

Introduced by

Representatives S. Kelsh, Hawken, Ruby, Wolf

Senators Fischer, Robinson

1 A BILL for an Act to provide for the establishment of the North Dakota family financial security  
2 program; and to provide an appropriation.

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

4 **SECTION 1. Definitions.**

- 5 1. "Account provider" means the Bank of North Dakota or any other entity that has  
6 been approved by the state treasurer to hold child accounts, based upon a finding  
7 that the entity is subject to sufficient governmental or regulatory oversight,  
8 possesses suitable internal controls to ensure the safety and soundness of  
9 amounts held in child accounts, and is capable of providing the same level of  
10 protection to customers' personal information as the Bank of North Dakota.
- 11 2. "Certificate" means a certificate issued by the state, in a form prescribed by rule,  
12 on behalf of an eligible child which enables participation in the North Dakota family  
13 financial security program.
- 14 3. "Child account" means an account established on behalf of an eligible child with an  
15 account provider in accordance with this Act and rules adopted to implement this  
16 Act.
- 17 4. "Eligible child" means a child who is born on or after January 1, 2010, and who is a  
18 resident of this state.
- 19 5. "Qualified eligible child" means an eligible child who is a resident of this state and  
20 who has not yet attained age eighteen.
- 21 6. "Resident" means a resident of this state for purposes of the North Dakota child  
22 accounts program as defined by rule.
- 23 7. "Responsible individual" means:

a. An individual who has parental responsibility for a particular eligible child, as determined under rules adopted by the state treasurer; or

b. The eligible child associated with an account when that child attains age eighteen.

8. "State" means the state of North Dakota.

**SECTION 2. Child account requirements.**

1. An account may be treated as a child account only if the account satisfies the following requirements:

a. The account is opened with an account provider; and

b. The written governing instrument creating an account provides that:

(1) The account is held by the responsible person as custodian for the benefit and in the name of the designated eligible child;

(2) The account is the sole account held for the benefit of the eligible child;

(3) The eligible child is beneficially entitled to the investments under the account, including all income and gains arising from the investments; and

(4) Instructions must be given to the account provider with respect to the management of the account only by the responsible person.

2. Only cash contributions to a child account may be accepted.

3. Exclusive of the initial state contribution, the aggregate contributions to a child account in any calendar year may not exceed two thousand dollars. The state treasurer shall increase the two thousand dollar amount annually based upon the cost-of-living adjustment.

4. No withdrawals are permitted from the child account before the eligible child associated with the account attains age eighteen; however, an earlier distribution may be made upon the death of the eligible child, as provided in section 7 of this Act.

5. Fees, expenses, and any other charges in connection with a child account only may be assessed in any calendar year as provided in section 5 of this Act.

6. The written governing instrument must provide that assets in the account may not be assigned or alienated. Any assignment of, or agreement to assign, an interest

1           in a child account is void. Any pledge or use of an interest in a child account as  
2           collateral or security for a loan is of no force or effect. Upon the bankruptcy of an  
3           eligible child or responsible person with respect to an account, no interest in the  
4           child account may be claimed by any trustee or other person acting on behalf of  
5           the creditors of the eligible child or responsible person.

6           **SECTION 3. Opening and transfers of child accounts.**

- 7           1. Effective as of January 1, 2010, each year the state treasurer shall issue a  
8           certificate in the name of each eligible child born in that year to the responsible  
9           person for that child. The state treasurer shall determine the identity and address  
10          of each eligible child and the eligible child's responsible person.
- 11          2. A responsible person may establish a child account for the eligible child named in  
12          the certificate by submitting the certificate and a written application meeting the  
13          conditions set forth in section 2 of this Act to an account provider. An account  
14          provider to which an application and certificate have been submitted on behalf of  
15          an eligible child shall open a child account and notify the state treasurer of the  
16          account.
- 17          3. The state treasurer shall open a child account for each eligible child for whom a  
18          certificate has not been redeemed within twelve months of its issuance with an  
19          account provider, as selected by the state treasurer, in accordance with rules  
20          adopted by the state treasurer.
- 21          4. The state treasurer shall adopt rules to establish procedures for changes in the  
22          responsible person upon the resignation, incapacity, or death of the current  
23          responsible person or to permit an individual who has parental responsibility for a  
24          particular eligible child to become the responsible person for a child account  
25          established pursuant to subsection 3.

