

SENATE BILL NO. 2142

Introduced by

Senators O. Larsen, Unruh

Representative Johnston

1 A BILL for an Act to create and enact chapter 15.1-39 of the North Dakota Century Code,
2 relating to the establishment of an education savings account program.

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

4 **SECTION 1.** Chapter 15.1-39 of the North Dakota Century Code is created and enacted as
5 follows:

6 **15.1-39-01. Definitions.**

7 For purposes of this chapter, unless the context otherwise requires:

- 8 1. "Account" means an education savings account established under the program.
- 9 2. "Course documentation" means records from a qualified provider, school, or institution
10 of higher education indicating course completion.
- 11 3. "Curriculum" means a complete course of study for a particular content area or grade
12 level.
- 13 4. "Financial institution" means a bank, credit union, or savings and loan association
14 organized under state or federal law which has its main office or a branch office in this
15 state.
- 16 5. "Institution of higher education" means an accredited, public or private college,
17 university, community college, technical institute, or the equivalent, or any other
18 accredited private postsecondary institution offering educational credentials.
- 19 6. "Instructional material" means any supplemental materials required to administer a
20 curriculum.
- 21 7. "Parent" means a resident of this state who is a parent, conservator, legal guardian,
22 custodian, or other individual with legal authority to act on behalf of a program
23 participant.
- 24 8. "Program" means the education savings account program created under this chapter.

1 9. "Program participant" means a child participating in the program.

2 10. "Qualified provider" means an educational service provider or vendor, including a
3 nonpublic school or a tutor, licensed or accredited by a state, regional, or national
4 accrediting organization if applicable, which accepts education savings account funds
5 and is selected by a parent-controlled board commissioned by the state treasurer.

6 **15.1-39-02. Program and account establishment and management.**

7 1. The state treasurer shall establish and administer the program to provide funds for
8 qualified education expenses of program participants.

9 2. The state treasurer shall create and fund an account for each program participant,
10 who may use the funds in the account only as permitted under this chapter. For each
11 year of program participation, the state treasurer shall fund the participant's account
12 with an amount that is:

13 a. Seventy-five percent of the per-student payment rate reduced by the state
14 average percentage of local revenue required to be subtracted to determine state
15 aid payments under section 15.1-27-04.1 for the prior fiscal year; or

16 b. Seventy-five percent of the per-student payment rate reduced by the state
17 average percentage of local revenue required to be subtracted to determine state
18 aid payments under section 15.1-27-04.1 for the prior fiscal year weighted to the
19 state's funding formula, if the participant has an active individualized education
20 plan.

21 3. A parent may choose any education method, including nonpublic school, private tutor,
22 online learning, or other qualified provider, which best serves the needs of the program
23 participant. A parent who signs an agreement with the state treasurer under
24 section 15.1-39-04 is deemed to have satisfied the requirements of chapter 15.1-20
25 with regard to the program participant.

26 4. The state treasurer shall commission a parent-controlled board to select qualified
27 providers.

28 5. The state treasurer may contract with a third party to administer the program and
29 manage accounts for the program. The state treasurer shall oversee and audit the
30 contractor.

1 6. The state treasurer shall provide information regarding the program to the public,
2 including through the state treasurer's website. The state treasurer shall ensure
3 parents of children who have disabilities or educational disadvantages are aware of
4 the program.

5 **15.1-39-03. Program eligibility.**

6 A child is eligible for the program if the child participated in the program in a prior academic
7 year or if the child is eligible to attend public school in this state and was enrolled in a public
8 school during the preceding semester, is enrolling in kindergarten or first grade for the first time,
9 or is enrolling in school in this state for the first time.

10 **15.1-39-04. Agreement required.**

11 Before a program participant may receive funding under this chapter, a parent must agree
12 in writing to:

- 13 1. Ensure the program participant is instructed in the subjects required by law to be
14 taught to public school students.
- 15 2. Ensure the program participant has at least four hours of instruction each day for a
16 minimum of one hundred seventy-five days each year.
- 17 3. Spend program funds only on qualified education expenses as provided under
18 section 15.1-39-05.
- 19 4. Ensure the program participant is administered nationally norm-referenced appropriate
20 assessment instruments annually.
- 21 5. Notify the state treasurer immediately if the program participant enrolls in a public
22 school.
- 23 6. Provide course documentation to the state treasurer to prove the program participant's
24 fulfillment of state graduation requirements.

