

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2303

Introduced by

Senators Wobbema, Boehm, Cory, Gerhardt

Representatives Hauck, Koppelman

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.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

6 **Definitions.**

7 As used in this chapter:

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

- 1 6. "Parent" means a resident of this state who is a parent, guardian, custodian, or other
2 person with the authority to act on behalf of the child.
- 3 7. "Participating school" means any nonpublic school providing education to elementary
4 students, secondary students, or both that has notified the administrator of the
5 school's intention to participate in the education savings account program and comply
6 with the education savings account program requirements under this chapter and
7 related administrative rules.
- 8 8. "Private tutoring" means qualified tutoring services approved to receive payment under
9 this chapter.

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

- 11 1. The Bank of North Dakota by July fifteenth of each year shall deposit into each
12 education savings account sixty percent of the dollar amount under subsection 3 of
13 section 15.1-27-04.1 for the respective year.
- 14 2. The department shall give priority access to the education savings account program to
15 the sibling of a student already enrolled in the education savings account program.
- 16 3. A parent of an eligible student qualifies for a state grant to the child's education
17 savings account if the parent signs an agreement with the department promising:
- 18 a. To provide an education for the eligible student in at least the subjects of reading,
19 grammar, mathematics, social studies, and science;
- 20 b. Not to enroll the parent's eligible student in a public school;
- 21 c. To use education savings account program funds solely for qualified expenses
22 under this chapter, as identified in subsection 4;
- 23 d. To comply with the requirements outlined in this chapter and any related rules;
- 24 e. If the participating student is a child with a disability, to acknowledge the parent
25 has received information from the department and understands participation in
26 the education savings account program qualifies as a parental placement of the
27 parent's child under the Individuals with Disabilities Education Act [Pub. L.
28 108-446; 20 U.S.C. 1412(a)(10)(A)]; and
- 29 f. To notify the department if the parent's student terminates participation in the
30 education savings account program and enrolls in a public school.

- 1 4. A parent participating in the education savings account program shall use the funds
2 deposited in the eligible student's account for the following qualifying expenses to
3 educate the eligible student:
- 4 a. Tuition and fees at a participating school;
5 b. Textbooks and supplies as required by a participating school;
6 c. Payment for private tutoring or to another educational service provider;
7 d. Payment for educational therapy or services, including occupational therapy,
8 behavioral therapy, physical therapy, speech-language therapy, and audiology
9 therapy from a licensed or certified practitioner or provider, including a licensed or
10 certified paraprofessional or educational aid;
11 e. Payment for purchase of curriculum;
12 f. Tuition or fees for a nonpublic online learning program;
13 g. Fees for national norm-referenced examinations, advanced placement
14 examinations or similar courses, and any examinations related to college or
15 university admission;
16 h. Computer hardware, software, or other technological device that is used solely
17 for a student's educational needs and approved by the department or a licensed
18 physician, provided hardware purchased with education savings account funds
19 may not be resold within one year of purchase;
20 i. Reasonable fees for transportation paid to a fee-for-service transportation
21 provider for the student to travel to and from an education service provider;
22 j. Tuition and fees at an eligible postsecondary institution;
23 k. A textbook required for college or university courses; and
24 l. Upon graduation, a transfer to a North Dakota education savings plan under
25 section 6-09-38.
- 26 5. The administrator may adjust the qualified expenses identified in subsection 4, if
27 necessary.
- 28 6. A participating school, private tutor, eligible postsecondary institution, or other
29 education service provider may not refund, rebate, or share a student's grant with a
30 parent or the student in any manner.

- 1 7. A parent may make a payment for the cost of educational programs and services not
2 covered by the funds in the child's account.
- 3 8. A participating student must inform the department of the student's school district of
4 residence for the purposes of calculating state aid for the school district of residence.
5 The department shall forward ten percent of the dollar amount under subsection 3 of
6 section 15.1-27-04.1 for the respective year to the school district of residence for each
7 participating student residing in that school district in addition to any other state aid
8 paid to the school district.
- 9 9. The state treasurer by July fifteenth of each year shall transfer the funds required for
10 education savings accounts from the general fund to the Bank of North Dakota for
11 deposit in each education savings account.
- 12 10. Funds, not to exceed twenty-five percent of the amount under subsection 1, not
13 expended over the course of a school year may be carried forward for use in the
14 following school year for a child who remains in the education savings account
15 program. If a parent removes a child from the education savings account program
16 before the end of the school year, any remaining funds from that school year must be
17 returned to the state and be allocated to fund other accounts. A student may transfer
18 to another nonpublic school or home school and retain the funds in the education
19 savings account.
- 20 11. Funds deposited in an education savings account do not constitute taxable income to
21 the parent or the education savings account student.

