

# HOUSE BILL No. 5783

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

A bill to amend 1986 PA 316, entitled "Michigan education trust act," by amending sections 6, 7, and 8 (MCL 390.1426, 390.1427, and 390.1428); and to repeal acts and parts of acts.

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

1       Sec. 6. (1) The trust, on behalf of itself and the state,  
2 may contract with a purchaser for the advance payment of tuition  
3 by the purchaser for a qualified beneficiary to attend any of the  
4 state institutions of higher education to which the qualified  
5 beneficiary is admitted, without further tuition cost to the  
6 qualified beneficiary. In addition, an advance tuition payment  
7 contract shall set forth in a clear, understandable manner all of  
8 the following:

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

1 (b) The terms and conditions for making the payment,  
2 including, but not limited to, the date or dates upon which the  
3 payment, or portions of the payment, ~~shall be~~ **is** due.

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

5 (d) The name and age of the qualified beneficiary under the  
6 contract, **unless the contract is purchased by a state or local**  
7 **government agency or instrumentality or a person exempt from**  
8 **taxation as an organization described in section 501(c)(3) of the**  
9 **internal revenue code of 1986, 26 USC 501, as part of a**  
10 **scholarship program.** The purchaser, with the approval of and on  
11 conditions determined by the trust, may subsequently substitute  
12 another 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  
15 contract. ~~, which, as provided by the contract, may be~~ **The**  
16 **contract may provide for termination by** the purchaser, the  
17 qualified beneficiary, ~~or~~ a person **appointed** to act on behalf  
18 of the purchaser or qualified beneficiary, or any combination of  
19 these persons.

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

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

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

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

11 (j) All other rights and obligations of the purchaser and the  
12 trust.

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

15 (2) The ~~form of~~ **trust shall not enter into** any advance  
16 tuition payment contract ~~to be entered into by the trust shall~~  
17 ~~first be approved by~~ **unless** the state administrative board **has**  
18 **approved of the form of that contract.**

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

26 (4) An advance tuition payment contract shall provide that  
27 the trust provide for the qualified beneficiary to attend a

1 community or junior college in this state before entering a state  
2 institution of higher education if the beneficiary so chooses and  
3 that the contract may be terminated pursuant to section 8 after  
4 completing the requirements for a degree at the community or  
5 junior college in this state or before entering the state  
6 institution of higher education.

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

16 (6) A writing or information provided to the trust for  
17 purposes of this section by a purchaser, qualified beneficiary,  
18 or person appointed under subsection (1)(f) is exempt from  
19 disclosure under the freedom of information act, 1976 PA 442, MCL  
20 15.231 to 15.246. As used in this subsection, "writing" means  
21 that term as defined in section 2 of the freedom of information  
22 act, 1976 PA 442, MCL 15.232.

23 Sec. 7. (1) At a minimum, the trust shall offer **1 of the 2**  
24 **types of** advance tuition payment contracts ~~of the 2 types~~ set  
25 forth in subsections (2) and (3), to be known as Plan A and Plan  
26 B, respectively.

27 (2) Under Plan A:

1 (a) A payment or series of payments shall be required from  
2 the purchaser on behalf of a qualified beneficiary.

3 (b) If an advance tuition payment contract is terminated  
4 before a qualified beneficiary earns a high school diploma or  
5 reaches the age of majority, or pursuant to section 8(1)(d), the  
6 trust shall refund the face amount of the payment or payments in  
7 accordance with the terms of the contract, less any  
8 administrative fee specified in the contract, but shall not  
9 refund any investment income attributable to the payments.

10 (c) Except as provided in subdivision (d), the trust shall  
11 provide for the qualified beneficiary to attend a state  
12 institution of higher education at which the qualified  
13 beneficiary attends for the number of credit hours required by  
14 the institution for the awarding of a baccalaureate degree,  
15 without further tuition cost to the qualified beneficiary, except  
16 as provided in section 6(1) for a qualified beneficiary who is  
17 not entitled to in-state tuition rates.

18 (d) As an alternative to subdivision (c), the trust shall  
19 provide for the qualified beneficiary to attend a state  
20 institution of higher education at which the qualified  
21 beneficiary attends for a fixed number of credit hours, as  
22 permitted by the trust, less than the total number of credit  
23 hours required by the institution for the awarding of a  
24 baccalaureate degree, without further tuition cost to the  
25 qualified beneficiary for that fixed number of credit hours,  
26 except as provided in section 6(1) for a qualified beneficiary  
27 who is not entitled to in-state tuition rates.

