

April 2, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2400

Introduced by

Senators Axtman, Hogue, Sickler, Myrdal

Representatives Bosch, M. Ruby

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to create and enact a new section to chapter 12.1-23 and chapter ~~to~~
2 ~~title 15.1~~15.1-27.1 of the North Dakota Century Code, relating to the creation of a criminal
3 offense for the misuse of education savings account funds and the establishment of the
4 education savings account program; to amend and reenact section 15.1-20-02 of the North
5 Dakota Century Code, relating to exceptions to compulsory school attendance; to provide a
6 penalty; to provide a continuing appropriation; and to provide an ~~a~~ continuing appropriation.

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

8 **SECTION 1.** A new section to chapter 12.1-23 of the North Dakota Century Code is created
9 and enacted as follows:

10 Misuse of education savings account funds - Penalty.

11 1. A person is guilty of an offense under this section if the person:

- 12 a. Spends the funds in an education savings account for an expense the person
13 knows is not a qualified education expense; or
14 b. Intentionally fails to provide an eligible student with the educational services
15 funded by the education savings account.

16 2. An offense under this section is:

- 17 a. A class A felony if the value of the funds spent or the educational services not
18 provided exceeds fifty thousand dollars;

b. A class B felony if the value of the funds spent or the educational services not provided exceeds ten thousand dollars but does not exceed fifty thousand dollars;

c. A class C felony if the value of the funds spent or the educational services not provided exceeds one thousand dollars but does not exceed ten thousand dollars;

d. A class A misdemeanor if the value of the funds spent or the educational services not provided exceeds five hundred dollars but does not exceed one thousand dollars; or

e. A class B misdemeanor in all other cases.

~~—SECTION 2. A new chapter to title 15.1 of the North Dakota Century Code is created and enacted as follows:~~

SECTION 2. Chapter 15.1-27.1 of the North Dakota Century Code is created and enacted as follows:

15.1-27.1-01. Definitions.

As used in this chapter:

1. "Education service provider" means a person approved to provide qualified education services. The term does not include a participating school or a parent supervising home education in accordance with chapter 15.1-23.
2. "Eligible student" means an elementary or secondary student who is a resident of this state and eligible to attend a public school, including a student who has received a scholarship under the education savings account program, if the student has not graduated from high school or reached twenty-one years of age.
3. "Parent" means parent or legal guardian.
4. "Participating school" means a nonpublic school providing education to elementary students, secondary students, or both, which has notified the administrator of the school's intention to participate in the education savings account program and comply with the education savings account program requirements.
5. "Qualified educational expenses" means:
 - a. Tuition and fees at a nonpublic school;

- b. Textbooks, fees, or payments for educational therapies, including tutoring or cognitive skills training;
- c. Curriculum fees, software, and materials for a course of study for a specific subject matter or grade level;
- d. Tuition or fees for nonpublic online education programs;
- e. Tuition for vocational and life skills education approved by the superintendent of education;
- f. Education materials and services for students with disabilities from an accredited provider, including the cost of paraprofessionals and assistants who are trained in accordance with state law;
- g. Standardized test fees and advanced placement examinations or examinations related to postsecondary education admission or credentialing;
- h. Tuition or fees for dual-credit courses;
- i. Meals served to students in school buildings;
- j. Mental health assistance;
- k. Medical appointments necessary for educational benefit;
- l. Educational camps; and
- m. Qualified expenses as adopted by the superintendent of public instruction in administrative rules.

15.1-27.1-02. Education savings account fund - Establishment - Continuing appropriation.

There is created in the state treasury an education savings account fund. The fund consists of moneys appropriated to the superintendent of public instruction for the education savings account program. Moneys in the fund are appropriated on a continuing basis for education savings accounts.

15.1-27.1-03. Superintendent of public instruction - Administrator - Duties.

1. The superintendent of public instruction is the education savings account program administrator, and shall:
 - a. Annually inform eligible students and parents of the schools participating in the education savings account program.