25 **15.1-39-05. Qualified education expenses.**

- 26 1. Program funds may be used to pay the following qualified education expenses:
 - 27 a. Tuition, books, instructional materials, and fees at an accredited nonpublic
28 school.
 - 29 b. Textbook purchases.
 - 30 c. Curriculum purchases.

- 1 d. Computer and any other hardware purchases that may be approved by the
- 2 program administrator every three years.
- 3 e. Instructional material purchases.
- 4 f. Tuition and fees for nonpublic online educational courses or programs.
- 5 g. Professional fees of a private tutor or teaching services.
- 6 h. Professional fees of a practitioner or provider of educational therapies or
- 7 services.
- 8 i. Fees for a nationally standardized, norm-referenced achievement test or
- 9 examination, an advanced placement examination or similar examination, or any
- 10 examination related to college or university admission.
- 11 j. Educational services purchased from a public school, but which do not qualify the
- 12 participant to be counted in daily attendance at the school.
- 13 k. Tuition and fees at an institution of higher education.
- 14 l. Contributions to a 529 or 530 college savings plan.
- 15 m. Professional fees of a financial institution that manages the participant's account.
- 16 n. Transportation costs for up to three hundred miles per month.
- 17 o. Field trip costs for an approved education curriculum.
- 18 2. Program funds may not be used for the purchase of food or child care provided before
- 19 or after school hours or during holidays and vacations.
- 20 3. A qualified provider shall give a parent a receipt for each qualifying education expense
- 21 charged by the qualified provider.
- 22 4. If a qualified provider reasonably expects to receive more than fifty thousand dollars
- 23 from education savings accounts under this chapter during a school year, the qualified
- 24 provider, by a date proscribed by the state treasurer, shall:
- 25 a. Post a surety bond in an amount equal to the amount reasonably expected to be
- 26 received by the qualified provider from education savings accounts during the
- 27 school year; or
- 28 b. Provide evidence satisfactory to the state treasurer that the qualified provider
- 29 otherwise has unencumbered assets sufficient to pay to the state treasurer the
- 30 amount reasonably expected to be received by the qualified provider from
- 31 education savings accounts during the school year.

1 5. This section does not limit the ability of a program participant to pay a qualified
2 provider with funds other than program funds for educational courses, materials,
3 supplies, or services not covered by the program.

4 **15.1-39-06. Application for program.**

5 1. A parent may enroll an eligible child in the program for the next school year at any time
6 during a calendar year.

7 2. The state treasurer shall use a standardized enrollment form to determine a child's
8 eligibility for the program. The state treasurer shall make the enrollment form readily
9 available through various sources, including the state treasurer's website, fax, and
10 mail.

11 3. The state treasurer shall provide to each applicant and annually to each program
12 participant information that describes the operation of the program, including the list of
13 qualified education expenses, expense reporting requirements, a list of qualified
14 providers, including nonpublic schools participating in the program, and a description
15 of the responsibilities of program participants and the state treasurer.

16 **15.1-39-07. Achievement testing.**

17 1. A parent shall arrange for the program participant to be administered a nationally
18 recognized norm-referenced achievement test each year unless the program
19 participant is attending a nonpublic school and that school administers the program
20 participant a national norm-referenced assessment.

21 2. The parent shall report the results of the assessment to an independent researcher
22 selected by the state treasurer through procurement practices, including a request for
23 proposals. The independent researcher shall aggregate the test scores for all program
24 participants and produce an annual report containing the aggregated results. Each
25 report of the independent researcher must document changes in assessment scores
26 of program participants. The first report must be produced three years after the
27 program commences.

28 3. The requirements of subsection 1 do not apply if the parent notifies the school district
29 in which the program participant resides, and the independent researcher selected by
30 the state treasurer, the parent has a philosophical, moral, or religious objection to the
31 use of norm-referenced achievement tests.