1 (3) Under Plan B:

2 (a) A payment or series of payments shall be required on  
3 behalf of a qualified beneficiary.

4 (b) If an advance tuition payment contract is terminated  
5 before a qualified beneficiary earns a high school diploma or  
6 reaches the age of majority, or pursuant to section 8(1)(d), the  
7 trust shall refund the face amount of the payment or payments in  
8 accordance with the terms of the contract, less any  
9 administrative fee specified in the contract, together with all  
10 or a specified portion of accrued investment income attributable  
11 to the payment or payments as may be agreed to in the contract.

12 (c) Except as provided in subdivision (d), the trust shall  
13 provide for the qualified beneficiary to attend a state  
14 institution of higher education at which the qualified  
15 beneficiary attends for the number of credit hours required by  
16 the institution for the awarding of a baccalaureate degree,  
17 without further tuition cost to the qualified beneficiary, except  
18 as provided in section 6(1) for a qualified beneficiary who is  
19 not entitled to in-state tuition rates.

20 (d) As an alternative to subdivision (c), the trust shall  
21 provide for the qualified beneficiary to attend a state  
22 institution of higher education at which the qualified  
23 beneficiary attends for a fixed number of credit hours, as  
24 permitted by the trust, less than the total number of credit  
25 hours required by the institution for the awarding of a  
26 baccalaureate degree, without further tuition cost to the  
27 qualified beneficiary for that fixed number of credit hours,

1 except as provided in section 6(1) for a qualified beneficiary  
2 who is not entitled to in-state tuition rates.

3 (4) Contracts required to be offered by this section may  
4 require that payment or payments from a purchaser, on behalf of a  
5 qualified beneficiary who may attend a state institution of  
6 higher education in less than 4 years after the date the contract  
7 is entered into by the purchaser, be based upon attendance at a  
8 certain state institution of higher education or at that state  
9 institution of higher education with the highest prevailing  
10 tuition cost for the number of credit hours covered by the  
11 contract.

12 (5) ~~Contracts required to be offered by~~ **A contract offered**  
13 **by the trust under** this section shall be offered with 2  
14 alternatives. ~~One~~ **The first** alternative shall offer **an** advance  
15 tuition payment ~~contracts that provide~~ **contract that provides**  
16 the credit hours of higher education necessary for the granting  
17 of a baccalaureate degree at any of the state institutions of  
18 higher education. The second alternative shall provide that the  
19 number of credit hours of higher education a qualified  
20 beneficiary may receive under the contract will be reduced to a  
21 percentage of the credit hours required for the granting of a  
22 baccalaureate degree at a state institution of higher education,  
23 as specified in the contract, if the qualified beneficiary  
24 enrolls in a state institution of higher education imposing at  
25 the time the qualified beneficiary enrolls an annual tuition rate  
26 that is greater than 105% of the weighted average annual tuition  
27 rate of all state institutions of higher education. This

1 subsection ~~shall~~ **does** not preclude a state institution of  
2 higher education at which a qualified beneficiary is entitled to  
3 receive less than the minimum number of credit hours required for  
4 the granting of a baccalaureate degree from providing that  
5 qualified beneficiary, without further tuition charges, the  
6 additional credit hours necessary to receive a baccalaureate  
7 degree.

8 (6) If a beneficiary of an advance tuition payment contract  
9 with either ~~an~~ alternative ~~1 or alternative 2~~ designation ~~—~~  
10 ~~as~~ described in subsection (5) ~~—~~, attends a community or junior  
11 college for 2 years at the in-district tuition rate, that  
12 beneficiary then may attend any state institution of higher  
13 education at no additional tuition cost and receive the number of  
14 credit hours necessary for the awarding of a baccalaureate  
15 degree.

16 Sec. 8. (1) An advance tuition payment contract shall  
17 authorize a termination of the contract when any 1 of the  
18 following occurs:

19 (a) The qualified beneficiary dies.

