-  
10 vidual during a tax year to the internal revenue service and the  
11 account owner or, to the extent required by federal law or regu-  
12 lation, to the distributee.

13       (2) The program manager shall provide statements that iden-  
14 tify the individual contributions made during the tax year, the  
15 total contributions made to the account for the tax year, the  
16 value of the account at the end of the tax year, distributions  
17 made during the tax year, and any other information that the  
18 treasurer requires to each account owner on or before the January  
19 31 following the end of each calendar year.

20       Sec. 12. The program manager shall disclose the following  
21 information in writing to each account owner of an education sav-  
22 ings account and any other person who requests information about  
23 an education savings account:

24       (a) The terms and conditions for establishing an education  
25 savings account.

26       (b) Restrictions on the substitutions of designated  
27 beneficiaries and transfer of account funds.

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

3 (d) The period of time during which a designated beneficiary  
4 may receive benefits under the Michigan education savings program  
5 agreement.

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

10 (f) The potential tax consequences associated with contribu-  
11 tions to and distributions and withdrawals from accounts.

12 (g) Investment history and potential growth of account funds  
13 and a projection of the impact of the growth of the account funds  
14 on the maximum amount allowable in an account.

15 (h) All other rights and obligations under Michigan educa-  
16 tion savings program agreements and any other terms, conditions,  
17 and provisions of a contract or an agreement entered into under  
18 this act.

19 Sec. 13. This act and any agreement under this act shall  
20 not be construed or interpreted to do any of the following:

21 (a) Give any designated beneficiary any rights or legal  
22 interest with respect to an account unless the designated benefi-  
23 ciary is the account owner.

24 (b) Guarantee that a designated beneficiary will be admitted  
25 to an eligible educational institution or, upon admission to an  
26 eligible educational institution, will be permitted to continue

1 to attend or will receive a degree from the eligible educational  
2 institution.

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

5 (d) Guarantee that amounts contributed to an account will be  
6 sufficient to cover the qualified higher education expenses of a  
7 designated beneficiary.

8 Sec. 14. (1) This act does not create and shall not be con-  
9 strued to create any obligation upon this state or any agency or  
10 instrumentality of this state to guarantee for the benefit of an  
11 account owner or designated beneficiary any of the following:

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

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

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

19 Sec. 15. The program manager shall file an annual report  
20 with the treasurer and the board that includes all of the  
21 following:

22 (a) The names and identification numbers of account owners,  
23 designated beneficiaries, and distributees of family tuition  
24 accounts. The information reported pursuant to this subdivision  
25 is not subject to the freedom of information act, 1976 PA 442,  
26 MCL 15.231 to 15.246.

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1 (b) The total amount contributed to all accounts during the  
2 year.

3 (c) All distributions from all accounts and whether or not  
4 each distribution was a qualified withdrawal.

5 (d) Any information that the program manager or treasurer  
6 may require regarding the taxation of amounts contributed to or  
7 withdrawn from accounts.

8 Sec. 16. (1) Contributions to and interest earned on an  
9 education savings account are exempt from taxation as provided in  
10 sections 30 and 30f of the income tax act of 1967, 1967 PA 281,  
11 MCL 206.30 and 206.30f.

12 (2) Withdrawals made from education savings accounts are  
13 taxable as provided in section 30 of the income tax act of 1967,  
14 1967 PA 281, MCL 206.30.

15 Enacting section 1. This act does not take effect unless  
16 all of the following bills of the 90th Legislature are enacted  
17 into law:

18 (a) House Bill No. 5653.

19 (b) House Bill No. 5654.