



SENATE, NO. 2186

AN ACT TO CREATE WEALTH WITHIN LOW AND MODERATE INCOME HOUSEHOLDS OF THE COMMONWEALTH

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Sections (1) to (15), inclusive shall be known as the Massachusetts Individual
2 Development Account Program Act.

3 Section 2. Definitions.

4 As used in this section, the following words shall have the following meanings:-

5 “Account” or “Individual Development Account”, an account established under this act.

6 “Account owner”, an individual of a low and moderate income household who
7 establishes an individual development account by entering into a Massachusetts individual
8 development account program agreement.

9 “Council”, the investment advisory council established pursuant to section 5B of chapter

10 10.

11 “Department”, the department of the state treasurer as defined in section 1 of chapter 10.

12 “Designated beneficiary”, the individual designated as the individual whose qualified
13 expenses are expected to be paid from the account.

14 "Low and moderate income household", a household which has income that does not
15 exceed 80 per cent of the median income for the area, with adjustments made for smaller and
16 larger families, as such median shall be determined from time to time by the Secretary of
17 Housing and Urban Development pursuant to 42 USC section 1437(a)(B)(2).

18 “Management contract”, the contract executed between the treasurer and the program
19 manager.

20 “Massachusetts individual development account agreement”, the agreement between the
21 program and an account owner that establishes an individual development account.

22 “Non-qualified withdrawal”, means a distribution from an individual development
23 account that does not meet the definition of a qualified withdrawal.

24 “Program”, the Massachusetts individual development account program established
25 under this act.

26 “Program manager”, the entity selected by the treasurer to act as the manager of the
27 program.

28 “Qualified expense”, means an expense related to:

29 (i) expenses, including tuition, fees, room and board, books, supplies and
30 equipment, required for the enrollment or attendance at an accredited
31 institution of higher education;

32 (ii) expenses related to the purchase of a home, which will serve as the principal
33 place of residence for the account owner;

34 (iii) expenses related to major repairs to a new or existing home, which serves as
35 the principal place of residence for the account owner; and,

36 (iv) expenses related to starting and operating a new business enterprise.

37 “Qualified withdrawal”, means a distribution that is not subject to a penalty under this
38 act or taxation under the chapter 62 of the General Laws and that meets one of the following: -

39 (i) A withdrawal from an account to pay the qualified expense made by the
40 account owner after the account is established;

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

43 (iii) A transfer of funds due to the termination of the management contract as
44 provided in section 5.

45 (iv) A transfer of funds as provided in section 8.

46 “Treasurer”, the state treasurer as defined in section 1 of chapter 10 of the General Laws.

47 Section 3. Massachusetts individual development account program; establishment; soliciting
48 proposals; duties and powers vested in treasurer; administration of program; funds trustee;
49 personnel and services; selection of program manager; contract.

50 (1) The Massachusetts individual development account program is established in the
51 department of the state treasurer.

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

54 (3) The purposes, powers, and duties of the Massachusetts individual development account
55 program are vested in and shall be exercised by the treasurer or the designee of the treasurer;

56 (4) The treasurer shall administer the Massachusetts individual development account
57 program and shall be the trustee for the funds of the Massachusetts individual development
58 account program;

59 (5) The treasurer may employ or contract with personnel and contract for services necessary
60 for the administration of the program and the investment of the assets of the program including,
61 but not limited to, managerial, professional, legal, clerical, technical, and administrative
62 personnel or services;

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

67 (a) Financial stability.

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

69 (c) The ability of the entity to satisfy the record keeping and reporting requirements of
70 this act.

71 (d) The entity's plan for marketing the program and the investment it is willing to make
72 to promote the program.

73 (e) The fees, if any, proposed to be charged to persons opening or maintaining an
74 account.

75 (f) The minimum initial deposit and minimum contributions that the entity will require
76 which, for the first year of the program and each year thereafter, shall not be greater
77 than \$25.00 for a cash contribution or \$15.00 per pay period for payroll deduction
78 plans.

79 (g) The ability of the entity to accept electronic withdrawals, including payroll
80 deduction plans.

81 (7) The treasurer shall enter into a contract with the program manager which shall address
82 the respective authority and responsibility of the treasurer and the program manager to do all of
83 the following:

84 (a) Develop and implement the program.

85 (b) Invest the money received from account owners in one or more investment
86 instruments.

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

89 (d) Determine the use of financial organizations as account depositories and financial
90 managers.

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

94 (f) Develop marketing plans and promotional material(s).

