

SENATE BILL NO. 2414

Introduced by

Senators Krauter, Grindberg, Kelsh, O'Connell

Representatives Drovdal, R. Kelsch

1 A BILL for an Act to create and enact a new chapter to title 15 of the North Dakota Century
2 Code, relating to establishment of the North Dakota scholarshare trust program student aid
3 commission; and to provide continuing appropriations.

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

5 **SECTION 1.** A new chapter to title 15 of the North Dakota Century Code is created and
6 enacted as follows:

7 **North Dakota scholarshare trust.** The North Dakota scholarshare trust is an
8 instrumentality of the state. The trust is the program provided by this chapter.

9 **Student aid commission - Creation.** The student aid commission consists of thirteen
10 members. The governor shall appoint one individual representing a degree-granting institution
11 under the control of the state board of higher education, one individual representing a
12 nondegree-granting institution under the control of the state board of higher education, one
13 individual representing a private degree-granting institution of higher education, two students in
14 full-time attendance at an institution of higher education in this state, three members of the
15 public, and one individual representing a high school. The majority leader of the senate shall
16 appoint two individuals. The speaker of the house of representatives shall appoint two
17 individuals.

18 **Student aid commission - Chairman - Meetings.** The governor shall set the time and
19 place of the initial meeting of the student aid commission. At the initial meeting, the
20 commission shall elect from among its members a chairman and a secretary. Thereafter, the
21 commission must meet at least quarterly, at the call of the chairman.

22 **Student aid commission - General powers.** The student aid commission may:

- 23 1. Sue and be sued.
24 2. Cause moneys in the program fund to be invested and reinvested.

- 1 3. Appoint an executive director, employ necessary staff, and set the compensation
- 2 for the executive director and staff.
- 3 4. Contract with any public or private entity for the effectuation of its rights and duties.
- 4 5. Accept grants and gifts from any public or private source for deposit to the program
- 5 fund.
- 6 6. Enter participation agreements with participants.
- 7 7. Make payments to institutions of higher education on behalf of beneficiaries,
- 8 pursuant to participation agreements.
- 9 8. Make refunds to participants upon the cancellation of participation agreements,
- 10 pursuant to this chapter.
- 11 9. Defray the costs of administering and operating the North Dakota scholarshare
- 12 trust.
- 13 10. Adopt rules to implement this chapter.

14 **Student aid commission - Scholarshare trust powers.** The student aid commission
15 may:

- 16 1. Carry out studies and projections in order to advise participants regarding the
- 17 present and estimated future higher education expenses and the levels of financial
- 18 participation required in order to enable participants to reach their funding
- 19 objectives.
- 20 2. Contract for goods and services.
- 21 3. Participate in any federal, state, or local program for the benefit of the North
- 22 Dakota scholarshare trust.
- 23 4. Impose and collect administrative fees and charges in connection with transactions
- 24 of the North Dakota scholarshare trust and provide for reasonable service charges,
- 25 including charges for cancellation.
- 26 5. Set minimum and maximum investment levels.
- 27 6. Obtain insurance against any loss in connection with the property, assets, or
- 28 activities of the North Dakota scholarshare trust.
- 29 7. Obtain insurance indemnifying any member of the commission from personal loss
- 30 or liability resulting from the member's action or inaction.
- 31 8. Administer the funds of the North Dakota scholarshare trust.

1 9. Contract for the administration of the North Dakota scholarshare trust.

2 **Participation agreements.**

3 1. Each participant must agree to invest a specific amount of money in the trust, for a
4 specific period of time, and for the benefit of a named beneficiary. The commission
5 may specify a minimum length of time before any disbursements may be made on
6 behalf of a beneficiary and may impose a penalty on the early distribution of funds,
7 if determined necessary by the commission.

8 2. A participation agreement may be amended for any reason, including to provide for
9 adjusted levels of participation and changes in the named beneficiary.

10 3. A participation agreement must provide that the agreement may be canceled upon
11 the terms and conditions set forth in the rules adopted by the commission.

12 **Participation agreements - Scope.** The execution of a participation agreement does
13 not guarantee:

14 1. That the higher education expenses of the named beneficiary will be equal to
15 projections and estimates provided by the trust.

16 2. That the named beneficiary will be admitted to an institution of higher education.