- b. Create a standard application form a parent of an eligible student may submit to establish the student's eligibility for the education savings account program. The superintendent shall ensure the application is readily available to interested families through various sources, including the department's website.
 - c. Execute a multimedia marketing program targeting eligible families, particularly families below the state's median household income, informing the families about the education savings account program and how to apply.
 - d. Establish a web and phone-based support system providing parents with education savings account program application support and ongoing account maintenance support.
 - e. Reduce potential waste, fraud, and abuse, and ensure that any technology platform used for the program meets the state's highest security requirements, including compliance.
 - f. Report evidence of the misuse of education savings account funds to law enforcement.
 - g. Inform the parent of a student with a disability under the Individuals with Disabilities Education Act of 1990 [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.] if the parent spends the funds in the student's education savings account on tuition or fees at a nonpublic school, the services received from the nonpublic school constitute a parental placement and the protections under the Individuals with Disabilities Education Act of 1990 no longer apply to the student.
 - h. Adopt rules to implement this chapter.
2. The superintendent of public instruction may:
 - a. Make and enter a contract with a third-party entity to administer and audit the program, including allocating funds from each eligible student's account for the payment of qualified educational expenses by the eligible student's parent.
 - b. Conduct audits or other reviews necessary to properly administer the program.
 - c. Bar a participating school or education service provider from the education savings account program, if the superintendent determines the participating school or education provider has:

(1) Routinely failed to comply with the accountability standards established under this chapter; or

(2) Failed to provide the eligible student with the educational services funded by the education savings account.

15.1-27.1-04. Enrollment - Account deposits.

1. From January first to June thirtieth immediately preceding the school year for which the education savings account payment is requested, the parent of an eligible student may request an education savings account payment by submitting an application to the superintendent of public instruction.

2. Within thirty days of submission of an application, the superintendent of public instruction or third-party entity shall notify the parent whether the eligible student is approved for the following school year and specify the amount of the education savings account payment for the eligible student, if known at the time of the notice.

3. For an eligible student approved for an education savings account payment, the superintendent of public instruction or third-party entity shall establish an individual account for the eligible student in the education savings account fund and deposit the payment into the eligible student's individual account within thirty days following submission of the application, but in any case no later than July fifteenth. The funds must be available immediately for the payment of qualified educational expenses incurred by the parent for the eligible student during the fiscal year.

4. A ~~nonpublic~~ ~~participating~~ school or ~~other provider of qualified educational expenses~~ ~~education service provider~~ accepting payment from a parent using funds from an eligible student's individual account in the fund may not refund, rebate, or share any portion of the payment with the parent or eligible student.

5. Moneys remaining in an eligible student's individual account upon conclusion of the fiscal year must be returned to the education savings account fund.

6. Beginning with the school budget year beginning July 1, 2026, for each school year, an eligible student who:

a. ~~Attends~~ ~~Is enrolled full-time in and attends~~ a public school is eligible to receive an education savings account payment of ~~five hundred~~ ~~one~~ ~~thousand~~ dollars.

b. Is enrolled full-time in and attends a nonpublic participating school, or who participates in a home education program subject to subsection 9 and is enrolled in courses at the center for distance education, is eligible to receive an education savings account payment of:

(1) Three thousand five hundred dollars, if the eligible student's household has an annual income less than or equal to three hundred percent of the most recently revised poverty income guidelines published by the United States department of health and human services.

(2) Two thousand dollars, if the eligible student's household has an annual income greater than three hundred percent and less than or equal to five hundred percent of the most recently revised poverty income guidelines published by the United States department of health and human services.

(3) Five hundredOne thousand dollars, if the eligible student does not qualify under paragraph 1 or 2.

c. Participates in a home education program-in accordance with chapter 15.1-23, subject to subsection 9 is eligible to receive an education savings account payment of five hundredone thousand dollars.

d. Attends a nonpublic school that is not a participating school is eligible to receive an education savings account payment of five hundred dollars.

7. Education savings account payments may be approved for one school year and applications must be submitted annually for payments in subsequent school years.

8. Funds deposited in an education savings account are not taxable income to the parent or eligible student.

9. A parent who submits an application for an education savings account for an eligible student, which is approved by the superintendent of public instruction, may not file a statement of intent under section 15.1-23-02. If a statement of intent is on file at the time the application is approved, the approval of the application constitutes revocation of the statement of intent. This chapter and related rules do not apply to a home education student who is not participating in the program under this chapter.

15.1-27.1-05. Participating schools - Accountability standards - Autonomy.

