Fifty-sixth Legislative Assembly of North Dakota

SENATE BILL NO. 2414

Introduced by

Senators Krauter, Grindberg, Kelsh, O'Connell

Representatives Drovdal, R. Kelsch

- 1 A BILL for an Act to create and enact a new chapter to title 15 of the North Dakota Century
- 2 Code, relating to establishment of the North Dakota scholarshare trust program student aid
- 3 commission; and to provide continuing appropriations.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 5 **SECTION 1.** A new chapter to title 15 of the North Dakota Century Code is created and 6 enacted as follows:
 - North Dakota scholarshare trust. The North Dakota scholarshare trust is an instrumentality of the state. The trust is the program provided by this chapter.
- 9 **Student aid commission Creation.** The student aid commission consists of thirteen 10 members. The governor shall appoint one individual representing a degree-granting institution 11 under the control of the state board of higher education, one individual representing a
- 12 nondegree-granting institution under the control of the state board of higher education, one
- 13 individual representing a private degree-granting institution of higher education, two students in
- 14 full-time attendance at an institution of higher education in this state, three members of the
- 15 public, and one individual representing a high school. The majority leader of the senate shall
- 16 appoint two individuals. The speaker of the house of representatives shall appoint two
- 17 individuals.

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- 18 **Student aid commission Chairman Meetings.** The governor shall set the time and
- 19 place of the initial meeting of the student aid commission. At the initial meeting, the
- 20 commission shall elect from among its members a chairman and a secretary. Thereafter, the
- 21 commission must meet at least quarterly, at the call of the chairman.
- 22 **Student aid commission General powers.** The student aid commission may:
- 23 1. Sue and be sued.
- 24 2. Cause moneys in the program fund to be invested and reinvested.

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1 3. Appoint an executive director, employ necessary staff, and set the compensation 2 for the executive director and staff. 3 4. Contract with any public or private entity for the effectuation of its rights and duties. 4 5. Accept grants and gifts from any public or private source for deposit to the program 5 fund. 6 6. Enter participation agreements with participants. 7 7. Make payments to institutions of higher education on behalf of beneficiaries, 8 pursuant to participation agreements. 9 8. Make refunds to participants upon the cancellation of participation agreements, 10 pursuant to this chapter. 11 9. Defray the costs of administering and operating the North Dakota scholarshare 12 trust. 13 10. Adopt rules to implement this chapter. 14 Student aid commission - Scholarshare trust powers. The student aid commission 15 may: 16 1. Carry out studies and projections in order to advise participants regarding the 17 present and estimated future higher education expenses and the levels of financial 18 participation required in order to enable participants to reach their funding 19 objectives. 20 2. Contract for goods and services. 21 3. Participate in any federal, state, or local program for the benefit of the North 22 Dakota scholarshare trust. 23 4. Impose and collect administrative fees and charges in connection with transactions 24 of the North Dakota scholarshare trust and provide for reasonable service charges. 25 including charges for cancellation. 26 5. Set minimum and maximum investment levels. 27 6. Obtain insurance against any loss in connection with the property, assets, or 28 activities of the North Dakota scholarshare trust. 29 7. Obtain insurance indemnifying any member of the commission from personal loss 30 or liability resulting from the member's action or inaction.

Administer the funds of the North Dakota scholarshare trust.

Contract for the administration of the North Dakota scholarshare trust.

Participation agreements.

- 1. Each participant must agree to invest a specific amount of money in the trust, for a specific period of time, and for the benefit of a named beneficiary. The commission may specify a minimum length of time before any disbursements may be made on behalf of a beneficiary and may impose a penalty on the early distribution of funds, if determined necessary by the commission.
- 2. A participation agreement may be amended for any reason, including to provide for adjusted levels of participation and changes in the named beneficiary.
- 3. A participation agreement must provide that the agreement may be canceled upon the terms and conditions set forth in the rules adopted by the commission.

Participation agreements - Scope. The execution of a participation agreement does not guarantee:

- That the higher education expenses of the named beneficiary will be equal to projections and estimates provided by the trust.
- 2. That the named beneficiary will be admitted to an institution of higher education.
- 3. That the named beneficiary will be determined to be a resident of this state for purposes of tuition.
- 4. That the named beneficiary will be allowed to continue attendance at an institution of higher education following admission.
- 5. That the named beneficiary will graduate from an institution of higher education.
- 6. That the named beneficiary will have sufficient savings to fully cover all qualified education expenses as a result of attending an institution of higher education.

Participation agreements - Change of beneficiary. A participant may change the named beneficiary, in accordance with the rules implemented by the commission, at any time before the date a named beneficiary is admitted to an institution of higher education.

North Dakota scholarshare investment board - Members. The North Dakota scholarshare investment board consists of the state treasurer, the director of the office of management and budget, and the executive director of the student aid commission. The state treasurer shall serve as chairman of the board.

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1	North Dakota scholarshare investment board - Investment policy. Annually, the
2	North Dakota scholarshare investment board shall prepare a written statement of investment
3	policy. The board shall make the statement of investment policy available to the public and
4	conduct a public hearing to accept comments regarding the policy. After due consideration of
5	the comments, the board may modify the policy and shall adopt the final policy. The investment
6	policy must include approval of the person charged with managing and investing the North
7	Dakota scholarshare program fund. Moneys in the North Dakota scholarshare program fund
8	may be invested or reinvested by the state treasurer or may be invested in whole or in part
9	under contract with private money managers, as determined appropriate by the North Dakota
10	scholarshare investment board.

