

REFERENCE TITLE: ESAs; authorized expenses; special education

State of Arizona
House of Representatives
Fifty-seventh Legislature
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HB 2888

Introduced by
Representatives Abeytia: Austin, Crews, Gutierrez, Márquez, Simacek,
Tsosie, Volk

AN ACT

AMENDING SECTIONS 15-2402 AND 15-2403, ARIZONA REVISED STATUTES; RELATING
TO ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-2402, Arizona Revised Statutes, is amended to
3 read:

4 15-2402. Arizona empowerment scholarship accounts; funds;
5 definition

6 A. Arizona empowerment scholarship accounts are established to
7 provide options for the education of students in this state.

8 B. To enroll a qualified student for an Arizona empowerment
9 scholarship account, the parent of the qualified student must sign an
10 agreement to do all of the following:

11 1. Use a portion of the Arizona empowerment scholarship account
12 monies allocated annually to provide an education for the qualified
13 student in at least the subjects of reading, grammar, mathematics, social
14 studies and science, unless the Arizona empowerment scholarship account is
15 allocated monies according to a transfer schedule other than quarterly
16 transfers pursuant to section 15-2403, subsection G.

17 2. Not enroll the qualified student in a school district or charter
18 school and release the school district from all obligations to educate the
19 qualified student. This paragraph does not:

20 (a) Relieve the school district or charter school that the
21 qualified student previously attended from the obligation to conduct an
22 evaluation pursuant to section 15-766.

23 (b) Require the qualified student to withdraw from ~~a~~ ANY school
24 district or charter school before enrolling for an Arizona empowerment
25 scholarship account if the qualified student withdraws from the school
26 district or charter school before receiving any monies in the qualified
27 student's Arizona empowerment scholarship account.

28 (c) Prevent the qualified student from applying in advance for an
29 Arizona empowerment scholarship account to be funded beginning the
30 following school year, subject to section 15-2403, subsection H.

31 3. Not accept a scholarship from a school tuition organization
32 pursuant to title 43 concurrently with an Arizona empowerment scholarship
33 account for the qualified student in the same year a parent signs the
34 agreement pursuant to this section.

35 4. Use monies deposited in the qualified student's Arizona
36 empowerment scholarship account only for the following expenses of the
37 qualified student:

38 (a) Tuition or fees at a qualified school that requires all
39 teaching staff and personnel who have unsupervised contact with students
40 to be fingerprinted.

41 (b) Textbooks required by a qualified school.

42 (c) If the qualified student meets any of the criteria specified in
43 section 15-2401, paragraph 7, subdivision (a), item (i), (ii) or (iii) as
44 determined by a school district or by an independent third party pursuant

1 to section 15-2403, subsection J, the qualified student may use the
2 following additional services:

3 (i) Educational therapies from a licensed or accredited
4 practitioner or provider, including and up to any amount not covered by
5 insurance if the expense is partially paid by a health insurance policy
6 for the qualified student.

7 (ii) A licensed or accredited paraprofessional or educational aide.

8 (iii) Tuition for vocational and life skills education approved by
9 the department.

10 (iv) Associated goods and services that include educational and
11 psychological evaluations, assistive technology rentals and braille
12 translation goods and services approved by the department.

13 (d) Tutoring or teaching services provided by an individual who is
14 not subject to disciplinary action by the state board of education for
15 immoral or unprofessional conduct pursuant to section 15-505 or 15-534.04
16 or a facility that is accredited by a state, regional or national
17 accrediting organization. The department shall ensure THAT any individual
18 who provides tutoring or teaching services to one or more qualified
19 students pursuant to this subdivision is not subject to disciplinary
20 action by the state board of education. The department shall also remove
21 any individual who is subject to disciplinary action by the state board of
22 education from all platforms that the department provides to parents and
23 qualified students for the purchase of goods or educational services using
24 account monies.

25 (e) Curricula and supplementary materials.

26 (f) Tuition or fees for a nonpublic online learning program.

27 (g) Fees for a nationally standardized norm-referenced achievement
28 test, an advanced placement examination or any exams related to college or
29 university admission.

30 (h) Tuition or fees at an eligible postsecondary institution.

31 (i) Textbooks required by an eligible postsecondary institution.

32 (j) Fees to manage the Arizona empowerment scholarship account.

33 (k) Services provided by a public school, including individual
34 classes and extracurricular programs.

35 (l) Insurance or surety bond payments.

36 (m) Uniforms purchased from or through a qualified school.