1. A participating school shall:

- 1 a. ~~Comply with all health and safety laws or codes that apply to nonpublic schools.~~
- 2 ~~b. Hold a valid occupancy permit if required by the city in which the school is~~
- 3 ~~located.~~
- 4 ~~c. Certify the school complies with the nondiscrimination policies under 42 U.S.C.~~
- 5 ~~1981.~~
- 6 ~~d. Conduct criminal background checks on employees.~~
- 7 ~~e. Exclude from employment any individual who:~~
- 8 ~~(1) Is not permitted by state law to work in a nonpublic school; or~~
- 9 ~~(2) Might reasonably pose a threat to the safety of eligible students.~~
- 10 ~~f.b.~~ Provide a parent with a receipt for all qualifying expenses at the school.
- 11 ~~g.c.~~ Demonstrate the school's financial viability, if the school will receive fifty thousand
- 12 dollars or more during the school year, by filing with the superintendent of public
- 13 instruction before the start of the school year:
- 14 (1) A surety bond payable to the state in an amount equal to the aggregate
- 15 amount of funds from education savings accounts the participating school
- 16 expects to receive; or
- 17 (2) Financial information demonstrating the school is able to pay an aggregate
- 18 amount equal to the amount of the funds from education savings accounts
- 19 the participating school expects to receive.
- 20 d. Administer state tests and assessments and comply with requirements in
- 21 accordance with sections 15.1-21-08, 15.1-21-09, and 15.1-21-10.
- 22 2.a. An eligible student using education savings account program funds for tuition
- 23 payments at a participating school shall take required state tests and assessments in
- 24 accordance with section 15.1-21-08. This subsection does not apply to an eligible
- 25 student participating in a home education program subject to subsection 9 of section
- 26 15.1-27.1-04 who is enrolled in courses at the center for distance education.
- 27 ~~b.3.~~ The superintendent of public instruction ~~shall:~~
- 28 a. Shall compile and publish assessment results in accordance with sections
- 29 15.1-21-09 and 15.1-21-10.
- 30 ~~c. The superintendent of public instruction shall~~

b. Shall administer an annual parental satisfaction survey requesting each parent of an eligible student receiving an education savings account program payment to indicate the number of years the child has participated in the education savings account program and express the parent's:

- (1) Satisfaction with the education savings account program;~~and.~~
- (2) Opinions on other topics, items, or issues that may indicate the effectiveness of the education savings account program.

c. May apply to a federal agency for supplemental funds for this program and may create other education savings account programs in accordance with requirements identified in a federal grant. The department of public instruction may adopt rules to implement this subdivision. If there is a conflict between a provision of this chapter and rules adopted to receive a federal grant under this subdivision, the rules supersede this chapter.

~~3.4.~~ A participating school or education service provider is autonomous and not an agent of the state or federal government. The superintendent may not regulate the educational program of a participating school or education service provider that accepts funds from an education savings account. The creation of the education savings account program does not expand the regulatory authority of the state, its officers, or a school district beyond the regulations necessary to enforce the requirements of the education savings account program.

SECTION 3. AMENDMENT. Section 15.1-20-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-20-02. Compulsory attendance - Exceptions.

1. Section 15.1-20-01 does not apply if the person having responsibility for the child demonstrates to the satisfaction of the school board that:
 - a. The child is in attendance for the same length of time at an approved nonpublic school;
 - b. The child has completed high school;
 - c. The child is necessary to the support of the child's family;
 - d. A multidisciplinary team including the child's school district superintendent, the director of the child's special education unit, the child's classroom teacher, the

child's physician, and the child's parent has determined that the child has a disability that renders attendance or participation in a regular or special education program inexpedient or impracticable.

e. The child is receiving home education; ~~or~~ under chapter 15.1-23.

f. The child is a military-connected student engaging in virtual instruction under section 15.1-07-37 at the educational entity of the gaining or losing military installation, a student with a medical condition unable to physically attend school, or a student moving out of state and virtual instruction is allowed by the gaining or losing educational entity.

g. The child is participating in a home education program and is participating in the education savings account program under chapter 15.1-27.1.

2. The period of virtual instruction under subdivision f of subsection 1 may not extend beyond the current school year.

3. A decision by the board of a school district under subsection 1 is appealable to the district court.

SECTION 4. APPROPRIATION - SUPERINTENDENT OF PUBLIC INSTRUCTION -

EDUCATION SAVINGS ACCOUNT PROGRAM. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of administering the education savings account program, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 5. APPROPRIATION - SUPERINTENDENT OF PUBLIC INSTRUCTION -

EDUCATION SAVINGS ACCOUNT PROGRAM - LEGAL DEFENSE. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of defending any lawsuit related to the education savings account program under chapter 15.1-27.1, in which the state is a defendant, for the biennium beginning July 1, 2025, and ending June 30, 2027.