

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend **HB 2445**, as amended by House Committee of the Whole, on page 32, following line 27, by inserting:

"New Sec. 17. Sections 17 through 29, and amendments thereto, shall be known and may be cited as the Kansas school finance litigation contingency act.

New Sec. 18. As used in section 17 et seq., and amendments thereto:

- (a) "Account" means a Kansas school finance litigation contingency account.
- (b) "Department" means the Kansas department of education.
- (c) "Parent" means a parent, legal guardian custodian or other person with authority to act on behalf of a qualified student.
- (d) "Participating learning entity" means a nonpublic entity that satisfies at least one of the requirements set forth in section 25(a)(1), and amendments thereto.
- (e) "Program" means the Kansas school finance litigation contingency program established under section 19, and amendments thereto.
- (f) "Qualified student" means a resident of Kansas who is a resident of a school district that is a plaintiff in a lawsuit alleging a violation of article 6 of the constitution of the state of Kansas as certified pursuant to section 19, and amendments thereto, and who:

(1) Is enrolled in kindergarten or any of the grades one through 12 in such student's resident school district;

(2) is eligible to be enrolled in such student's school district in the school year in which an account is first sought for such resident and the resident is under the age of six; or

(3) (A) has established an account pursuant to section 17 et seq., and amendments thereto; and

(B) has not graduated from high school.

(g) "Resident school district" means the school district in which a qualified student would be enrolled based on such qualified student's residence.

(h) "Treasurer" means the state treasurer or the state treasurer's designee.

New Sec. 19. (a) The treasurer shall administer the Kansas school finance litigation contingency program which is hereby established. The purpose of the program is to provide options for the education of Kansas students in the event such students' resident school district cannot provide a suitable education.

(b) Upon the receipt of information that a school district organized under the laws of this state is a plaintiff in a lawsuit alleging a violation of article 6 of the constitution of the state of Kansas, the state board of education shall certify the existence of such conditions and submit such certification to the treasurer.

New Sec. 20. (a) The treasurer shall establish a Kansas school finance litigation contingency account for each qualified student whose parent satisfies the requirements of this act.

(b) The treasurer shall maintain an explanation of the following information on the treasurer's website and provide a hard copy of such information to any person who requests it:

(1) The allowable uses of moneys in an account;

(2) the responsibilities of a parent of a qualified student participating in the program;

(3) the effect of participation in the program by qualified students with an individualized education program (IEP) or an education plan under section 504 of the rehabilitation act of 1973, 29 U.S.C. § 794 (section 504 plan);

(4) the duties of the treasurer; and

(5) a list of participating learning entities.

New Sec. 21. (a) To establish an account, the parent of a qualified student shall enter into a written agreement with the treasurer, in a manner and on a form prescribed by the treasurer.

(b) The agreement between the parent of a qualified student and the treasurer shall provide:

(1) The qualified student shall not enroll full-time in the qualified student's resident school district;

(2) the qualified student shall receive instruction from a participating learning entity;

(3) the parent shall comply with all requirements and rules and regulations of the program;

and

(4) the money in the qualified student's account shall only be expended as authorized by this program.

(c) Only one account may be established for each qualified student. A parent acting on behalf of more than one qualified student shall have a separate written agreement for each qualified student.

(d) A written agreement entered pursuant to this act shall have a term of one year, but may be terminated early pursuant to subsection (e). Such written agreement shall be executed on or before August 1 of the current school year. Such written agreement may be renewed annually by August 1 upon the written consent of the parent and the treasurer in a manner determined by the treasurer, except the parent may submit a request to the treasurer for an extension of time for renewal not to exceed 30 days. Failure to renew a written agreement does not preclude renewal of such written agreement in a subsequent year. A written agreement that has been terminated pursuant to subsection (e) shall not be renewed.

(e) (1) A written agreement may be terminated by the treasurer upon a determination that:

(A) Money in an account has been used for purposes other than those allowed by the program;

(B) the qualified student no longer satisfies the definition of a "qualified student" as defined in section 18, and amendments thereto; or

(C) the qualified student enrolls in such student's resident school district on a full-time basis.

(2) A written agreement may be terminated by a parent at any time. To terminate a written agreement, such parent shall notify the treasurer in writing of such termination.

(3) When a written agreement is terminated, the account associated with such agreement shall be deemed no longer active, and the treasurer shall close the account in accordance with section 22(d) (2), and amendments thereto.

