

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

REENGROSSED HOUSE BILL NO. 1540

Introduced by

Representatives Koppelman, Hauck, J. Johnson, Marschall, Morton, Rohr, Steiner

Senators Clemens, Cory, Gerhardt, Wobbema, Boehm

In place of the amendment (25.1055.04004) adopted by the Senate, Reengrossed House Bill No. 1540 is amended by amendment (25.1055.04007) as follows:

- 1 A BILL for an Act to create and enact a new chapter to title 15.1 of the North Dakota Century
- 2 Code, relating to an education savings account program; to provide a penalty; to provide an
- 3 appropriation; and to provide an effective date.

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

- 5 **SECTION 1.** A new chapter to title 15.1 of the North Dakota Century Code is created and
- 6 enacted as follows:

7 **Definitions.**

8 As used in this chapter:

- 9 1. "Administrator" means an organization registered by the secretary of state to do
- 10 business in North Dakota and designated by the Bank of North Dakota to assist in the
- 11 implementation of this chapter.
- 12 2. "Department" means the department of public instruction.
- 13 3. "Education service provider" means an individual or organization approved to provide
- 14 qualified education services. The term does not include a participating school.
- 15 4. "Eligible postsecondary institution" means a community college, an accredited
- 16 university, or an accredited private postsecondary institution.
- 17 5. "Eligible student" means:
- 18 a. ~~An~~ an elementary or secondary student who is a resident of this state ~~and~~ is
- 19 eligible to attend a public school; ~~or~~

1 ~~b. A student who has received a scholarship under the education savings account~~
2 ~~program until the student graduates high school or reaches twenty-one years of~~
3 ~~age, regardless of household income, and whose family's household income is~~
4 ~~less than three hundred percent of the federal poverty guidelines.~~

5 6. "Parent" means a resident of this state who is a parent, guardian, custodian, or other
6 person with the authority to act on behalf of the child the eligible student.

7 7. "Participating school" means any nonpublic school providing education to elementary
8 students, secondary students, or both that, which charges tuition and has notified the
9 administrator of the school's intention to participate in the education savings account
10 program and comply with the education savings account program requirements under
11 this chapter and related administrative rules.

12 8. "Private tutoring" means qualified professional tutoring services approved by the
13 administrator to receive payment under this chapter.

14 9. "Program manager" means an organization registered by the secretary of state to do
15 business in North Dakota and designated by the Bank of North Dakota to assist in the
16 implementation of this chapter.

17 **Account deposits - Parent agreement - Qualified expenses - Enrollment.**

18 1. ~~Beginning with the 2026-27 school year, the Bank of North Dakota annually shall~~
19 ~~deposit into each education savings account fifty percent of the statewide average~~
20 ~~amount distributed per student under subsection 5 of section 15.1-27-04.1 for the~~
21 ~~previous year.~~

22 ~~2. The department shall give priority access to the education savings account program to~~
23 ~~the sibling of a student already enrolled in the education savings account program.~~

24 ~~3. A parent of an eligible student qualifies for a state grant to the child's~~ an education
25 savings account ~~child~~ for the student if the parent signs an agreement with the
26 department promising:

27 a. To provide an education for the eligible student in at least the subjects of reading,
28 grammar English language arts, mathematics, social studies, and science;

29 b. Not to enroll the parent's eligible student in a public school or supervise home
30 education under chapter 15.1-23 for the eligible student;

- 1 c. To use education savings account program funds solely for qualified expenses
2 under this chapter;
- 3 d. To comply with the requirements outlined in this chapter and any related rules
4 adopted by the department under chapter 28-32, and other requirements of the
5 Bank of North Dakota or the program manager; and
- 6 e. If the participating student is a child with a disability, to acknowledge the parent
7 has received information from the department and understands participation in
8 the education savings account program qualifies as a parental placement of the
9 parent's child under the Individuals with Disabilities Education Act [Pub. L.
10 108-446; 20 U.S.C. 1412(a)(10)(A)]; and
- 11 ~~f. To notify the department if the parent's student terminates participation in the~~
12 ~~education savings account program and enrolls in a public school.~~
- 13 4.2. A parent participating in the education savings account program shall may use the
14 funds deposited in the eligible student's account for any of the following qualifying
15 expenses to educate the eligible student:
- 16 a. Tuition and fees at a participating school;
17 b. A textbook required by a participating school;
18 c. Payment for private tutoring or to another educational service provider;
19 d. Payment for purchase of curriculum;
20 e. Tuition or fees for a nonpublic online learning program;
21 f. Fees for national norm-referenced examinations, advanced placement
22 examinations or similar courses, and any examinations related to college or
23 university admission;
24 g. Computer hardware, software, or other technological device that is used solely
25 for a student's educational needs and approved permitted by the rules of the
26 department or a licensed physician, provided hardware purchased with education
27 savings account funds may not be resold within one year of purchase;
28 h. Reasonable fees for transportation paid to a fee-for-service transportation
29 provider for the student to travel to and from an education service provider;
30 i. Tuition and fees at an eligible postsecondary institution; and
31 j. A textbook required for college or university courses.

