

# HOUSE BILL No. 4202

February 5, 2009, Introduced by Reps. Lindberg, Roberts, McDowell, Ebli, Sheltroun, Hansen, Terry Brown, Polidori and Mayes and referred to the Committee on Education.

A bill to amend 2000 PA 161, entitled "Michigan education savings program act," by amending sections 2 and 7 (MCL 390.1472 and 390.1477), as amended by 2007 PA 153.

**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 account  
3 established under this act.

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

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

1           (ii) ~~An~~ **A STATE OR LOCAL GOVERNMENT AGENCY OR INSTRUMENTALITY,**  
2 **AN** entity exempt from taxation under section 501(c)(3) of the  
3 internal revenue code, ~~or~~ an estate or trust, **OR A CORPORATION** that  
4 enters into a Michigan education savings program agreement and  
5 establishes an education savings account.

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

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

10           (e) "Designated beneficiary" means the individual designated  
11 as the individual whose higher education expenses are expected to  
12 be paid from the account.

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

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

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

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

26           (j) "Michigan education savings program agreement" means the  
27 agreement between the program and an account owner that establishes

1 an education savings account.

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

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

7 (m) "Qualified higher education expenses" means qualified  
8 higher education expenses as defined in section 529 of the internal  
9 revenue code.

10 (n) "Qualified withdrawal" means a distribution that is not  
11 subject to a penalty or an excise tax under section 529 of the  
12 internal revenue code, a penalty under this act, or taxation under  
13 the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and  
14 that meets any of the following:

15 (i) A withdrawal from an account to pay the qualified higher  
16 education expenses of the designated beneficiary incurred after the  
17 account is established.

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

20 (iii) A withdrawal made because a beneficiary received a  
21 scholarship that paid for all or part of the qualified higher  
22 education expenses of the beneficiary to the extent the amount of  
23 the withdrawal does not exceed the amount of the scholarship.

24 (iv) A withdrawal made because a beneficiary attended a service  
25 academy to the extent that the amount of the withdrawal does not  
26 exceed the costs of the advanced education attributable to the  
27 beneficiary's attendance in the service academy.

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

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

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

7 (p) "Service academy" means the United States military  
8 academy, United States naval academy, United States air force  
9 academy, United States coast guard academy, or United States  
10 merchant marine academy.

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

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

14 (2) Any individual or entity described in section 2(b)(ii) may  
15 open 1 or more education savings accounts to save money to pay the  
16 qualified higher education expenses of 1 or more designated  
17 beneficiaries. An account owner shall open only 1 account for any 1  
18 designated beneficiary. Each account opened under this act shall  
19 have only 1 designated beneficiary.

20 (3) To open an education savings account, the individual or  
21 entity described in section 2(b)(ii) shall enter into a Michigan  
22 education savings program agreement with the program. The Michigan  
23 education savings program agreement shall be in the form prescribed  
24 by a program manager and approved by the treasurer and contain all  
25 of the following:

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

1 (b) A designated beneficiary. A STATE OR LOCAL GOVERNMENT  
2 AGENCY OR INSTRUMENTALITY, A PERSON EXEMPT FROM TAXATION AS AN  
3 ORGANIZATION DESCRIBED IN SECTION 501(C) (3) OF THE INTERNAL REVENUE  
4 CODE, OR A CORPORATION, AS PART OF A SCHOLARSHIP PROGRAM, MAY DEFER  
5 NAMING A DESIGNATED BENEFICIARY CONSISTENT WITH THE TERMS OF THE  
6 APPLICABLE MICHIGAN EDUCATION SAVINGS PROGRAM AGREEMENT.

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

9 (d) Any other information that the treasurer or program  
10 manager considers necessary.

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

13 (5) Contributions to accounts shall only be made in cash, by  
14 check, ~~by money order,~~ by credit card, or by any similar method as  
15 approved by the state treasurer but shall not be property.

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

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

23 (a) Directly to an eligible education institution.

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

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

1           (D) IN THE FORM OF AN ELECTRONIC FUNDS TRANSFER TO AN ACCOUNT  
2 SPECIFIED BY THE DESIGNATED BENEFICIARY OR ACCOUNT HOLDER.

3           (8) Except as otherwise provided in this subsection for tax  
4 years that begin before January 1, 2002, if the distribution is not  
5 a qualified withdrawal, a program manager shall withhold an amount  
6 equal to 10% of the distribution amount as a penalty and pay that  
7 amount to the department for deposit into the general fund. For a  
8 distribution made after December 31, 2001 that is not a qualified  
9 withdrawal, if an excise tax or penalty is imposed under section  
10 529 of the internal revenue code pursuant to section 530(d)(4) of  
11 the internal revenue code, a penalty shall not be imposed under  
12 this subsection for that distribution. If a distribution that is  
13 not a qualified withdrawal is made after December 31, 2001 and an  
14 excise tax or penalty is not imposed under section 529 of the  
15 internal revenue code pursuant to section 530(d)(4) of the internal  
16 revenue code on that distribution, a program manager shall withhold  
17 an amount equal to 10% of the accumulated earnings attributable to  
18 that distribution amount as a penalty and pay that amount to the  
19 department for deposit into the general fund. The penalty under  
20 this subsection may be increased or decreased if the treasurer and  
21 the program manager determine that it is necessary to increase or  
22 decrease the penalty to comply with section 529 of the internal  
23 revenue code.

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