New Sec. 22. (a) (1) There is hereby established in the state treasury the Kansas school finance litigation contingency fund to be administered by the state treasurer. Money in the Kansas school finance litigation contingency fund shall be expended only for the purposes established in this act. All moneys received pursuant to section 23, and amendments thereto, shall be deposited in the state treasury in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, and shall be credited to the Kansas school finance litigation contingency fund.

(2) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the Kansas school finance litigation contingency fund interest earnings based on:

(A) The average daily balance of moneys in the Kansas school finance litigation contingency fund; and

(B) the net earnings rate of the pooled money investment portfolio for the preceding month.

(b) Upon execution of an agreement in accordance with section 20, and amendments thereto, the treasurer shall establish an account in the Kansas school finance litigation contingency fund in the state treasury in the name of the qualified student. Upon establishment of such account, the treasurer shall notify the resident school district of the establishment of such an account for the qualified student.

(c) (1) The treasurer shall transfer to a qualified student's account in the Kansas school finance litigation contingency fund an aggregate annual amount equal to 75% of the BASE aid, as

defined in K.S.A. 2017 Supp. 72-5132, and amendments thereto, for the immediately preceding school year, plus an amount equal to 75% of the per student proportion of that portion of the qualified student's resident school district's state foundation aid that is directly attributable to such district's weightings for the immediately preceding school year. The treasurer shall make such transfers in quarterly installments pursuant to a schedule determined by the treasurer.

(2) If a qualified student enrolls in such student's resident school district on a part-time basis, such qualified student or such student's parent shall notify the treasurer and the treasurer shall prorate the amount to be transferred under paragraph (1).

(3) The treasurer may deduct a percentage of the amount to be transferred into an account pursuant to paragraph (1) as reimbursement for the administrative costs of implementing the provisions of this act as follows:

(A) Up to 5% each year for the first two years money is transferred to a qualified student's account under paragraph (1); and

(B) up to 2.5% the third year and each subsequent year money is transferred to a qualified student's account under paragraph (1).

(4) No transfers shall be made to any qualified student's account after such student has graduated from high school.

(d) (1) Each account shall remain active until:

(A) A written agreement is terminated pursuant to section 21, and amendments thereto;

(B) the student graduates from high school; or

(C) there are two consecutive years of nonrenewal of an agreement.

(2) When the treasurer determines an account is no longer active, the treasurer shall close the account and certify the amount of funds remaining in the account to the director of accounts and reports. Such certified amount shall be transferred from the closed account to the Kansas school finance

litigation contingency fund.

(e) The treasurer shall develop a system for payment of services by participating parents by electronic funds transfer. However, such system shall not require parents to be reimbursed for out-of-pocket expenses. All transfers shall be only for expenditures approved by the treasurer. The treasurer may contract with a third party for the purposes of this subsection.

New Sec. 23. (a) The treasurer shall notify the state board of education as to the names of the students participating in the program and the resident school district of each such student.

(b) For school year 2018-2019, and each school year thereafter, a qualified student shall be counted in the enrollment of such qualified student's resident school district for the purposes of calculating the amount of the state foundation aid per student for the school district. An amount equal to 75% of the BASE aid, as defined in K.S.A. 2017 Supp. 72-5132, and amendments thereto, plus an amount equal to 75% of the per student proportion of that portion of the qualified student's resident school district's state foundation aid that is directly attributable to such district's weightings for the immediately preceding school year, shall be multiplied by the total number of qualified students in such school district who are participating in the program and have not graduated from high school. The state board of education shall certify the resulting product to the director of accounts and reports. Upon receipt of such certification, the director shall transfer such certified amount from the state general fund to the Kansas school finance litigation contingency fund established in section 22, and amendments thereto.

(c) For school year 2018-2019 and each school year thereafter, the state board shall deduct from the amount of state foundation aid for each school district an amount equal to the amount certified under subsection (b).