1 5.3. A participating school, private tutor, eligible postsecondary institution, or other
2 education service provider may not refund, rebate, or share a student's grant with a
3 parent or the student in any manner. Any refund must be provided to the administrator
4 who shall deposit the funds into the appropriate student's education savings account.

5 6.4. A parent may make a payment for the cost of educational programs and services not
6 covered by the funds in the child's account.

7 7.

8 **Bank of North Dakota - State auditor - State treasurer - Duties - Transfer - Penalty.**

9 1. The administrator shall:

10 a. Beginning with the 2026-27 school year, annually deposit into each education
11 savings account fifty percent of the statewide average amount distributed per
12 student under subsection 5 of section 15.1-27-04.1 for the previous year as
13 certified by the department.

14 b. Qualify a program manager to provide operational oversight and control of
15 education savings accounts.

16 c. Establish the role and responsibilities of a program manager.

17 d. Contract with the state auditor for the annual auditing of accounts. The state
18 auditor may determine a parent of an eligible student is ineligible for the
19 education savings account program if the parent substantially misuses the funds
20 in the account, in which case the state auditor shall notify the administrator. Upon
21 receiving the notice, the administrator shall discontinue contributions to the
22 eligible student's account. If evidence of fraudulent use of an account is obtained,
23 the state auditor shall refer cases of substantial misuse of funds to the attorney
24 general for investigation. A person who fraudulently misuses funds in violation of
25 this chapter is guilty of a class A misdemeanor, for which a maximum penalty of
26 imprisonment for three hundred sixty days, a fine of three thousand dollars, or
27 both, may be imposed.

28 e. Make deposits into eligible students' education savings accounts on a quarterly
29 basis.

30 f. Comply with the rules of the department adopted under chapter 28-32.

- 1 g. Upon notification by the program manager or department that a participating
2 student graduated from high school or is no longer participating in the education
3 savings account program, close the participating student's account and transfer
4 any remaining money in the account to the general fund in the state treasury.
- 5 2. The administrator may disqualify a participating school or education service provider
6 from the education savings account program if the program manager or state auditor
7 determines the participating school or education service provider has:
- 8 a. Routinely failed to comply with the accountability standards established under
9 this chapter; or
- 10 b. Failed to provide a participating student with the educational services funded by
11 the education savings account.
- 12 3. If the administrator, upon recommendation from the program manager or state auditor,
13 disqualifies a participating school or education provider from the education savings
14 account program, the program manager shall notify eligible students and parents of
15 the decision as quickly as possible.
- 16 4. A decision of the administrator may be appealed to the department under chapter
17 28-32.
- 18 5. The state treasurer annually shall transfer the funds required for education savings
19 accounts from the general fund to the Bank of North Dakota for quarterly deposit in
20 each education savings account.
- 21 ~~8-6.~~ Funds, not to exceed twenty-five percent of the amount under subsection 1, not
22 expended over the course of a school year may be carried forward for use in the
23 following school year for a child who remains in the education savings account
24 program. If a parent removes a child from the education savings account program
25 before the end of the school year, any remaining funds from that school year must be
26 returned to the state and be allocated to fund other accounts. A student may transfer
27 to another nonpublic school or home school and retain the funds in the education
28 savings account.
- 29 9-7. Funds deposited in an education savings account do not constitute state taxable
30 income in North Dakota to the parent or the education savings account student.

8. The superintendent of public instruction may apply to a federal agency for additional funds to support this program. These funds must provide an additional benefit to each participating student's education savings account. If necessary to become eligible for the receipt of federal funds, the department shall adopt rules that supersede any conflicting law under this chapter and notify the administrator.