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

- 23 1. The Bank of North Dakota shall:
- 24 a. Qualify private financial management firms to manage and administer education
25 savings accounts.
- 26 b. Conduct or contract for the auditing of accounts and, at a minimum, conduct
27 random audits of accounts on an annual basis. The Bank of North Dakota may
28 make a parent of an eligible student ineligible for the education savings account
29 program if the parent substantially misuses the funds in the account.
- 30 c. Refer cases of substantial misuse of funds to law enforcement for investigation if
31 evidence of fraudulent use of an account is obtained.

- 1 d. Make payments to eligible students' education savings accounts on a quarterly
2 basis.
- 3 e. Adopt rules and procedures as necessary for the administration of the education
4 savings account program.
- 5 2. The administrator shall provide to the parent of a participating student a written
6 explanation of the allowable uses of education saving accounts, the responsibilities of
7 the parent, and the duties of the administrator.

8 **Participating schools - Accountability standards.**

- 9 1. To ensure students are treated fairly and kept safe, each participating school shall:
- 10 a. Comply with all health and safety laws or codes that apply to participating
11 schools;
- 12 b. Obtain certification of approval under section 15.1-06-06.1;
- 13 c. Hold a valid occupancy permit if required by the school's municipality; and
- 14 d. Certify the school complies with the nondiscrimination policies under [42 U.S.C.
15 1981].
- 16 2. To ensure funds are spent appropriately, a participating school shall:
- 17 a. Provide a parent with a receipt for all qualifying expenses at the school.
- 18 b. Demonstrate the school's financial viability, if the school is to receive fifty
19 thousand dollars or more during the school year, by filing with the administrator
20 before the start of the school year:
- 21 (1) A surety bond payable to the state in an amount equal to the aggregate
22 amount of the funds from education savings accounts expected to be paid
23 during the school year from students admitted at the participating school; or
- 24 (2) Financial information demonstrating the school has the ability to pay an
25 aggregate amount equal to the amount of the funds from education savings
26 accounts expected to be paid during the school year to students admitted to
27 the participating school.
- 28 3. To allow parents and taxpayers to measure the achievements of the education savings
29 account program:
- 30 a. Parents shall ensure the parents are in compliance with all state law pertaining to
31 the category of nonpublic schools the student is participating in.

- 1 **b.** The department, or an organization chosen by the department, shall:
- 2 (1) Ensure compliance with all student privacy laws;
- 3 (2) Collect all test results;
- 4 (3) Provide the test results, associated learning gains, and graduation rates to
5 the public on the department's website after the third year of test and
6 graduation-related data collection. The findings must be aggregated by the
7 student's grade level, gender, family income level, number of years of
8 participation in the education savings account program, and race;
- 9 (4) Provide rates for high school graduation, college attendance, and college
10 graduation for participating students to the public on the department's
11 website after the third year of test and test-related data collection; and
- 12 (5) Administer an annual parental satisfaction survey requesting each parent of
13 a student receiving an education savings account program grant indicate
14 the number of years the child has participated in the education savings
15 account program and express the parent's:
- 16 (a) Satisfaction with the education savings account program; and
- 17 (b) Opinions on other topics, items, or issues that may indicate the
18 effectiveness of the education savings account program.
- 19 **4.** A participating school or other education service provider is autonomous and not an
20 agent of the state or federal government and:
- 21 a. The department may not regulate the educational program of a participating
22 school or education service provider that accepts funds from an education
23 savings account, except as provided under this chapter and chapter 15.1-23;
- 24 b. The creation of the education savings account program does not expand the
25 regulatory authority of the state, its officers, or a school district to impose an
26 additional regulation of participating schools or education service providers
27 beyond the regulations necessary to enforce the requirements of the education
28 savings account program; and
- 29 c. Participating schools and education service providers must have the freedom to
30 provide for the educational needs of the school's students without governmental
31 control.

1 **Department of public instruction - Administrator - Duties.**

2 1. The administrator shall:

3 a. Ensure eligible students and parents are informed annually of the schools that
4 will be participating in the education savings account program.

5 b. Create a standard form a parent of an eligible student may submit to establish a
6 student's eligibility for the education savings account program. The administrator
7 shall ensure the application is readily available to interested families through
8 various sources, including the department's website.

9 c. Accept applications on a year-round basis and shall approve applications in a
10 reasonable time frame.

11 d. Execute a multimedia marketing program targeting eligible families, especially
12 those below the state's median household income, informing the families about
13 the education savings account program and how to apply.

14 e. Establish a web and phone-based support system providing parents with
15 education savings account program application support and ongoing account
16 maintenance support.

17 2. The department may bar a participating school or education service provider from the
18 education savings account program if the department determines the participating
19 school or education provider has:

20 a. Routinely failed to comply with the accountability standards established under
21 this chapter; or

22 b. Failed to provide the eligible student with the educational services funded by the
23 education savings account.

24 3. If the department bars a participating school or education provider from the education
25 savings account program, the department shall notify eligible students and parents of
26 the decision as quickly as possible. A parent may appeal a decision of the department
27 under chapter 28-32.

28 4. The department shall adopt rules and procedures as necessary for the administration
29 of the education savings account program.

30 **School districts of residence - Duties.**

31 The school district of residence:

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