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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1529

- 03/05/2015 Authored by Fenton, Miller, O'Driscoll, Pugh, Lohmer and others
The bill was read for the first time and referred to the Committee on Education Innovation Policy
- 03/16/2015 Adoption of Report: Re-referred to the Committee on Government Operations and Elections Policy
- 03/23/2015 Adoption of Report: Re-referred to the Committee on Education Finance

1.1 A bill for an act
 1.2 relating to education; creating Education Savings Accounts for Students with
 1.3 Special Needs Act; appropriating money.

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

1.5 Section 1. **EDUCATION SAVINGS ACCOUNTS FOR STUDENTS WITH**
 1.6 **SPECIAL NEEDS ACT.**

1.7 Subdivision 1. Title. This act shall be known as the "Education Savings Accounts
 1.8 for Students with Special Needs Act."

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

1.11 (b) "Commissioner" means the commissioner of education.

1.12 (c) "Department" means the Department of Education.

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

1.15 The eligible student's parent shall not be an educational service provider for that student.

1.16 (e) "Eligible school" means a nonpublic school where a student can fulfill compulsory
 1.17 education requirements and that is recognized by the commissioner or accredited by an

1.18 accrediting agency recognized by the Minnesota Nonpublic Education Council under
 1.19 Minnesota Statutes, section 123B.445, paragraph (a). An eligible school does not include

1.20 a home school under Minnesota Statutes, sections 120A.22, subdivision 4, and 120A.24.

1.21 (f) "Eligible student" means any student who has had an individualized education
 1.22 program (IEP) or has been determined by the resident school district to qualify for special
 1.23 education services.

2.1 (g) "Parent" means a resident of this state who is a parent, legal guardian, custodian,
2.2 or other person with the authority to act on behalf of the eligible student.

2.3 (h) "Postsecondary institution" means a college or university accredited by a state,
2.4 regional, or national accrediting organization.

2.5 (i) "Program" means a five-year pilot program to implement education savings
2.6 accounts (ESAs).

2.7 (j) "Tutor" means a person who (1) is certified or licensed by a state, regional, or
2.8 national certification or licensing organization to teach, (2) has earned a valid teacher's
2.9 license, or (3) has experience teaching at a postsecondary institution.

2.10 Subd. 3. **ESA program.** (a) An eligible student qualifies to participate in the
2.11 program if the student's parent signs an agreement:

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

2.15 (2) to not enroll the participating student in a public school or a public charter
2.16 school and to acknowledge as part of the agreement that the participating student has no
2.17 individual entitlement to a free appropriate public education from the student's resident
2.18 school district, including special education and related services, for as long as the student
2.19 is participating in the program.

2.20 (b) A parent shall use the funds deposited in a participating student's ESA for any
2.21 of the following qualifying expenses to educate the student using any of the methods
2.22 or combination of methods in this paragraph that meet the requirement in paragraph
2.23 (a), clause (1):

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

2.25 (2) payment to a tutor;

2.26 (3) payment for purchase of curriculum, including any textbooks and supplemental
2.27 materials required by the curriculum;

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

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

2.31 (6) fees for nationally standardized norm-referenced achievement tests, including
2.32 alternate assessments, and fees for advanced placement examinations or similar courses
2.33 and any examinations related to college or university admission;

2.34 (7) educational services or therapies from a licensed or certified practitioner or
2.35 provider, including licensed or certified paraprofessionals or educational aides;

3.1 (8) services provided by a public school, including individual classes and
3.2 extracurricular programs;

3.3 (9) tuition, fees, and textbooks at a postsecondary institution;

3.4 (10) no more than \$300 in annual consumable school supplies necessary for the
3.5 student's education; or

3.6 (11) computer hardware and software and other technological devices if an eligible
3.7 school, tutor, educational service provider, or licensed medical professional verifies in
3.8 writing that these items are necessary for the student to meet annual, measurable goals.

3.9 (c) Neither a participating student nor anyone on the student's behalf may receive
3.10 cash or cash-equivalent items, such as gift cards or store credit, from refunds or rebates
3.11 from a provider of services or products in this program. Refunds or rebates shall be
3.12 credited directly to the participating student's ESA. The funds in an ESA may only be
3.13 used for education-related purposes. Eligible schools, postsecondary institutions, and
3.14 educational service providers that serve participating students shall provide parents with a
3.15 receipt for all qualifying expenses.