~~**Bank of North Dakota - Administrator - Administration.**~~

~~1. The Bank of North Dakota shall:~~

~~a. Qualify private financial management firms to manage and administer education savings accounts.~~

~~b. Conduct or contract for the auditing of accounts and, at a minimum, conduct random audits of accounts on an annual basis. The Bank of North Dakota may make a parent of an eligible student ineligible for the education savings account program if the parent substantially misuses the funds in the account.~~

~~c. Refer cases of substantial misuse of funds to law enforcement for investigation if evidence of fraudulent use of an account is obtained.~~

~~d. Make payments to eligible students' education savings accounts on a quarterly basis.~~

~~e. Adopt rules and procedures as necessary for the administration of the education savings account program.~~

~~f. Upon the student's graduation from high school, the superintendent of public instruction shall close the student's account and transfer any remaining money in the account to the general fund in the state treasury.~~

~~2. The administrator shall provide to the parent of a participating student a written explanation of the allowable uses of education saving accounts, the responsibilities of the parent, and the duties of the administrator.~~

Participating schools - Department - Accountability standards.

1. ~~To ensure students are treated fairly and kept safe, each~~ A participating nonpublic school shall:

a. Comply with all health and safety laws or codes that apply to nonpublic schools;

b. Obtain certification of approval under section 15.1-06-06.1;

c. Hold a valid occupancy permit if required by the school's municipality; and.

1 d. Certify the school complies with the nondiscrimination policies under [42 U.S.C.
2 1981].

3 ~~2. To ensure funds are spent appropriately, a participating school shall:~~

4 a.e. Provide a parent with a receipt for all qualifying expenses at the school.

5 ~~b. Demonstrate the school's financial viability, if the school is to receive fifty-~~
6 ~~thousand dollars or more during the school year, by filing with the administrator~~
7 ~~before the start of the school year:~~

8 ~~(1) A surety bond payable to the state in an amount equal to the aggregate~~
9 ~~amount of the funds from education savings accounts expected to be paid~~
10 ~~during the school year from students admitted at the participating school; or~~

11 ~~(2) Financial information demonstrating the school has the ability to pay an~~
12 ~~aggregate amount equal to the amount of the funds from education savings~~
13 ~~accounts expected to be paid during the school year to students admitted to~~
14 ~~the participating school.~~

15 ~~3. To allow parents and taxpayers to measure the achievements of the education savings~~
16 ~~account program:~~

17 ~~a. Parents shall ensure:~~

18 ~~(1) The~~

19 f. Refund any payment for which a good or service was not provided to the student
20 due to a participating student terminating participation in the education savings
21 account program. A tuition payment must be refunded pro rata determined by the
22 school days remaining in the term for which the tuition was paid. A refund must
23 be paid to the administrator who shall deposit the funds into the appropriate
24 student's education savings account.

25 g. Ensure the eligible student annually takes the state achievement
26 tests assessments, or other nationally norm-referenced tests, or equivalent tests
27 that, which measure learning gains in mathematics and English language arts,
28 and provide for value-added assessment. If a parent selects the state
29 achievement test, the department shall pay associated costs and materials;

30 ~~(2) The~~

- 1 h. Ensure the results of the tests are provided to the department or an organization
2 chosen by the state on an annual basis:
- 3 ~~(3) The student information is reported in a way that allows the department to~~
4 ~~aggregate data by grade level, gender, family income level, and race; and~~
- 5 ~~(4) The department, or an organization chosen by the department, is informed~~
6 ~~of the eligible student's graduation from high school.~~
- 7 ~~b.2. The department, or an organization chosen by the department, shall:~~
- 8 ~~(4)a. Ensure compliance with all student privacy laws;~~
- 9 ~~(2)b. Collect all test results;~~
- 10 ~~(3)c. Provide the test results, associated learning gains, and graduation rates to the~~
11 ~~public on the department's website after the third year of test and graduation-~~
12 ~~related data collection. The findings must be aggregated by the student's grade~~
13 ~~level, gender, family income level, number of years of participation in the~~
14 ~~education savings account program, and race. Data aggregation related to~~
15 ~~assessments may be limited to the state assessment, as determined necessary~~
16 ~~by the department.~~
- 17 ~~(4)d. Provide rates for high school graduation, college attendance, and college~~
18 ~~graduation for participating students to the public on the department's website~~
19 ~~after the third year of test and test-related data collection; and~~
- 20 ~~(5) Administer an annual parental satisfaction survey requesting each parent~~
21 ~~of a student receiving an education savings account program grant indicate the~~
22 ~~number of years the child has participated in the education savings account~~
23 ~~program and express the parent's:~~
- 24 ~~(a) Satisfaction with the education savings account program; and~~
- 25 ~~(b) Opinions on other topics, items, or issues that may indicate the effectiveness of~~
26 ~~the education savings account program.~~
- 27 4.3. A participating nonpublic school or other education service provider is autonomous
28 and not an agent of the state or federal government and, except as provided under
29 this chapter and in related rules, the:
- 30 a. The department~~Department~~ may not regulate the educational program of a
31 participating nonpublic school or education service provider that accepts funds