North Dakota scholarshare investment board - Investment manager - Duties. Not later than thirty days after the close of each month, the investment manager shall provide to the investment board and publish in the daily newspapers of general circulation in the state a report regarding deposits and investments made pursuant to this Act. Not later than thirty days after the close of each month, the investment manager shall provide to the investment board the following information:

- The type of investment, the name of the issuer, the date of maturity, the par and dollar amount invested in each security, investment, and money within the North Dakota scholarshare program fund.
- 2. The weighted average maturity of the investments within the North Dakota scholarshare program fund.
- 3. The amount of money in the North Dakota scholarshare program fund under the management of private money managers.
- 4. The market value as of the date of the report and the source of this valuation for any security within the program fund.
- A description of the compliance with the statement of investment policy.
- Receipts of moneys Deposit. The student aid commission shall deposit all moneys paid to it by participants into the North Dakota scholarshare program fund. Moneys in the fund may be used for payments to any institution of higher education, as provided for in the participation agreements.

Participation agreements - Cancellation - Refunds.

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- A participant may cancel a participation agreement at will. Upon cancellation, a
 participant is entitled to receive an amount equal to the then current market value
 of the total amount contributed to the participant's account, less a penalty with
 respect to the interest earned on the contributions levied by the student aid
 commission.
- 2. If a participant cancels a participation agreement because the beneficiary has died or become disabled, or if the beneficiary is the recipient of a scholarship which makes the contributions through the North Dakota scholarshare program unnecessary, the student aid commission shall refund to the participant an amount equal to the then current market value of the total amount contributed to the participant's account. The student aid commission may not levy a penalty under these circumstances.
- 3. The cancellation of a participation agreement is deemed to have been made at the close of business for the month during which notice of the cancellation is received by the student aid commission and the current market value of contributions as of that date must be determined according to the monthly report for that month.

Participation agreements - Ownership rights.

- The participant in a participation agreement retains ownership of all moneys
 contributed under the participation agreement up to the date the money is used for
 the payment of higher education costs on behalf of the beneficiary and all interest
 derived from the investment of payments made by the participant are deemed to
 be held in trust for the benefit of the beneficiary.
- If there has been a decrease in the value of the funds in a participant's account at
 the time a participation agreement is canceled, the participant may not have
 ownership rights to any amount above the market value of the funds in the account
 at the time of cancellation.
- 3. If a beneficiary graduates from an institution of higher education with no intention of further attendance at an institution of higher education and if a balance remains in the participant's account, the participant is entitled to receive a refund equal to the amount of the balance, less any penalty imposed by the student aid commission.

- 4. A participant may not pledge any contributions nor any interest derived from the contributions as collateral for a loan.
 - 5. A participant may transfer ownership rights in the moneys to another eligible participant and may make a gift of the moneys to an eligible beneficiary. The transfer must be conducted in accordance with rules adopted by the commission and the terms of the participant's participation agreement.

Payments to institutions of higher education. The student aid commission shall make payments for qualified higher education expenses directly to the institution of higher education in which the beneficiary is enrolled.

Unclaimed amounts - Owned by trust. Any amounts paid into the North Dakota scholarshare program fund and not claimed as provided for in this chapter remain the property of the North Dakota scholarshare trust.

Annual audit. The student aid commission shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the North Dakota scholarshare trust to the governor and the state auditor. The audit must be conducted by an independent certified public accountant and must include the direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees. Any contributions to the North Dakota scholarshare trust which are not directed to a specified beneficiary must be accounted for and treated separately in the annual audit. The commission also shall submit, along with the annual audit, any studies or evaluations prepared in the preceding year, a summary of the benefits provided by the trust including the number of participants and beneficiaries and any other information necessary to make a full, fair, and effective disclosure of the operations of the North Dakota scholarshare trust.

Annual reports. The North Dakota scholarshare trust annually shall:

 Provide to the tax commissioner a list of all distributions including payments of benefits and refunds to individuals having an interest in a participation agreement.
 The list must include the individual's name, address, and tax identification number, and the type and amount of each distribution including interest earned and penalties imposed.

- 2. Provide to each participant and beneficiary information regarding the value of the beneficiary's account, the interest earned on the account, the rate of return of the investments in the beneficiary's account for the annual reporting period, the investment goal the participant will achieve if all future contributions are made in a timely fashion, and the amount of any missed contributions that the participant is eligible to make up.
- 3. Provide information regarding the trends in qualified higher education expenses at the state institutions of higher education.

Trust assets. The assets of the North Dakota scholarshare trust, including the North Dakota scholarshare program fund, must be preserved, invested, and expended solely for the purposes of the trust and must be held in trust for the participants and beneficiaries. No property rights exist in favor of the state. The assets may not be transferred or used by the state for any purpose other than the purpose of the trust.

Marketing efforts. The state aid commission shall market the North Dakota scholarshare trust program to the citizens of this state. The commission shall include in its marketing efforts information designed to educate citizens about the benefits of saving for higher education and information to help them decide the level of scholarshare participation and the combination of savings strategies that may be appropriate for them. The trust also shall develop a mechanism to keep participants in the program motivated about their current and future academic endeavors.

North Dakota scholarshare program fund - Continuing appropriation. The North Dakota scholarshare program fund is a special fund in the state treasury. All moneys in the fund, together with all interest income earned by moneys in the fund, are appropriated on a continuing basis to the student aid commission for the purposes of carrying out this chapter. The student aid commission may transfer moneys from the North Dakota scholarshare program fund to the North Dakota scholarshare administration fund to defray the necessary expenses of the commission in administering this chapter provided that such expenditures may not exceed more than one percent of the total North Dakota scholarshare program fund.

North Dakota scholarshare administration fund - Continuing appropriation. The North Dakota scholarshare administration fund is a special fund in the state treasury. All moneys in the fund, together with all interest income earned by moneys in the fund, are

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- 1 appropriated on a continuing basis to the student aid commission for the purposes of carrying
- 2 out this chapter.