

Sixty-ninth
Legislative Assembly
of North Dakota

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 implement
10 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, regardless of household income.
- 22 6. "Parent" means a resident of this state who is a parent, guardian, custodian, or other
23 person with the authority to act on behalf of the child.

- 1 7. "Participating school" means any private school providing education to elementary
2 students, secondary students, or both that has notified the administrator of the
3 school's intention to participate in the education savings account program and comply
4 with the education savings account program requirements under this chapter and
5 related administrative rules.
- 6 8. "Private tutoring" means qualified tutoring services approved to receive payment under
7 this chapter.

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

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

- 1 a. Tuition and fees at a participating school;
- 2 b. A textbook required by a participating school;
- 3 c. Payment for private tutoring or to another educational service provider;
- 4 d. Payment for purchase of curriculum;
- 5 e. Tuition or fees for a nonpublic online learning program;
- 6 f. Fees for national norm-referenced examinations, advanced placement
- 7 examinations or similar courses, and any examinations related to college or
- 8 university admission;
- 9 g. Computer hardware, software, or other technological device that is used solely
- 10 for a student's educational needs and approved by the department or a licensed
- 11 physician, provided hardware purchased with education savings account funds
- 12 may not be resold within one year of purchase;
- 13 h. Reasonable fees for transportation paid to a fee-for-service transportation
- 14 provider for the student to travel to and from an education service provider;
- 15 i. Tuition and fees at an eligible postsecondary institution; or
- 16 j. A textbook required for college or university courses.
- 17 5. A participating school, private tutor, eligible postsecondary institution, or other
- 18 education service provider may not refund, rebate, or share a student's grant with a
- 19 parent or the student in any manner.
- 20 6. A parent may make a payment for the cost of educational programs and services not
- 21 covered by the funds in the child's account.
- 22 7. A participating student must be counted in the enrollment figures for the student's
- 23 school district of residence for the purposes of calculating state aid to the school
- 24 district of residence. The funds needed for a grant to an education savings account
- 25 must be subtracted from the state school aid payable to the student's school district of
- 26 residence and forwarded to the Bank of North Dakota for deposit in the education
- 27 savings account. Twenty percent of the dollar amount under subsection 3 of section
- 28 15.1-27-04.1 for the respective year per grant must be paid to the school district of
- 29 residence.
- 30 8. Funds not expended over the course of a school year may be carried forward for use
- 31 in the following school year for a child who remains in the education savings account

1 program. If a parent removes a child from the education savings account program
2 before the end of the school year, any remaining funds from that school year must be
3 returned to the state and be allocated to fund other accounts. A student may transfer
4 to another nonpublic school or home school and retain the funds in the education
5 savings account.

- 6 9. Funds deposited in an education savings account do not constitute taxable income to
7 the parent or the education savings account student.

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

- 9 1. The Bank of North Dakota shall:

- 10 a. Qualify private financial management firms to manage and administer education
11 savings accounts.
12 b. Conduct or contract for the auditing of accounts and, at a minimum, conduct
13 random audits of accounts on an annual basis. The Bank of North Dakota may
14 make a parent of an eligible student ineligible for the education savings account
15 program if the parent substantially misuses the funds in the account.
16 c. Refer cases of substantial misuse of funds to law enforcement for investigation if
17 evidence of fraudulent use of an account is obtained.
18 d. Make payments to eligible students' education savings accounts on a quarterly
19 basis.
20 e. Adopt rules and procedures as necessary for the administration of the education
21 savings account program.

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

25 **Participating schools - Accountability standards.**

- 26 1. To ensure students are treated fairly and kept safe, each participating private school
27 shall:
28 a. Comply with all health and safety laws or codes that apply to private schools;
29 b. Hold a valid occupancy permit if required by the school's municipality;
30 c. Certify the school complies with the nondiscrimination policies under [42 U.S.C.
31 1981]; and

d. Conduct criminal background checks on employees. The participating school shall exclude from employment any individual who:

(1) Is not permitted by state law to work in a private school; and

(2) Might reasonably pose a threat to the safety of students.

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

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

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

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

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

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

a. Parents shall ensure:

(1) The eligible student annually takes the state achievement tests, nationally norm-referenced tests, or equivalent tests that measure learning gains in mathematics and language arts, and provide for value-added assessment. If a parent selects the state achievement test, the department shall pay associated costs and materials;

(2) The results of the tests are provided to the department or an organization chosen by the state on an annual basis;

(3) The student information is reported in a way that allows the department to aggregate data by grade level, gender, family income level, and race; and

(4) The department, or an organization chosen by the department, is informed of the eligible student's graduation from high school.

b. The department, or an organization chosen by the department, shall:

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

Department of public instruction - Administrator - Duties.

1. The administrator shall:

- a. Ensure eligible students and parents are informed annually of the schools that will be participating in the education savings account program.**
- b. Create a standard form a parent of an eligible student may submit to establish a student's eligibility for the education savings account program. The administrator shall ensure the application is readily available to interested families through various sources, including the department's website.**
- c. Accept applications on a year-round basis and shall approve applications in a reasonable time frame.**
- d. Execute a multimedia marketing program targeting eligible families, especially those below the state's median household income, informing the families about the education savings account program and how to apply.**
- e. Establish a web and phone-based support system providing parents with education savings account program application support and ongoing account maintenance support.**

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

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

School districts of residence - Duties.

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 private schools. The
8 school district of residence qualifies for state transportation aid for each student
9 transported.