1 from an education savings account; except as provided under this chapter and
2 chapter 15.1-23:

3 b. ~~The creation~~Creation of the education savings account program does not expand
4 the regulatory authority of the state, its officers, or a school district to impose an
5 additional regulation of nonpublic schools or education service providers beyond
6 the regulations necessary to enforce the requirements of the education savings
7 account program; and

8 c. Participating nonpublic schools and education service providers must have the
9 freedom to provide for the educational needs of the school's students without
10 governmental control.

11 ~~Department of public instruction - Administrator~~Program manager - Duties.

12 ~~1. The administrator~~program manager shall:

13 ~~a.1.~~ Ensure eligible students and parents are informed annually of the schools that will be
14 participating in the education savings account program.

15 ~~b.2.~~ CreateProvide a standard form a parent of an eligible student may submit to establish
16 a student's eligibility for the education savings account program. The
17 ~~administrator~~program manager shall ensure the application is readily available to
18 interested families through various sources, including the department'sa website for
19 the program.

20 ~~e.3.~~ Accept applications on a year-round basis and shall approve applications in a
21 reasonable time frame.

22 ~~d.4.~~ Execute a multimedia marketing program targeting eligible families, especially those
23 below the state's median household income, informing the families about the
24 education savings account program and how to apply.

25 ~~e.5.~~ Establish a web and phone-based support system providing parents with education
26 savings account program application support and ongoing account maintenance
27 support.

28 ~~2. The department may bar a participating school or education service provider from the~~
29 education savings account program if the department determines the participating
30 school or education provider has:

- ~~1. a. Routinely failed to comply with the accountability standards established under this chapter; or~~
- ~~2. b. Failed to provide the eligible student with the educational services funded by the education savings account.~~
- ~~3. If the department bars a participating school or education provider from the education savings account program, the department shall notify eligible students and parents of the decision as quickly as possible. A parent may appeal a decision of the department under chapter 28-32.~~
- ~~4. The department shall adopt rules and procedures as necessary for the administration of the education savings account program.~~
6. Provide to the parent of a participating student a written explanation of the allowable uses of education savings accounts, the responsibilities of the parent, and the duties of the program manager.
7. Ensure the administrator and the department are informed of a participating student's graduation from high school or a participating student's termination of participation in the education savings account program.
8. Coordinate with the administrator and the department to develop procedures to implement the program in accordance with this chapter and related rules.
9. Upon request, determine whether an expense is allowable. A parent may appeal a determination to the administrator.
10. Establish a procedure for a participating school to provide data to the department as required under this chapter.
11. Administer an annual parental satisfaction survey requesting each parent of a student receiving an education savings account program grant indicate the number of years the child has participated in the education savings account program and express the parent's:
 - a. Satisfaction with the education savings account program; and
 - b. Opinions on other topics, items, or issues that may indicate the effectiveness of the education savings account program.

School districts of residence - Duties.

The school district of residence:

- 1 1. Shall provide a participating school or education service provider that has admitted an
2 eligible student under this chapter with a complete copy of the student's school
3 records, while complying with the Family Educational Rights and Privacy Act of 1974
4 [20 U.S.C. Section 1232(g)].
- 5 2. May provide transportation for an eligible student to and from the participating school
6 or education service provider under the same conditions as the school district of
7 residence is required to provide transportation for other resident students to nonpublic
8 schools. The school district of residence qualifies for state transportation aid for each
9 student transported.

10 **SECTION 2. APPROPRIATION - BANK OF NORTH DAKOTA - EDUCATION SAVINGS**

11 **ACCOUNT PROGRAM.** There is appropriated out of any moneys in the general fund in the
12 state treasury, not otherwise appropriated, the sum of \$40,000,000, or so much of the sum as
13 may be necessary, to the Bank of North Dakota for the purpose of funding the education
14 savings account program beginning in the school year 2026-27, for the biennium beginning
15 July 1, 2025, and ending June 30, 2027.

16 **SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on July 1, 2026.