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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 5123

03/21/2024 Authored by Kresha The bill was read for the first time and referred to the Committee on Education Policy

1.1 A bill for an act
1.2 relating to education; establishing education savings accounts; requiring rules;
1.3 proposing coding for new law in Minnesota Statutes, chapter 126C.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. 126C.75] EDUCATION SAVINGS ACCOUNTS FOR STUDENTS ACT.

1.6 Subdivision 1. Title. This section may be cited as the "Education Savings Accounts for
1.7 Minnesota Students Act" (ESA-4-MSA).

1.8 Subd. 2. Definitions. (a) For the purposes of this section, the following terms have the
1.9 meanings given.

1.10 (b) "Commissioner" means the commissioner of the Department of Revenue.

1.11 (c) "Curriculum" means programs and written plans for a particular content area or grade
1.12 level that provides students with learning experiences that lead to expected knowledge,
1.13 skills, and career and college readiness.

1.14 (d) "Department" means the Department of Revenue or an organization with which the
1.15 commissioner contracts to implement any portion of this section.

1.16 (e) "Education savings account" or "ESA" means the account to which funds are allocated
1.17 by the commissioner to the parent to pay for qualifying expenses to educate the ESA student
1.18 pursuant to the requirements of this section.

1.19 (f) "Educational service provider" means an eligible school, tutor, or other person or
1.20 organization that provides education-related services and products to participating students.

1.21 (g) "Eligible school" means:

2.1 (1) a nonpublic school, including nonpublic online learning programs, where a student
2.2 can fulfill compulsory education requirements and that is recognized by the commissioner
2.3 or accredited by an accrediting agency recognized by the Minnesota Nonpublic Education
2.4 Council under section 123B.445, paragraph (a); or

2.5 (2) a public high school, community college, or community and technical college that
2.6 offers one or more individual courses to eligible students in person or online.

2.7 A child receiving instruction in a home school is eligible for an educational savings account
2.8 and may use it for eligible expenses, but the child's parent may not be reimbursed for the
2.9 time a parent spends providing instruction to the child.

2.10 (h) "Eligible student" means any student who:

2.11 (1) resides in Minnesota; and

2.12 (2) is a member of a household whose total annual income does not exceed an amount
2.13 equal to four times the income standard used to qualify for reduced-price meals under the
2.14 National School Lunch Act, United States Code, title 42, section 1751, et seq.

2.15 (i) "Eligible student participation maximum" means the maximum number of eligible
2.16 students receiving an ESA. In the first year, the eligible student participation maximum
2.17 shall be equal to five percent of the prior year's public school average daily membership.
2.18 For each subsequent year, the eligible student participation maximum shall increase by an
2.19 additional three percent of the prior year's statewide public school average daily membership.

2.20 (j) "Eligible student selection priority" means the commissioner's acceptance of eligible
2.21 students in the ESA program based on the following order:

2.22 (1) a student entering kindergarten;

2.23 (2) a student who attended a public school, including a charter school, for the full school
2.24 year preceding anticipated participation in the ESA program;

2.25 (3) a student whose sibling is participating in the ESA program; and

2.26 (4) other eligible students.

2.27 (k) "ESA program" means the program to implement education savings accounts.

2.28 (l) "ESA student" means an eligible student who is participating in the ESA program.

2.29 (m) "Parent" means a resident of Minnesota who is a parent, legal guardian, or other
2.30 person having legal custody of an eligible student under age 18. For an eligible student age

3.1 18 or over, "parent" means the eligible student unless a guardian or conservator has been
3.2 appointed, in which case it means the guardian or conservator.

3.3 (n) "Postsecondary institution" means a college or university, including a career or
3.4 technical school, accredited by a state, regional, or national accrediting organization.