3.16 (d) Payment for educational services through an ESA shall not preclude parents
3.17 from paying for educational services using non-ESA funds.

3.18 (e) For purposes of continuity of educational attainment, students who enroll in the
3.19 program shall remain eligible to receive quarterly ESA payments until the participating
3.20 student returns to a public school, graduates from high school, or completes the school
3.21 year in which the student reaches the age of 21, whichever occurs first.

3.22 (f) Any funds remaining in a student's ESA upon graduation from high school
3.23 may be used to attend or take courses from a postsecondary institution, with qualifying
3.24 expenses subject to the applicable conditions in paragraph (b).

3.25 (g) Upon the participating student's graduation from a postsecondary institution or
3.26 after any period of four consecutive years after graduation from high school that the
3.27 student is not enrolled in a postsecondary institution, the participating student's ESA shall
3.28 be closed and any remaining funds shall be returned to the state general fund.

3.29 (h) A participating student shall be allowed to return to the resident school district at
3.30 any time after enrolling in the program, according to rules adopted by the commissioner
3.31 providing for the least disruptive process for doing so. Upon a participating student's
3.32 return to the resident school district, the student's ESA shall be closed and any remaining
3.33 funds shall be returned to the state general fund.

3.34 (i) The commissioner shall begin accepting applications for the program on July
3.35 1, 2016.

4.1 Subd. 4. **Funding.** (a) The commissioner shall determine the amount to be deposited
4.2 in each student's ESA on a first-come, first-served basis. The commissioner shall calculate
4.3 the sum of the following to determine the ESA amount:

4.4 (1) the statewide average general education revenue per adjusted pupil unit; and

4.5 (2) the sum of the amounts according to Minnesota Statutes, section 125A.76,
4.6 subdivision 2, clauses (1), (3), (4), (5), (6), and (7), attributable to the student and using
4.7 the student's most recent year of enrollment in a public school as the base year.

4.8 (b) The information in paragraph (a) must be provided by the school in the form
4.9 required by the commissioner.

4.10 Subd. 5. **Administration.** (a) The commissioner shall create a standard form
4.11 that parents of students submit to establish their student's eligibility for an ESA. The
4.12 commissioner shall ensure that the application is readily available to interested families
4.13 through various sources, including the department's Web site, and a copy of procedural
4.14 safeguards annually given to parents.

4.15 (b) The commissioner shall provide parents of participating students with a written
4.16 explanation of the allowable uses of ESAs, the responsibilities of parents, and the duties
4.17 of the commissioner. The information shall also be made available on the department's
4.18 Web site.

4.19 (c) The commissioner shall annually notify all students who are eligible to
4.20 participate of the existence of the program and shall ensure that lower-income families are
4.21 made aware of their potential eligibility.

4.22 (d) The commissioner may deduct up to six percent from appropriations made to
4.23 fund ESAs to cover the costs of overseeing and administering the program.

4.24 (e) The commissioner shall make payments to the ESAs of participating students on
4.25 a quarterly basis unless there is evidence of misuse of the ESA pursuant to subdivision 6.

4.26 (f) The commissioner shall make a determination of eligibility and shall approve the
4.27 application within 21 business days of receiving an application for participation in the
4.28 program.

4.29 Subd. 6. **ESA establishment.** (a) To ensure that funds are spent appropriately,
4.30 the commissioner shall adopt rules and policies necessary for the administration of the
4.31 program, including the auditing of ESAs, and shall conduct or contract for random audits
4.32 throughout the year.

4.33 (b) Beginning with the 2016-2017 school year, the commissioner shall issue ESA
4.34 cards to parents making expenditures under this section on behalf of a participating
4.35 student. ESA cards shall be issued to parents upon entry to the program and shall expire
4.36 when the participating student's ESA is closed, except for the periodic expiration and

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

5.4 (c) The commissioner, taking into consideration requests from the parents of
5.5 participating students, shall use merchant category classification (MCC) codes, or a
5.6 similar system as practicable and consistent with current technology, to identify categories
5.7 of providers that provide services and products consistent with subdivision 3, paragraph
5.8 (b). The commissioner shall make a list of blocked and unblocked MCC codes publicly
5.9 available for purposes of the program.