26          **SECTION 4. Contributions and withdrawals.**

- 27          1. For the initial state contribution, the state treasurer shall pay to each account  
28          provider that has notified the state treasurer of the receipt of a certificate the  
29          amount of five hundred dollars within thirty days of the surrender of the certificate.  
30          The account provider shall credit the child account for the eligible child with the  
31          amount of that payment.

2. In any calendar year, any person or any entity described in section 503(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 may make additional contributions to a child account for the benefit of the eligible child associated with that account, subject to the annual contribution limit of section 2 of this Act.

3. Effective January 1, 2010, the amount of contributions made to a child account of a qualified eligible child in any calendar year under subsection 2 may be matched by the state on a dollar-for-dollar basis up to a maximum of five hundred dollars, subject to the aggregate annual contribution limitation set forth in section 2 of this Act. A matching contribution may not be made to a child account of an eligible child who is no longer a resident. The state treasurer shall adopt rules for the claim and payment of matching contributions.

4. a. Upon attaining the age of eighteen, the eligible child associated with a child account may request a withdrawal of all or any portion of the amount in the account for the following purposes:

(1) Payment for postsecondary education, career technical education, or training;

(2) To purchase a first home;

(3) To purchase a vehicle for transportation to work;

(4) To start a small business; or

(5) To fund a retirement account.

b. No other person, including the responsible person, may request a withdrawal at any time, except as provided in subsection 1 of section 7 of this Act.

**SECTION 5. Limitation on fees.** Annual fees for the management of, and all other expenses in connection with, a child account, including any sales charges and fees and expenses with respect to any investment fund in which the account's assets are invested, may not exceed one and one-half percent of the net asset value of the account. The fees and expenses must be deducted from the child account.

**SECTION 6. Taxes.**

1. For state income tax purposes, no amount is includable in gross income of the eligible child associated with a child account with respect to any contribution to the

account and no amount may be includable in the gross income of the eligible child or any contributor to the account on behalf of the eligible child, with respect to any earnings on or distribution from the account.

2. No state income tax deduction or loss is allowed for contributions to or withdrawals from a child account.

3. For state gift and estate tax purposes, any contribution to a child account on behalf of an eligible child must be treated as a completed gift to the eligible child and is not a future interest in property.

**SECTION 7. Other provisions.**

1. Upon the death of an eligible child, the assets of the eligible child's child account must be distributed to the eligible child's estate or according to the laws in intestacy of this state.

2. Child account assets may not be considered for purposes of determining eligibility for any state benefits, including student financial aid or health care benefits.

3. All personally identifiable information concerning responsible persons and eligible children obtained in connection with a child account is confidential and the disclosure of that information is restricted to purposes directly connected with the administration of the North Dakota family financial security program.

4. An account provider shall provide child account statements to each eligible child and each responsible person at least once each year within sixty days after the end of the calendar year to which the statement relates. The statement must identify the contributions made during the preceding calendar year, the total contributions made to the account through the end of the period, the value of the account at the end of the period, and any other information prescribed by law or rule. An account provider shall provide similar statements upon any distribution from a child account and upon the transfer of an account to another provider on the effective date of the transfer. An account provider shall prepare and file the reports and information relating to child accounts as is required by federal and state law.

**SECTION 8. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$8,820,000, or so much of the sum as may be necessary, to the state treasurer for the purpose of funding the

Sixty-first  
Legislative Assembly

- 1 North Dakota family financial security program under sections 1 through 7 of this Act, for the
- 2 biennium beginning July 1, 2009, and ending June 30, 2011.