3.5 (o) "Qualifying expense" means any expense used to educate an eligible student,
3.6 including:

3.7 (1) tuition and fees at an eligible school;

3.8 (2) payment to a tutor;

3.9 (3) payment for purchase of curriculum, including any textbook and supplemental
3.10 materials required by the curriculum;

3.11 (4) fees for transportation to and from an educational service provider paid to a
3.12 fee-for-service transportation provider;

3.13 (5) tuition and fees for online learning programs or courses;

3.14 (6) textbooks and fees for nationally standardized norm-referenced achievement tests
3.15 or for alternative assessments, including an assessment for a child with a disability as defined
3.16 in section 125A.02 or an English learner as defined in section 124D.59;

3.17 (7) textbooks and fees for advanced placement examinations or similar courses and any
3.18 examination related to college or university admission;

3.19 (8) educational services or therapies, including from paraprofessionals or educational
3.20 aides;

3.21 (9) services provided by a public school, including extracurricular programs and
3.22 individual classes paid for as a tuition payment and not as an enrolled student in the public
3.23 school or as part of a shared time program under section 126C.19;

3.24 (10) tuition, fees, and textbooks at a postsecondary institution;

3.25 (11) no more than \$400 in annual consumable school supplies, including school uniforms
3.26 necessary for the student's education;

3.27 (12) computer hardware and software and other technological devices if an eligible
3.28 school, tutor, educational service provider, or licensed medical professional verifies in
3.29 writing that these items are necessary for the student to meet annual, measurable goals;

3.30 (13) tuition and fees for summer education programs and after-school education programs,
3.31 but not after-school child care; or

4.1 (14) any other expense approved by the commissioner.

4.2 (p) "Tutor" means a person who:

4.3 (1) is certified or licensed by a state, regional, or national certification or licensing
4.4 organization to teach;

4.5 (2) has a valid teacher's license; or

4.6 (3) has experience teaching at a postsecondary institution.

4.7 **Subd. 3. Education savings account program.** (a) An eligible student may participate
4.8 in the ESA program if the student's parent agrees:

4.9 (1) to arrange for the provision of organized, appropriate educational services with
4.10 measurable goals to the participating student in at least the subjects of reading, writing,
4.11 mathematics, social studies, and science;

4.12 (2) not to enroll the participating student in a public school, including a charter school,
4.13 for as long as the student participates in the program;

4.14 (3) to use the funds deposited in a participating student's ESA only for qualifying expenses
4.15 to educate the student using any of the methods or combination of methods in this paragraph
4.16 that meet the requirement in clause (1); and

4.17 (4) not to receive cash or cash-equivalent items, such as gift cards or store credit, from
4.18 refunds or rebates from a provider of services or products in the ESA program. Refunds or
4.19 rebates shall be credited directly to the participating student's ESA. Eligible schools,
4.20 postsecondary institutions, and educational service providers that serve participating students
4.21 shall provide parents with a receipt for all qualifying expenses.

4.22 (b) A parent and a student may satisfy compulsory instruction requirements that the
4.23 student acquires knowledge and skills that are essential for the student's effective citizenship
4.24 and personal flourishing through the student's participation in the ESA program.

4.25 (c) Payment for educational services through an ESA shall not preclude parents from
4.26 paying for educational services using non-ESA funds.

4.27 (d) For purposes of continuity of educational attainment, a student who enrolls in the
4.28 ESA program remains eligible to receive monthly ESA payments until the participating
4.29 student enrolls in a public school, graduates from high school, or completes the school year
4.30 in which the student reaches the age of 21, whichever occurs first.

4.31 (e) Any funds remaining in a student's ESA upon graduation from high school may be
4.32 used to pay for qualifying expenses at an accredited postsecondary institution.

5.1 (f) Upon a participating student's graduation from a postsecondary institution, or after
5.2 any period of four consecutive years after graduation from high school during which the
5.3 student is not enrolled in a postsecondary institution, the participating student's ESA shall
5.4 be closed and any remaining funds shall be returned to the state general fund.

5.5 (g) A participating student may enroll in the resident school district at any time after
5.6 enrolling in the ESA program, according to rules adopted by the commissioner providing
5.7 the least disruptive process for doing so. The parent must notify the commissioner that the
5.8 student has enrolled in the public school. Upon receiving notice of the enrollment, the
5.9 commissioner must close the student's ESA and return any remaining funds to the state
5.10 general fund.

5.11 Subd. 4. **Students with disabilities.** Participation in the ESA program by a student with
5.12 a disability is considered a parental placement under United States Code, title 20, section
5.13 1412, the Individuals with Disabilities Education Act (IDEA). Participation in the program
5.14 does not affect the eligibility of a student with a disability for instruction and education
5.15 services under chapter 125A or otherwise affect the student's status under federal special
5.16 education laws.