37 (n) If the qualified student meets the criteria specified in
38 section 15-2401, paragraph 7, subdivision (a), item (i), (ii) or (iii) and
39 if the qualified student is in the second year prior to the final year of
40 a contract executed pursuant to this article, costs associated with an
41 annual education plan conducted by an independent evaluation team. The
42 department shall prescribe minimum qualifications for independent
43 evaluation teams pursuant to this subdivision and factors that teams must
44 use to determine whether the qualified student shall be eligible to
45 continue to receive monies pursuant to this article through the school

1 year in which the qualified student reaches twenty-two years of age. An
2 independent evaluation team that provides an annual education plan
3 pursuant to this subdivision shall submit a written report that summarizes
4 the results of the evaluation to the parent of the qualified student and
5 to the department on or before July 31. The written report submitted by
6 the independent evaluation team is valid for one year. If the department
7 determines that the qualified student meets the eligibility criteria
8 prescribed in the annual education plan, the qualified student is eligible
9 to continue to receive monies pursuant to this article until the qualified
10 student reaches twenty-two years of age, subject to annual review. A
11 parent may appeal the department's decision pursuant to title 41, chapter
12 6, article 10. As an addendum to a qualified student's final-year
13 contract, the department shall provide the following written information
14 to the parent of the qualified student:

15 (i) That the qualified student will not be eligible to continue to
16 receive monies pursuant to this article unless the results of an annual
17 education plan conducted pursuant to this subdivision demonstrate that the
18 qualified student meets the eligibility criteria prescribed in the annual
19 education plan.

20 (ii) That the parent is entitled to obtain an annual education plan
21 pursuant to this subdivision to determine whether the qualified student
22 meets the eligibility criteria prescribed in the annual education plan.

23 (iii) A list of independent evaluation teams that meet the minimum
24 qualifications prescribed by the department pursuant to this subdivision.

25 (o) Public transportation services in this state, including a
26 commuter pass for the qualified student, or transportation network
27 services as defined in section 28-9551 between the qualified student's
28 residence and a qualified school in which the qualified student is
29 enrolled.

30 (p) Computer hardware and technological devices primarily used for
31 an educational purpose. For the purposes of this subdivision, "computer
32 hardware and technological devices":

33 (i) Includes calculators, personal computers, laptops, tablet
34 devices, microscopes, telescopes and printers.

35 (ii) Does not include entertainment and other primarily
36 noneducational devices, including televisions, telephones, video game
37 consoles and accessories, and home theatre and audio equipment.

38 5. Not file an affidavit of intent to homeschool pursuant to
39 section 15-802, subsection B, paragraph 2 or 3.

40 6. Not use monies deposited in the qualified student's account for
41 any of the following:

42 (a) Computer hardware or other technological devices, except as
43 otherwise allowed under paragraph 4, subdivision (c) or (p) of this
44 subsection.

(b) Transportation of the pupil, except for transportation services described in paragraph 4, subdivision (o) of this subsection.

7. NOT SELL ANY ITEM THAT WAS PURCHASED WITH MONIES FROM AN ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT WHILE THE QUALIFIED STUDENT FOR WHOM THE ITEM WAS PURCHASED IS ENROLLED IN THE ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNTS PROGRAM.

8. OBTAIN APPROVAL FROM THE DEPARTMENT BEFORE COMPLETING ANY TRANSACTION FOR WHICH THE EXPENSE IS AT LEAST \$500. THE DEPARTMENT SHALL REVIEW EACH TRANSACTION THAT IS SUBMITTED FOR APPROVAL PURSUANT TO THIS PARAGRAPH TO DETERMINE WHETHER THE EXPENSE IS ALLOWED UNDER THIS CHAPTER.

9. NOT USE MONIES DEPOSITED IN THE QUALIFIED STUDENT'S ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT FOR LUXURY GOODS OR SERVICES.

C. In exchange for the parent's agreement pursuant to subsection B of this section, the department shall transfer from the monies that would otherwise be allocated to a recipient's prior school district, or if the child is currently eligible to attend a preschool program for children with disabilities, a kindergarten program or any of grades one through twelve, the monies that the department determines would otherwise be allocated to a recipient's expected school district of attendance, to the treasurer for deposit into an Arizona empowerment scholarship account an amount that is equivalent to ninety percent of the sum of the base support level and additional assistance prescribed in sections 15-185 and 15-943 for that particular student if that student were attending a charter school.

D. The department of education empowerment scholarship account fund is established consisting of monies appropriated by the legislature. The department shall administer the fund. Monies in the fund are subject to legislative appropriation. Monies in the fund shall be used for the department's costs in administering Arizona empowerment scholarship accounts under this chapter. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations. If the number of Arizona empowerment scholarship accounts significantly increases after fiscal year 2020-2021, the department may request an increase in the amount appropriated to the fund in any subsequent fiscal year in the budget estimate submitted pursuant to section 35-113. The department shall list monies in the fund as a separate line item in its budget estimate.