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

22 (c) The qualified beneficiary certifies to the trust that he  
23 or she has decided to attend and has been accepted by a Michigan  
24 independent, degree-granting institution of postsecondary  
25 education recognized by the state board of education or, after he  
26 or she has a high school diploma or has reached the age of  
27 majority, he or she has decided not to attend a state institution



1 of higher education and requests, in writing, before July 15 of  
2 the year in which the qualified beneficiary desires to terminate  
3 the contract, that the advance tuition payment contract be  
4 terminated.

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

7 (2) Except as provided in section 7(2)(b) and (3)(b), an  
8 advance tuition payment contract shall provide for a refund  
9 ~~pursuant to this section~~ **upon termination of the contract** to a  
10 person to whom the refund is payable under the contract. ~~upon~~  
11 ~~termination of the contract.~~ **All of the following apply to the**  
12 **refund described in this subsection:**

13 (a) If the qualified beneficiary has a high school diploma or  
14 has reached the age of majority, and attends an institution of  
15 higher education, the amount of a refund, except as provided in  
16 subsection (4), ~~shall be~~ **is** the lesser of the average tuition  
17 cost of all state institutions of higher education on the date of  
18 termination of the contract, or the face amount of the payment or  
19 payments and any accrued investment income attributable to the  
20 payment or payments, if he or she is covered by ~~alternative 1,~~  
21 ~~as~~ **the first alternative** described in section 7(5), or the  
22 lowest tuition cost of all state institutions of higher education  
23 on the date of termination of the contract if he or she is  
24 covered by ~~alternative 2~~ **the second alternative described in**  
25 **section 7(5)** or does not attend an institution of higher  
26 education.

27 (b) The amount of a refund shall be reduced by an appropriate

1 percentage if the purchaser entered into an advance tuition  
2 payment contract that provided for a fixed number of credit hours  
3 less than the total number of credit hours required by a state  
4 institution of higher education for the awarding of a  
5 baccalaureate degree, by the amount transferred to a community or  
6 junior college on behalf of a qualified beneficiary when the  
7 contract is terminated as provided in section 6(4), and by the  
8 amount transferred to a state institution of higher education on  
9 behalf of a qualified beneficiary. ~~Termination of a contract~~

10 ~~and the right to receive a refund shall not be authorized under~~

11 **(c) The contract may provide that the trust may deny payment**  
12 **of a refund upon termination of** the contract if the qualified  
13 beneficiary has completed more than 1/2 of the credit hours  
14 required by the state institution of higher education for the  
15 awarding of a baccalaureate degree. However, this ~~provision~~  
16 **subdivision** shall not affect the termination and refund rights of  
17 a graduate of a community or junior college. ~~Pursuant to this~~  
18 ~~subsection and except~~

19 **(d) Except** as provided by subsection (3), the trust shall  
20 make refund payments in equal installments over 4 years and not  
21 later than August 15 of the year due.

22 (3) An advance tuition payment contract shall authorize a  
23 person, who is entitled under the advance tuition payment  
24 contract to terminate the contract, to direct payment of the  
25 refund to an independent degree-granting college or university  
26 located in this state or to a community or junior college located  
27 in this state. If directed to make payments pursuant to this

1 subsection, the trust shall transfer to the designated  
2 institution an amount equal to the tuition due for the qualified  
3 beneficiary, but the trust shall not transfer a cumulative amount  
4 greater than the refund to which the person is entitled. If the  
5 refund exceeds the total amount of transfers directed to the  
6 designated institution, the excess shall be returned to the  
7 person to whom the refund is otherwise payable.

8 (4) Notwithstanding any other section of this act, the amount  
9 of a refund paid upon termination of the advance tuition payment  
10 contract by a person who directs the trust pursuant to  
11 subsection (3) to transfer the refund to an independent  
12 degree-granting college or university located in this state shall  
13 not be less than the prevailing weighted average tuition cost of  
14 state institutions of higher education for the number of credit  
15 hours covered by the contract on the date of termination. In  
16 calculating the amount of a refund for an advance payment  
17 contract containing the restrictions provided by section 7(5),  
18 the prevailing weighted average tuition cost shall be based upon  
19 only those state institutions of higher education at which the  
20 qualified beneficiary could have received sufficient credit hours  
21 for a baccalaureate degree.

22 Enacting section 1. Sections 23 and 24 of the Michigan  
23 education trust act, 1986 PA 316, MCL 390.1443 and 390.1444, are  
24 repealed.