5.17 Subd. 5. **Commissioner's responsibilities.** The commissioner is responsible for the
5.18 establishment and implementation of the ESA program. This may include adopting rules
5.19 and policies and contracting with a service provider to administer the ESA program and to
5.20 prevent ESA funds from being spent on nonqualifying expenses.

5.21 Subd. 6. **Funding.** (a) The commissioner must establish a funding amount for eligible
5.22 students in the ESA program that is equal to the state's adjusted per pupil formula allowance.

5.23 (b) The commissioner may deduct up to a maximum of five percent annually in the first
5.24 two years of the ESA program and up to a maximum of three percent annually thereafter
5.25 from appropriations made to fund ESAs to cover the costs of overseeing and administering
5.26 the ESA program.

5.27 Subd. 7. **Notices.** (a) The commissioner must take reasonable actions to annually notify
5.28 all eligible students of:

5.29 (1) the existence of the ESA program;

5.30 (2) the amount of available funds per student;

5.31 (3) the allowable expenses and the procedures to use the funds;

5.32 (4) the program application procedures;

6.1 (5) educational service providers;

6.2 (6) the role of the commissioner and outside organizations with which the commissioner
6.3 contracts to administer the ESA program; and

6.4 (7) other relevant information.

6.5 (b) The commissioner must take reasonable actions to advise parents in low-income
6.6 families of their potential eligibility for the ESA program. The commissioner must take
6.7 reasonable actions to advise parents of students with disabilities about the rights of parentally
6.8 placed students under the IDEA and any applicable state laws and rules.

6.9 (c) The commissioner must provide parents of participating students with a written
6.10 explanation of the allowable uses of ESAs, the responsibilities of parents, and the duties of
6.11 the commissioner. The commissioner must make the information available on the
6.12 department's website.

6.13 Subd. 8. **Application process.** (a) The commissioner must create a standard application
6.14 form that:

6.15 (1) allows a parent to establish the student's eligibility and apply for an ESA;

6.16 (2) requires a parent to agree to the terms and conditions of the ESA. The agreement is
6.17 effective upon the eligible student's acceptance into the ESA program; and

6.18 (3) is readily available to interested families through various sources, including on the
6.19 department's website, and includes a copy of the procedural safeguards annually given to
6.20 parents.

6.21 (b) The commissioner must establish reasonable periods of time of not less than 90 days
6.22 during which the commissioner must accept applications to enter the ESA program before
6.23 the start of the school year in the fall and not less than 60 days to enter into the ESA program
6.24 at the start of classes in the spring term.

6.25 (c) The commissioner must begin accepting applications for the program for the fall
6.26 term of 2025 not later than December 1, 2024.

6.27 Subd. 9. **Acceptance process.** (a) The commissioner must establish procedures for
6.28 prioritizing and approving applications monthly consistent with the student participation
6.29 maximum in subdivision 2, paragraph (i), and the eligible student selection priority in
6.30 subdivision 2, paragraph (j).

6.31 (b) Starting in the second year of the ESA program, the commissioner must automatically
6.32 renew annually the ESA student's participation in the ESA program unless funds are not

7.1 available, the ESA student graduates from high school, or the commissioner receives notice
7.2 that the ESA student has withdrawn from the program.

7.3 (c) Starting in the second year of the ESA program and adjusted each year thereafter,
7.4 the commissioner may meet the eligible student participation maximum by granting
7.5 admittance to a greater number of applicants than the eligible student participation maximum.
7.6 The commissioner must base the additional acceptances on the ESA program's experience
7.7 of students who decline the acceptance.

7.8 Subd. 10. **Student withdrawal from the ESA program.** (a) Upon notice to the
7.9 commissioner that the ESA student has enrolled in a public school as a full-time student,
7.10 the commissioner must immediately stop depositing funds into the student's ESA. Funds
7.11 remaining in an ESA account that has been open and active for at least one full school year
7.12 remain available to be used for qualifying expenditures. The commissioner may close the
7.13 ESA when no funds remain in the student's ESA.

7.14 (b) If an eligible student applies and is accepted into the ESA program after previously
7.15 withdrawing, payments into the student's existing ESA may resume if the ESA is still open
7.16 and active. A new ESA may be established if the commissioner closed the eligible student's
7.17 ESA.