1 **15.1-39-08. Administration of accounts.**

2 1. The state treasurer shall issue a request for proposals if the state treasurer chooses to
3 hire a contractor to manage accounts under the program. The contractor shall
4 establish an account for each program participant. A program participant may pay
5 qualified expenses with program funds by using debit cards, online payment services,
6 or other methods.

7 2. Program funds must be transferred to each program participant's account in quarterly
8 installments of equal amounts to be made by September fifteenth, December fifteenth,
9 March fifteenth, and June fifteenth, unless a parent negotiates a different schedule
10 with the state treasurer.

11 3. The state treasurer may deduct from each quarterly transfer of funds an amount not to
12 exceed three percent of the transferred funds to cover the state treasurer's cost of
13 overseeing accounts and administering the program.

14 4. The state treasurer shall approve reasonable fees a contractor may charge for
15 managing accounts under the program. The fees must be based on market rates.

16 5. Any funds remaining in an account at the end of a school year may be carried forward
17 to the next school year. When a program participant graduates from high school, any
18 funds remaining in the program participant's account may be used only for qualified
19 expenses at an institution of higher education and must be used within five years of
20 high school graduation. At the end of the five years, any funds remaining in the
21 account revert to the state general fund.

22 **15.1-39-09. Auditing of accounts.**

23 The state treasurer randomly shall audit a sufficient number of program accounts annually
24 to ensure compliance with applicable law and the requirements of the program.

25 **15.1-39-10. Suspension of accounts.**

26 The state treasurer shall suspend the account of any program participant who fails to
27 comply with applicable law or the requirements of the program or who commits a substantial
28 misuse of program funds. The state treasurer shall notify the program participant in writing that
29 the account has been suspended and no further transactions are allowed on or disbursements
30 made from the account. The notification must specify the grounds for the suspension and state
31 the program participant has ten business days to respond and take any corrective action

1 ordered by the state treasurer. Following the expiration of the ten-day period, the state treasurer
2 shall:

- 3 1. Order permanent closure of the suspended account and declare the program
4 participant ineligible for the program;
- 5 2. Order temporary reinstatement of the account, conditioned on the performance of
6 specified action by the program participant; or
- 7 3. Order full reinstatement of the account.

8 **15.1-39-11. Rates and rebates - Restrictions.**

9 A qualified provider may not:

- 10 1. Charge a program participant an amount greater than the standard rate charged to
11 nonparticipants for the item or service provided.
- 12 2. Share with or refund, credit, or rebate to a parent or program participant, or any
13 person on behalf of a parent or program participant, any program funds paid or owed
14 by the program participant to the qualified provider.

15 **15.1-39-12. Referral to the attorney general.**

16 If the state treasurer obtains evidence of any fraudulent use of an account, the state
17 treasurer shall refer the matter to the attorney general for investigation and prosecution.

18 **15.1-39-13. Limitation on regulation of qualified providers.**

- 19 1. The program does not expand the regulatory authority of the superintendent of public
20 instruction, state treasurer, or any school district to impose additional regulations on a
21 qualified provider under the program beyond what is necessary by the state treasurer
22 to enforce the financial and administrative requirements of the program. The state
23 treasurer and school districts may not regulate the educational program of a qualified
24 provider under the program.
- 25 2. A qualified provider may not be required to alter its creed, practices, admissions policy,
26 or curriculum to accept a student whose parent pays tuition or fees from an education
27 savings account or to participate as a qualified provider.

28 **15.1-39-14. Student records.**

29 Upon request, a school district that a program participant would otherwise attend shall
30 provide to the parent or to a participating nonpublic school the program participant attends a
31 complete copy of the program participant's school records. This section does not require or

1 authorize the release of information except in conformity with the Family Educational Rights and
2 Privacy Act of 1974 [20 U.S.C. 1232(g)].

3 **15.1-39-15. Annual survey.**

4 The state treasurer annually may request a parent to complete a written survey that solicits
5 the parent's overall satisfaction with the program and opinion on specified topics and issues
6 relevant to the effectiveness of the program.

7 **15.1-39-16. Rules.**

8 Within forty-five days after the effective date of this chapter, the state treasurer shall adopt
9 rules, procedures, and forms necessary to implement the program.

10 **15.1-39-17. Applicability.**

11 Funds must be available to program participants starting with the 2020-21 school year.