New Sec. 24. (a) Moneys in the qualified student's account may be accessed by such qualified student's parent, but shall only be expended by such parent for the following purposes:

- (1) Tuition and fees charged by a participating learning entity;
  - (2) textbooks and other supplies required by a participating learning entity;
  - (3) educational therapies or services provided by a licensed or accredited education provider;
  - (4) tutoring services provided by a certified tutor;
  - (5) curriculum materials;
  - (6) tuition or fees charged by an accredited private online learning program;
  - (7) fees for any nationally standardized norm-referenced achievement test, advanced placement examination or other examination related to admission to a postsecondary institution;
  - (8) contracted services from a public school district, including individual classes;
  - (9) fees for transportation provided by a participating learning entity required for the qualified student to travel to and from a participating learning entity; and
  - (10) any other education expenses approved by the treasurer.
- (b) The treasurer shall notify the parent of any expenditures from a qualified student's account that do not meet the requirements of subsection (a). Such parent shall repay the cost of any such expenditures within 30 days of notification by the treasurer.
- (c) Except as provided in section 22(d), and amendments thereto, funds remaining in an account at the end of a school year shall roll over to the next succeeding school year.
- (d) A participating learning entity providing education services purchased with funds from an account shall not share, refund or rebate any portion of such funds to the parent or qualified student. Any such refund or rebate shall be made directly into the qualified student's account.
- (e) No personal deposits may be made into an account.
- (f) (1) The treasurer shall conduct or contract to conduct annual audits of school finance litigation contingency accounts to ensure compliance with the provisions of section 17 et seq., and amendments thereto. The treasurer shall also conduct or contract to conduct random and quarterly

audits of school finance litigation contingency accounts as needed to ensure compliance with section 17 et seq., and amendments thereto.

(2) If the treasurer determines money in an account has been used for purposes other than those allowed by subsection (a), the treasurer may:

(A) Prohibit expenditures from the account until such time as determined by the treasurer;

(B) prorate amounts to be deposited in such account under section 6, and amendments thereto, by an amount equal to the total amount used for purposes other than those allowed by subsection (a); or

(C) terminate the account.

New Sec. 25. (a) To become a participating learning entity, an applicant shall submit an application to the treasurer on a form and in a manner prescribed by the treasurer. Such application shall include proof of the following:

(1) The applicant is:

(A) An accredited nonpublic school registered with the state board of education pursuant to K.S.A. 2017 Supp. 72-4346, and amendments thereto;

(B) an accredited program of distance education that is not operated by a public school or the department;

(C) a tutor or tutoring facility that is accredited by a state, regional or national accrediting organization;

(D) an educational therapy provider; or

(E) a special education services provider; and

(2) if the applicant is a nonpublic school, then the applicant provides instruction in at least those subjects required by K.S.A. 2017 Supp. 72-3214, 72-3217 and 72-3235, and amendments thereto.

(b) The treasurer shall approve an application or request additional information as necessary to prove an applicant meets the criteria to be deemed a participating learning entity within 45 days of



receiving the application. If the applicant is unable to provide such additional information, the treasurer may deny the application.

(c) The treasurer shall conduct, or contract for the performance of, an audit of a participating learning entity selected at random each year to determine whether the participating learning entity is compliant with the requirements of subsection (a).

(d) (1) The treasurer may revoke a participating learning entity's approval if the treasurer determines the participating learning entity:

(A) Has routinely failed to comply with the provisions of this act or applicable rules and regulations; or

(B) has failed to provide any educational services required by law to a qualified student receiving instruction from the entity if the entity is accepting payments made from such student's account.

(2) Prior to revoking a participating learning entity's approval, the treasurer shall notify such participating learning entity of impending revocation and the reason for such revocation. The participating learning entity shall have 30 days from the time it was notified to cure the matter identified in the notice. If the participating learning entity fails to cure within 30 days, such participating learning entity's approval shall be revoked. A participating learning entity whose approval has been revoked shall not be allowed to participate in the program until such time the treasurer determines such participating learning entity is in compliance with the requirements of section 17 et seq., and amendments thereto.

(3) If the treasurer revokes a participating learning entity's approval, the treasurer shall immediately notify each parent of a qualified student participating in the program and receiving instruction from such participating learning entity.

(e) The treasurer may notify the attorney general or the district attorney of the county where

the participating learning entity is located if a participating learning entity's approval was revoked because of misuse of money paid from an account.

New Sec. 26. Enrollment of a qualified student in a nonpublic school that is a participating learning entity shall be considered a parental placement of such student under the individuals with disabilities education act, 20 U.S.C. § 1400 et seq.

New Sec. 27. The provisions of section 17 et seq., and amendments thereto, shall be subject to the Kansas administrative procedure act.

New Sec. 28. On or before January 1, 2019, the treasurer shall adopt rules and regulations necessary to carry out the provisions of section 17 et seq., and amendments thereto.

New Sec. 29. Nothing in section 17 et seq., and amendments thereto, shall be deemed to limit the independence or autonomy of a participating learning entity or to make the actions of a participating learning entity the actions of the state government.";

And by renumbering sections accordingly

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