7.18 Subd. 11. **Contracting with service providers.** To ensure the successful implementation
7.19 of the ESA program, the commissioner may contract with private organizations to administer
7.20 the ESA program. This authority includes contracting with a private firm to:

7.21 (1) track and report to a parent a student's enrollment and completion of classes, grades,
7.22 test scores, and similar educational information;

7.23 (2) perform the payment processing, manage financial functions, or provide financial
7.24 reporting to a parent about a student's ESA; and

7.25 (3) provide information on a program-wide basis, redacted for information about
7.26 individual students.

7.27 Subd. 12. **Payments.** (a) The commissioner must make electronic payments to the ESAs
7.28 of participating students on a monthly basis unless there is evidence of misuse of the ESA
7.29 under this section.

7.30 (b) Beginning with the 2025-2026 school year, the commissioner must issue ESA cards
7.31 to parents making expenditures under this section on behalf of a participating student. ESA
7.32 cards shall be issued to parents upon enrollment in the ESA program and shall expire when
7.33 the participating student's ESA is closed, except for the periodic expiration and replacement

8.1 of cards in the normal course of business. All unexpended amounts shall remain in the
8.2 student's ESA and be combined with the following year's allocation of ESA funds, subject
8.3 to subdivision 3, paragraphs (f) and (g).

8.4 (c) The commissioner, taking into consideration requests from the parents of participating
8.5 students, must use merchant category classification (MCC) codes, or a similar system as
8.6 practicable and consistent with current technology, to identify categories of providers that
8.7 provide qualifying expenses. The commissioner must make a list of blocked and unblocked
8.8 MCC codes publicly available for purposes of the ESA program.

8.9 Subd. 13. **Fraud prevention.** (a) The commissioner must adopt a process for removing
8.10 educational service providers that defraud parents and for referring cases of fraud to law
8.11 enforcement.

8.12 (b) The commissioner must establish or contract for the establishment of an online,
8.13 anonymous fraud reporting service and an anonymous telephone hotline for fraud reporting.

8.14 (c) The commissioner may require an education service provider to post a surety bond
8.15 if the provider has operated for less than three years and is projected to receive more than
8.16 \$100,000 annually from the ESA program.

8.17 (d) The commissioner must notify the parent of any amount spent on nonqualifying
8.18 expenses within five business days by United States mail at the parent's home address. The
8.19 notification must explain the suspension, detail the violation, and request that the parent,
8.20 within 15 business days, either: (1) provide additional documentation justifying the
8.21 expenditure; or (2) repay the misspent amount. If the parent repays the amount within the
8.22 requested time frame, the offense must not be recorded and not be held in the parent's file.
8.23 If the parent does not provide sufficient documentation and refuses to repay the amount,
8.24 the commissioner must seek to recover the misspent funds using collections methods allowed
8.25 under state law. A student whose ESA has incurred three offenses within a consecutive
8.26 three-year period is disqualified from further participation in the ESA program.

8.27 (e) If the commissioner determines that a parent has failed to comply with the terms of
8.28 the agreement as specified in subdivision 3, the commissioner must suspend the participating
8.29 student's ESA. The commissioner must notify the parent in writing within five business
8.30 days that the ESA has been suspended and that no further transactions will be allowed or
8.31 disbursements made. The notification must specify the reason for the suspension and state
8.32 that the parent has 21 business days to respond and take corrective action.

8.33 (f) If the parent fails to respond to the commissioner, furnish reasonable and necessary
8.34 information, or make a report that may be required for reinstatement within 21 business

9.1 days, the commissioner may remove the participating student from the ESA program. A
9.2 decision of the commissioner under this subdivision is subject to judicial review under
9.3 sections 14.63 to 14.69. The decision of the commissioner is stayed pending an appeal.

9.4 (g) The commissioner must refer cases of substantial misuse of funds to law enforcement
9.5 agencies for investigation if evidence of fraudulent intent and use of an ESA is obtained.

