HOUSE BILL No. 5782

April 21, 2004, Introduced by Rep. DeRossett and referred to the Committee on Tax Policy.

A bill to amend 2000 PA 161, entitled

"Michigan education savings program act,"

by amending sections 2, 7, 8, and 9 (MCL 390.1472, 390.1477, 390.1478, and 390.1479), as amended by 2001 PA 215.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2. As used in this act:

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

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

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

(*ii*) An entity exempt from taxation under section 501(c)(3) of the internal revenue code **or an estate or trust** that enters

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into a Michigan education savings program agreement and establishes an education savings account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*v*) A transfer of funds as provided in section 8.

(o) "Treasurer" means the state treasurer.

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

(2) Any individual or entity described in section 2(b)(*ii*) may open 1 or more education savings accounts to save money to

pay the qualified higher education expenses of 1 or more designated beneficiaries. An account owner shall open only 1 account for any 1 designated beneficiary. Each account opened under this act shall have only 1 designated beneficiary.

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

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

(b) A designated beneficiary.

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

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

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

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

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

(7) Distributions from an account shall be ~~used to pay for qualified higher education expenses incurred after the account is~~

~~established and only in any of the following circumstances:~~ **requested on a form approved by the state treasurer. The program manager may retain from the distribution the amount necessary to comply with federal and state tax laws. Distributions may be made in the following manner:**

(a) ~~The distribution is made directly~~ **Directly** to an eligible education institution.

(b) ~~The distribution is made in~~ **In** the form of a check payable to both the designated beneficiary and the eligible educational institution.

(c) ~~The distribution is made after~~ **In the form of a check payable to** the designated beneficiary ~~submits documentation to show that the distribution is a reimbursement for qualified higher education expenses that the designated beneficiary has already paid and the program has a process for reviewing the validity of the documentation prior to the distribution~~ **or account holder.**

~~(d) All of the following apply:~~

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

~~(*ii*) The program requires the designated beneficiary to provide documentation of payment of qualified higher education expenses within 30 days after making the distribution and has a process for reviewing the documentation.~~

~~(*iii*) The program retains an account balance that is large~~

~~enough to collect any penalty owed under subsection (8) on the distribution if valid documentation is not produced.~~

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

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

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

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

(3) An account owner may transfer ownership of all or a portion of an account to an individual or entity that is eligible to be an account owner under this act.

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

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

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

Sec. 9. (1) Except as otherwise provided in this section, an account owner or a designated beneficiary of any account shall not direct the investment of any contributions to an account or the earnings on an account.

(2) An account owner may select among different investment

strategies designed exclusively by the program manager in all of the following circumstances to the extent allowed under section 529 of the internal revenue code:

(a) At the time any contribution is made to an account with respect to the amount of that contribution.

(b) Once each calendar year with respect to the accumulated account balance.

(c) When an account owner makes a change in designated beneficiary of an account.

(3) The program may allow board members or employees of the program, or the board members or employees of a contractor hired by the program to perform administrative services, to make contributions to an account.

(4) An interest in an account shall not be used by an account owner or a designated beneficiary as security for a loan. Any pledge of an interest in an account has no force or effect.