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

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

97 (i) Address the ability of the program manager to take any action required to keep the
98 program in compliance with requirements of this act and its management contract.

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

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

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

104 (m) Provide for audits at least annually by a firm of certified public accountants.

105 (n) Provide the treasurer with copies of all regulatory filings and reports related to the
106 program made during the term of the management contract or while the program
107 manager is holding any accounts, other than confidential filings or reports except to
108 the extent those filings or reports are related to or are part of the program, it is the
109 responsibility of the program manager to make available for review by the treasurer
110 the results of any periodic examination of the program manager by any state or
111 federal banking, insurance, or securities commission, except to the extent that the
112 report or reports are not required to be disclosed under state or federal law.

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

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

116 Section 4. Management contract; supervision by treasurer.

117 The treasurer shall be responsible for the ongoing supervision of the management
118 contract in consultation with the council.

119 Section 5. Management contract; term; termination.

120 The treasurer may terminate the management contract based on the criteria specified in
121 the management contract.

122 Section 6. Contracts.

123 The treasurer may into contracts considered necessary and proper for the implementation
124 of the program.

125 Section 7. Individual development accounts; establishment; purpose; agreement; form of
126 contribution; withdrawal; distributions; penalty separate accounting for each beneficiary.

127 (1) Beginning October 1, 2007, individual savings accounts may be established under this
128 act.

129 (2) Any individual of a low and moderate income household may open an individual savings
130 account to save money to pay for qualified expenses, as defined in section 2(b), of one or more
131 beneficiaries. An account owner shall open only one account for any one designated
132 beneficiary. Each account opened under this act shall have only one designated beneficiary.

133 (3) To open an individual savings account, an individual of a low and moderate income
134 household, as defined in section (B), shall enter into a Massachusetts individual development
135 account program agreement with the program. The Massachusetts individual development
136 account program agreement shall be in the form prescribed by the program manager and
137 approved by the treasurer and shall contain all of the following:

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

140 (b) A designated beneficiary; provided, that nothing herein shall prevent an account
141 owner from naming himself as the designated beneficiary.

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

143 (d) Any other information that the treasurer or program manager considers necessary
144 for the effective administration of the program.

145 (4) Any individual of a low and moderate income household may make contributions to an
146 account

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

149 (6) An account owner may withdraw all or part of the balance from an account on thirty days
150 notice, or a shorter period as authorized in the Massachusetts individual development account
151 program agreement.

152 (7) Distributions from an account shall be used to pay for qualified expenses incurred after
153 the account is established and only in the following circumstances:

- 154 (a) The distribution is made in the form of a check payable to the designated
155 beneficiary and the indicated qualified expense is identified on the check.
- 156 (b) The distribution is made after the designated beneficiary submits documentation to
157 show that the distribution is for a qualified expense and the program has a process
158 for reviewing the validity of the documentation prior to the distribution.
- 159 (c) All of the following apply:
 - 160 (i) The designated beneficiary certifies prior to the distribution that the
161 distribution will be expended for his or her qualified expenses within a
162 reasonable time after the distribution is made.
 - 163 (ii) The program requires the designated beneficiary to provide documentation of
164 payment of a qualified expense within thirty days after making the distribution
165 and has a process for reviewing the documentation.

166 (iii) The program retains an account balance that is large enough to collect any
167 penalty owed under subsection (8) on the distribution if valid documentation is
168 not provided.

169 (8) Except as otherwise provided in this subsection for tax years that begin January 1, 2007,
170 if the distribution is not a qualified withdrawal, the program manager shall withhold an amount
171 equal to ten per cent of the distribution amount as a penalty and pay that amount to the
172 department for deposit into the general fund.

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

174 Section 8. Account owner or designated beneficiary; changes; transfer.

175 (1) An account owner may designate another individual as a successor owner of the account
176 in the event of the death of an account owner.

177 (2) An account owner may change the designated beneficiary of an account to another
178 designated beneficiary of the same account as provided in the management contract or as
179 otherwise provided in this act.

180 (3) An account owner may transfer all or a portion of an account to another individual
181 development account.

182 Section 9. Maximum account balance limit; limitation; rejection of contribution to designated
183 beneficiary account.

184 (1) The maximum account balance limit for any and all accounts that name the same
185 individual as the designated beneficiary shall not exceed a maximum of two hundred and fifty
186 thousand dollars.