17 3. That the named beneficiary will be determined to be a resident of this state for
18 purposes of tuition.

19 4. That the named beneficiary will be allowed to continue attendance at an institution
20 of higher education following admission.

21 5. That the named beneficiary will graduate from an institution of higher education.

22 6. That the named beneficiary will have sufficient savings to fully cover all qualified
23 education expenses as a result of attending an institution of higher education.

24 **Participation agreements - Change of beneficiary.** A participant may change the
25 named beneficiary, in accordance with the rules implemented by the commission, at any time
26 before the date a named beneficiary is admitted to an institution of higher education.

27 **North Dakota scholarshare investment board - Members.** The North Dakota
28 scholarshare investment board consists of the state treasurer, the director of the office of
29 management and budget, and the executive director of the student aid commission. The state
30 treasurer shall serve as chairman of the board.

1 **North Dakota scholarshare investment board - Investment policy.** Annually, the
2 North Dakota scholarshare investment board shall prepare a written statement of investment
3 policy. The board shall make the statement of investment policy available to the public and
4 conduct a public hearing to accept comments regarding the policy. After due consideration of
5 the comments, the board may modify the policy and shall adopt the final policy. The investment
6 policy must include approval of the person charged with managing and investing the North
7 Dakota scholarshare program fund. Moneys in the North Dakota scholarshare program fund
8 may be invested or reinvested by the state treasurer or may be invested in whole or in part
9 under contract with private money managers, as determined appropriate by the North Dakota
10 scholarshare investment board.

11 **North Dakota scholarshare investment board - Investment manager - Duties.** Not
12 later than thirty days after the close of each month, the investment manager shall provide to the
13 investment board and publish in the daily newspapers of general circulation in the state a report
14 regarding deposits and investments made pursuant to this Act. Not later than thirty days after
15 the close of each month, the investment manager shall provide to the investment board the
16 following information:

- 17 1. The type of investment, the name of the issuer, the date of maturity, the par and
18 dollar amount invested in each security, investment, and money within the North
19 Dakota scholarshare program fund.
- 20 2. The weighted average maturity of the investments within the North Dakota
21 scholarshare program fund.
- 22 3. The amount of money in the North Dakota scholarshare program fund under the
23 management of private money managers.
- 24 4. The market value as of the date of the report and the source of this valuation for
25 any security within the program fund.
- 26 5. A description of the compliance with the statement of investment policy.

27 **Receipts of moneys - Deposit.** The student aid commission shall deposit all moneys
28 paid to it by participants into the North Dakota scholarshare program fund. Moneys in the fund
29 may be used for payments to any institution of higher education, as provided for in the
30 participation agreements.

31 **Participation agreements - Cancellation - Refunds.**

- 1 1. A participant may cancel a participation agreement at will. Upon cancellation, a
2 participant is entitled to receive an amount equal to the then current market value
3 of the total amount contributed to the participant's account, less a penalty with
4 respect to the interest earned on the contributions levied by the student aid
5 commission.
- 6 2. If a participant cancels a participation agreement because the beneficiary has died
7 or become disabled, or if the beneficiary is the recipient of a scholarship which
8 makes the contributions through the North Dakota scholarshare program
9 unnecessary, the student aid commission shall refund to the participant an amount
10 equal to the then current market value of the total amount contributed to the
11 participant's account. The student aid commission may not levy a penalty under
12 these circumstances.
- 13 3. The cancellation of a participation agreement is deemed to have been made at the
14 close of business for the month during which notice of the cancellation is received
15 by the student aid commission and the current market value of contributions as of
16 that date must be determined according to the monthly report for that month.

Participation agreements - Ownership rights.

- 18 1. The participant in a participation agreement retains ownership of all moneys
19 contributed under the participation agreement up to the date the money is used for
20 the payment of higher education costs on behalf of the beneficiary and all interest
21 derived from the investment of payments made by the participant are deemed to
22 be held in trust for the benefit of the beneficiary.
- 23 2. If there has been a decrease in the value of the funds in a participant's account at
24 the time a participation agreement is canceled, the participant may not have
25 ownership rights to any amount above the market value of the funds in the account
26 at the time of cancellation.
- 27 3. If a beneficiary graduates from an institution of higher education with no intention of
28 further attendance at an institution of higher education and if a balance remains in
29 the participant's account, the participant is entitled to receive a refund equal to the
30 amount of the balance, less any penalty imposed by the student aid commission.