5.10 (d) The commissioner shall adopt a process for removing educational service
5.11 providers that defraud parents and for referring cases of fraud to law enforcement.

5.12 (e) The commissioner shall establish or contract for the establishment of an online,
5.13 anonymous fraud-reporting service and an anonymous telephone hotline for fraud
5.14 reporting.

5.15 (f) The commissioner shall adopt rules implementing policies on misspending of
5.16 ESA funds.

5.17 (g) Any amount not spent in the allowable categories pursuant to the agreement
5.18 will cause the ESA card to be temporarily suspended and the parent contacted within
5.19 five business days by United States mail at the parent's home address explaining the
5.20 suspension, detailing the violation, and requesting the parent to:

5.21 (1) provide additional documentation within 15 business days justifying the
5.22 expenditure; or

5.23 (2) repay the misspent amount within 15 business days.

5.24 (h) If the parent does not provide sufficient documentation and refuses to repay the
5.25 amount, the commissioner shall begin the removal process and shall seek to recover the
5.26 misspent funds using administrative measures or other appropriate measures, including
5.27 referral to collections, seeking a civil judgment, or referral to law enforcement.

5.28 (i) If the parent repays the amount within the requested time frame, then the offense
5.29 will be recorded and held in the parent's file.

5.30 (j) Three offenses within a consecutive three-year period shall disqualify the parent's
5.31 student from participating in the program.

5.32 (k) If the commissioner determines that a parent has failed to comply with the
5.33 terms of the agreement as specified in subdivision 3, the commissioner shall suspend the
5.34 participating student's ESA. The commissioner shall notify the parent in writing within
5.35 five business days that the ESA has been suspended and that no further transactions will be

6.1 allowed or disbursements made. The notification shall specify the reason for the suspension
 6.2 and state that the parent has 21 business days to respond and take corrective action.

6.3 (l) If the parent fails to respond to the commissioner, to furnish reasonable and
 6.4 necessary information, or to make a report that may be required for reinstatement within the
 6.5 21-day period, the commissioner may remove the participating student from the program.

6.6 (m) The decision of the commissioner under this section is subject to judicial review
 6.7 under Minnesota Statutes, sections 14.63 to 14.69. The decision of the commissioner is
 6.8 stayed pending an appeal.

6.9 (n) The commissioner shall refer cases of substantial misuse of funds to law
 6.10 enforcement agencies for investigation if evidence of fraudulent intent and use of an
 6.11 ESA is obtained.

6.12 Subd. 7. **Scope.** An eligible nonpublic school is autonomous and not an agent of the
 6.13 state or federal government, and therefore:

6.14 (1) the commissioner, department, or any other government agency shall not in
 6.15 any way regulate the educational program of a nonpublic school or educational service
 6.16 provider that accepts funds from the parent of a participating student;

6.17 (2) the creation of the program does not expand the regulatory authority of the state,
 6.18 its officers, or any school district to impose any additional regulation of nonpublic schools
 6.19 or educational service providers beyond those necessary to enforce the requirements
 6.20 of the program; and

6.21 (3) eligible schools and educational service providers shall be given the maximum
 6.22 freedom to provide for the educational needs of their students without governmental
 6.23 control. No eligible school or educational service provider shall be required to alter its
 6.24 creed, practices, admission policies, or curriculum in order to accept participating students.

6.25 Subd. 8. **Severability.** If any provision of this law or its application is found to be
 6.26 unconstitutional and void, the remaining provisions or applications of this law that can be
 6.27 given effect without the invalid provision or application are valid.

6.28 **EFFECTIVE DATE.** This section is effective the day following final enactment
 6.29 and applies for the 2016-2017 through the 2020-2021 school years.

6.30 Sec. 2. **APPROPRIATIONS.**

6.31 Subdivision 1. **Department of Education.** The sums indicated in this section are
 6.32 appropriated from the general fund in the fiscal year designated.

6.33 Subd. 2. **Education savings accounts.** For education savings accounts:

7.1 \$ 2016

7.2 \$ 2017

7.3 Any balance in the first year does not cancel but is available in the second year.