187 (2) The program shall reject a contribution to any account for a designated beneficiary, if at
188 the time of the contribution, the total balance of all accounts for said designated beneficiary has

189 reached the maximum account balance limit under subsection (1); provided, that said accounts
190 may continue to accrue earnings if the total balance of all accounts for that designated
191 beneficiary has reached the maximum account balance limit and shall not be considered to have
192 exceeded the maximum account balance limit under subsection (1).

193 Section 10. Account distributions; report to department of revenue and account owner;
194 statements.

195 (1) The program manager shall report distributions from an account to any individual or for
196 the benefit of any individual during a tax year to the department of revenue and the account
197 owner or, to the extent required by state law or regulation, to the distributee.

198 (2) The program manager shall provide statements that identify the individual contributions
199 made during the tax year, the total contributions made to the account for the tax year, the value
200 of the account at the end of the tax year, distributions made during the tax year, and any other
201 information that the treasurer requires to each account owner on or before the February 1
202 following the end of each calendar year.

203 Section 11. Disclosure of information.

204 The program manager shall disclose the following information in writing to each account
205 owner of an individual development account and any other person who requests information
206 about an individual development account:

- 207 (a) The terms and conditions for establishing an individual development account.
- 208 (b) Restrictions on the substitutions of designated beneficiaries and transfer of
209 account funds.
- 210 (c) The person entitled to terminate a Massachusetts individual development account
211 program agreement.

- 212 (d) The period of time during which a designated beneficiary may receive benefits
213 under the Massachusetts individual development program agreement.
- 214 (e) The terms and conditions under which money may be wholly or partially
215 withdrawn from an account or the program, including, but not limited to, any
216 reasonable charges and fees and penalties that may be imposed for withdrawal.
- 217 (f) The potential tax consequences associated with contributions to and distributions
218 and withdrawals from accounts.
- 219 (g) Investment history and potential growth of account funds and a projection of the
220 impact of the growth of the account funds on the maximum amount allowable in
221 an account.
- 222 (h) All other rights and obligations under Massachusetts individual development
223 account program agreements and any other terms, conditions, and provisions of a
224 contract or an agreement entered into under this act.

225 Section 12. Construction or interpretation of act and agreement.

226 This act and any agreement under this act shall not be construed or interpreted to do any of
227 the following:

- 228 (a) Give any designated beneficiary any rights or legal interest with respect to an account
229 unless the designated beneficiary is the account owner.
- 230 (b) Give residency status to an individual merely because the individual is a designated
231 beneficiary.
- 232 (d) Guarantee that amounts contributed to an account will be sufficient to cover the
233 qualified expenses of a designated beneficiary.

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235 Section 13. Obligation upon state, agency, or instrumentality of state.

236 (1) This act does not create and shall not be construed to create any obligation upon this state
237 or any agency or instrumentality of this state to guarantee for the benefit of an account owner or
238 designated beneficiary any of the following:

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

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

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

245 Section 14. Annual report.

246 The program manager shall file an annual report with the treasurer and the council that
247 includes all of the following:

248 (a) The names and identification numbers of account owners and designated beneficiaries.

249 The information reported pursuant to this subdivision shall not be subject to the freedom of
250 information act.

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

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

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

256 Section 15. Contributions and interest earned as tax exempt; withdrawals as taxable.

257 (1) Contributions to and interest earned on an individual development account are exempt
258 from taxation as provided in section 2 of chapter 62 of the General Laws.

259 (2) Non-qualified withdrawals made from individual development accounts are taxable as
260 provided in section 2 of chapter 62 of the General Laws.

261 SECTION 2. Section 2(a)(2) of chapter 62 of the General Laws, as appearing in the Official
262 Edition, is hereby amended by inserting after paragraph (K) the following new paragraph:-

263 “(L) Contributions made to and interest earned on an individual development account
264 established pursuant to the Massachusetts individual development account program act.”

265 SECTION 3. Section 2(a)(1) of chapter 62 of the General Laws, as appearing in the Official
266 Edition, is hereby amended by inserting after paragraph (I) the following new paragraph:-

267 “(J) Income earned from non-qualified withdrawals from an individual development account
268 established pursuant to the Massachusetts individual development account program act.”

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in the General Court assembled.

The undersigned, citizen of _____, respectfully petitions for the passage of the accompanying bill and for legislation.

TO CREATE WEALTH WITHIN LOW AND MODERATE INCOME HOUSEHOLDS OF
THE COMMONWEALTH

Dianne Wilkerson(D W0)

| Second Suffolk