1 4. A participant may not pledge any contributions nor any interest derived from the
2 contributions as collateral for a loan.

3 5. A participant may transfer ownership rights in the moneys to another eligible
4 participant and may make a gift of the moneys to an eligible beneficiary. The
5 transfer must be conducted in accordance with rules adopted by the commission
6 and the terms of the participant's participation agreement.

7 **Payments to institutions of higher education.** The student aid commission shall
8 make payments for qualified higher education expenses directly to the institution of higher
9 education in which the beneficiary is enrolled.

10 **Unclaimed amounts - Owned by trust.** Any amounts paid into the North Dakota
11 scholarshare program fund and not claimed as provided for in this chapter remain the property
12 of the North Dakota scholarshare trust.

13 **Annual audit.** The student aid commission shall submit an annual audited financial
14 report, prepared in accordance with generally accepted accounting principles, on the operations
15 of the North Dakota scholarshare trust to the governor and the state auditor. The audit must be
16 conducted by an independent certified public accountant and must include the direct and
17 indirect costs attributable to the use of outside consultants, independent contractors, and any
18 other persons who are not state employees. Any contributions to the North Dakota
19 scholarshare trust which are not directed to a specified beneficiary must be accounted for and
20 treated separately in the annual audit. The commission also shall submit, along with the annual
21 audit, any studies or evaluations prepared in the preceding year, a summary of the benefits
22 provided by the trust including the number of participants and beneficiaries and any other
23 information necessary to make a full, fair, and effective disclosure of the operations of the North
24 Dakota scholarshare trust.

25 **Annual reports.** The North Dakota scholarshare trust annually shall:

26 1. Provide to the tax commissioner a list of all distributions including payments of
27 benefits and refunds to individuals having an interest in a participation agreement.
28 The list must include the individual's name, address, and tax identification number,
29 and the type and amount of each distribution including interest earned and
30 penalties imposed.

- 1 2. Provide to each participant and beneficiary information regarding the value of the
2 beneficiary's account, the interest earned on the account, the rate of return of the
3 investments in the beneficiary's account for the annual reporting period, the
4 investment goal the participant will achieve if all future contributions are made in a
5 timely fashion, and the amount of any missed contributions that the participant is
6 eligible to make up.
- 7 3. Provide information regarding the trends in qualified higher education expenses at
8 the state institutions of higher education.

9 **Trust assets.** The assets of the North Dakota scholarshare trust, including the North
10 Dakota scholarshare program fund, must be preserved, invested, and expended solely for the
11 purposes of the trust and must be held in trust for the participants and beneficiaries. No
12 property rights exist in favor of the state. The assets may not be transferred or used by the
13 state for any purpose other than the purpose of the trust.

14 **Marketing efforts.** The state aid commission shall market the North Dakota
15 scholarshare trust program to the citizens of this state. The commission shall include in its
16 marketing efforts information designed to educate citizens about the benefits of saving for
17 higher education and information to help them decide the level of scholarshare participation and
18 the combination of savings strategies that may be appropriate for them. The trust also shall
19 develop a mechanism to keep participants in the program motivated about their current and
20 future academic endeavors.

21 **North Dakota scholarshare program fund - Continuing appropriation.** The North
22 Dakota scholarshare program fund is a special fund in the state treasury. All moneys in the
23 fund, together with all interest income earned by moneys in the fund, are appropriated on a
24 continuing basis to the student aid commission for the purposes of carrying out this chapter.
25 The student aid commission may transfer moneys from the North Dakota scholarshare program
26 fund to the North Dakota scholarshare administration fund to defray the necessary expenses of
27 the commission in administering this chapter provided that such expenditures may not exceed
28 more than one percent of the total North Dakota scholarshare program fund.

29 **North Dakota scholarshare administration fund - Continuing appropriation.** The
30 North Dakota scholarshare administration fund is a special fund in the state treasury. All
31 moneys in the fund, together with all interest income earned by moneys in the fund, are

Fifty-sixth
Legislative Assembly

- 1 appropriated on a continuing basis to the student aid commission for the purposes of carrying
- 2 out this chapter.