E. The state treasurer empowerment scholarship account fund is established consisting of monies appropriated by the legislature. The state treasurer shall administer the fund. Monies in the fund shall be used for the state treasurer's costs in administering the Arizona empowerment scholarship accounts under this chapter. If the number of Arizona empowerment scholarship accounts significantly increases after fiscal year 2020-2021, the state treasurer may request an increase in the amount appropriated to the fund in any subsequent fiscal year in the

1 budget estimate submitted pursuant to section 35-113. Monies in the fund
2 are subject to legislative appropriation. Monies in the fund are exempt
3 from the provisions of section 35-190 relating to lapsing of
4 appropriations. The state treasurer shall list monies in the fund as a
5 separate line item in its budget estimate.

6 F. A parent must renew the qualified student's Arizona empowerment
7 scholarship account on an annual basis. The department of education shall
8 verify that the parent's child is a qualified student as defined in
9 section 15-2401 or 15-2401.01 in the year for which the parent seeks to
10 renew the Arizona empowerment scholarship account. This subsection does
11 not require the department to annually verify the child's disability for
12 the purpose of section 15-2401, paragraph 7, subdivision (a), item (i),
13 (ii) or (iii), if applicable.

14 G. Notwithstanding any changes to the student's multidisciplinary
15 evaluation team plan, a student who has previously qualified for an
16 Arizona empowerment scholarship account remains eligible to apply for
17 renewal until the student finishes high school.

18 H. If a parent does not renew the qualified student's Arizona
19 empowerment scholarship account for a period of three academic years, the
20 department shall notify the parent that the qualified student's account
21 will be closed in sixty calendar days. The notification must be sent
22 through certified mail, email and telephone, if applicable. The parent
23 has sixty calendar days to renew the qualified student's Arizona
24 empowerment scholarship account. If the parent chooses not to renew or
25 does not respond in sixty calendar days, the department shall close the
26 account and any remaining monies shall be returned to the state.

27 I. A signed agreement under this section constitutes school
28 attendance required by section 15-802.

29 J. NOTWITHSTANDING SECTION 15-2404, A QUALIFIED SCHOOL OR A
30 PROVIDER OF SERVICES THAT RECEIVES MONIES FROM AN ARIZONA EMPOWERMENT
31 SCHOLARSHIP ACCOUNT PURSUANT TO THIS ARTICLE IS SUBJECT TO THE FOLLOWING
32 REQUIREMENTS:

33 1. A qualified school or a provider of services purchased pursuant
34 to subsection B, paragraph 4 of this section may not share, refund or
35 rebate any Arizona empowerment scholarship account monies with the parent
36 or qualified student in any manner.

37 2. A QUALIFIED SCHOOL THAT RECEIVES MONIES FROM AN ARIZONA
38 EMPOWERMENT SCHOLARSHIP ACCOUNT PURSUANT TO THIS ARTICLE SHALL DO BOTH OF
39 THE FOLLOWING:

40 (a) NOTIFY IN WRITING THE PARENT OF A PROSPECTIVE STUDENT WHO MEETS
41 THE CRITERIA OF QUALIFIED STUDENT PRESCRIBED IN SECTION 15-2401,
42 PARAGRAPH 7, SUBDIVISION (a), ITEM (i), (ii) OR (iii) OF THE INDIVIDUAL
43 SPECIAL EDUCATION SERVICES AND EDUCATIONAL THERAPIES THAT THE QUALIFIED
44 SCHOOL WILL PROVIDE TO THE STUDENT BEFORE THE PARENT PAYS TUITION OR FEES
45 FROM AN ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT TO THE QUALIFIED

1 SCHOOL. THE NOTIFICATION PRESCRIBED IN THIS SUBDIVISION IS NOT REQUIRED
2 IN SUBSEQUENT YEARS OF ENROLLMENT AT THE SAME QUALIFIED SCHOOL.

3 (b) IF A QUALIFIED STUDENT HAS AN INDIVIDUALIZED EDUCATION PROGRAM
4 OR SECTION 504 PLAN, PROVIDE ALL ACCOMMODATIONS AND SERVICES THAT ARE
5 REQUIRED UNDER THE QUALIFIED STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM OR
6 SECTION 504 PLAN UNLESS A PARENT OR THE QUALIFIED STUDENT WAIVES IN
7 WRITING THE ACCOMMODATIONS OR SERVICES. IF THE QUALIFIED SCHOOL FAILS TO
8 EITHER PROVIDE THE ACCOMMODATIONS AND SERVICES OR OBTAIN A WRITTEN WAIVER
9 PURSUANT TO THIS SUBDIVISION, THE QUALIFIED STUDENT MAY TRANSFER OUT OF
10 THE QUALIFIED SCHOOL AND IS ENTITLED TO A REFUND FOR THE PORTION OF THE
11 SCHOOL YEAR FOR WHICH THE STUDENT PAID TUITION AND FEES BUT DID NOT ATTEND
12 THE QUALIFIED SCHOOL.