9.6 Subd. 14. **Participation of education service providers.** The commissioner must
9.7 establish an application process for an education service provider to request the
9.8 commissioner's approval to offer services under the ESA program. The application must
9.9 require the provider to describe the services it will provide and affirm the services are a
9.10 qualifying expense. The commissioner may investigate the application to determine whether
9.11 the provider is providing services allowed for as qualifying expenses. The commissioner
9.12 must approve an application to become an education service provider and provide services
9.13 that are qualifying expenses unless:

9.14 (1) the provider notifies the commissioner of the withdrawal of its application or refusal
9.15 to receive payments from ESAs;

9.16 (2) the commissioner determines that some or all of the provider's services are not
9.17 qualifying expenses; or

9.18 (3) the provider or its management has been criminally convicted or found liable in a
9.19 civil case related to the provision of educational services, including theft, fraud, deceptive
9.20 trade practices, racketeering, or child abuse.

9.21 Subd. 15. **Scope.** An eligible nonpublic school is autonomous and not an agent of the
9.22 state or federal government, and therefore:

9.23 (1) the creation of the ESA program does not expand the regulatory authority of the
9.24 state, the commissioner, the department, any other government agency or officers, or any
9.25 school district to impose any additional regulation of nonpublic schools or educational
9.26 service providers beyond those necessary to enforce the requirements of the ESA program;
9.27 and

9.28 (2) upon being recognized by the commissioner, an eligible school shall have the freedom
9.29 to provide for the educational needs of students and be able to offer diverse learning
9.30 opportunities. Upon such recognition, no additional mandates to participate in the ESA may
9.31 be imposed on an eligible school that would require a change to the school's admission
9.32 criteria, employment practices, pedagogy, or curriculum.

10.1 Subd. 16. Parent Review and Advisory Panel. (a) Starting no later than the fall term
10.2 of the 2027-2028 school year a Parent Review and Advisory Panel must be established to
10.3 assist the commissioner and the department. The panel's responsibilities are solely advisory
10.4 or at the commissioner's request and include:

10.5 (1) collaborating with the commissioner to develop a system for parents to publicly rate,
10.6 review, and share information about education service providers;

10.7 (2) recommending to the commissioner whether questionable expenditures meet the
10.8 requirements to be considered qualifying expenses to educate the ESA student pursuant to
10.9 subdivision 3; and

10.10 (3) recommending to the commissioner ways to better implement, administer, and
10.11 increase the usage of the ESA program.

10.12 (b) The panel shall consist of nine members who are parents of ESA students and
10.13 represent at least four counties in the state. The members shall not be compensated other
10.14 than standard reimbursement for travel expenses. The nine members shall be appointed
10.15 equally by the governor, speaker of the house, and president of the senate and serve at the
10.16 pleasure of their respective appointers for one calendar year. Panel members may be
10.17 reappointed.

10.18 (c) The commissioner or the commissioner's designee shall serve as the nonvoting chair
10.19 of the panel.

10.20 (d) The commissioner may request the panel to meet in person or virtually to vote on
10.21 whether:

10.22 (1) an expenditure of ESA funds is or was a qualifying expense to educate an ESA
10.23 student pursuant to subdivision 3;

10.24 (2) to review appeals of denial of participation in the ESA program by education service
10.25 providers; or

10.26 (3) an education service provider should be allowed to receive, or continue receiving,
10.27 payments from ESAs.

10.28 Subd. 17. Legal proceedings and severability. (a) In any legal proceeding challenging
10.29 the application of this act to an education service provider, the state bears the burden of
10.30 establishing that the law is necessary and does not impose any undue burden on the education
10.31 service provider.

11.1 (b) Except for subdivision 7, no liability shall arise on the part of the state or its agencies;
11.2 a public school, including a charter school; or a school district based on the award or use
11.3 of an ESA under this section.

11.4 (c) If any part of this act is challenged in state court as violating either the state or federal
11.5 laws or constitutions, parents of participating or eligible students may intervene as of right
11.6 in such lawsuit for the purposes of defending the ESA program's legality or constitutionality.
11.7 For the purposes of judicial administration, a court may require that all parents file a joint
11.8 brief, so long as they are not required to join any brief filed on behalf of any named state
11.9 defendant.

11.10 (d) If any provision of this law or its application is found to be unconstitutional and void,
11.11 the remaining provisions or applications of this law that can be given effect without the
11.12 invalid provision or application are valid.

11.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.