13 K. Notwithstanding subsection H of this section, on the qualified
14 student's graduation from a postsecondary institution or after any period
15 of four consecutive years after high school graduation in which the
16 student is not enrolled in an eligible postsecondary institution, but not
17 before this time as long as the account holder continues using a portion
18 of account monies for allowable expenses each year and is in good
19 standing, the qualified student's Arizona empowerment scholarship account
20 shall be closed and any remaining monies shall be returned to the state.

21 L. Monies received pursuant to this article do not constitute
22 taxable income to the parent of the qualified student.

23 M. FOR THE PURPOSES OF THIS SECTION, "LUXURY GOODS OR SERVICES"
24 MEANS ANY GOOD OR SERVICE FOR WHICH A LESS EXPENSIVE GOOD OR SERVICE IS
25 AVAILABLE.

26 Sec. 2. Section 15-2403, Arizona Revised Statutes, is amended to
27 read:

28 15-2403. Arizona empowerment scholarship accounts;
29 administration; appeals; risk-based audits; rules;
30 policy handbook

31 A. The treasurer may contract with private financial management
32 firms to manage Arizona empowerment scholarship accounts.

33 B. The department shall conduct or contract for annual audits of
34 Arizona empowerment scholarship accounts to ensure compliance with section
35 15-2402, subsection B, paragraph 4. The department shall also conduct or
36 contract for random, quarterly and annual audits of Arizona empowerment
37 scholarship accounts as needed to ensure compliance with section 15-2402,
38 subsection B, paragraph 4. The department, in consultation with the
39 office of the auditor general, shall develop risk-based auditing
40 procedures for audits conducted pursuant to this subsection.

41 C. The department shall annually review a sample of Arizona
42 empowerment scholarship accounts, selected at random, to determine whether
43 the parent or qualified student is in compliance with the terms of the
44 contract, applicable laws, rules and orders relating to the Arizona
45 empowerment scholarship accounts program. The Arizona empowerment

1 scholarship account of a parent or qualified student who is in good
2 standing may be randomly selected pursuant to this subsection only one
3 time during any five-year period. The department may remove any parent or
4 qualified student from eligibility for an Arizona empowerment scholarship
5 account if the parent or qualified student fails to comply with the terms
6 of the contract or applicable laws, rules or orders or knowingly misuses
7 monies or knowingly fails to comply with the terms of the contract with
8 intent to defraud and shall notify the treasurer. The department shall
9 notify the treasurer to suspend the account of a parent or qualified
10 student and shall notify the parent or qualified student in writing that
11 the account has been suspended and that no further transactions will be
12 allowed or disbursements made. The notification shall specify the reason
13 for the suspension and state that the parent or qualified student has
14 fifteen days, not including weekends, to respond and take corrective
15 action. If the parent or qualified student refuses or fails to contact
16 the department, furnish any information or make any report that may be
17 required for reinstatement within the fifteen-day period, the department
18 may remove the parent or qualified student pursuant to this subsection.

19 D. A parent may appeal to the state board of education any
20 administrative decision the department makes pursuant to this article,
21 including determinations of allowable expenses, removal from the program
22 or enrollment eligibility. The department shall notify the parent in
23 writing that the parent may appeal any administrative decision under this
24 article and the process by which the parent may appeal at the same time
25 the department notifies the parent of an administrative decision under
26 this article. The state board of education shall establish an appeals
27 process, and the department shall post this information on the
28 department's website in the same location as the policy handbook developed
29 pursuant to subsection K of this section.

30 E. A parent may represent himself or herself or designate a
31 representative, not necessarily an attorney, before any appeals hearing
32 held pursuant to this section. Any designated representative who is not
33 an attorney admitted to practice may not charge for any services rendered
34 in connection with the hearing. The fact that a representative
35 participated in the hearing or assisted the account holder is not grounds
36 for reversing any administrative decision or order if the evidence
37 supporting the decision or order is substantial, reliable and probative.

38 F. The state board of education may refer cases of substantial
39 misuse of monies to the attorney general for the purpose of collection or
40 for the purpose of a criminal investigation if the state board of
41 education obtains evidence of fraudulent use of an account.

42 G. The department shall make quarterly transfers of the amount
43 calculated pursuant to section 15-2402, subsection C to the treasurer for
44 deposit in the Arizona empowerment scholarship account of each qualified
45 student, except the department may make transfers according to another

1 transfer schedule if the department determines a transfer schedule other
2 than quarterly transfers is necessary to operate the Arizona empowerment
3 scholarship account.

4 H. The department shall accept applications between July 1 and June
5 30 of each year. The department shall issue an award letter to eligible
6 applicants within thirty days after receipt of a completed application and
7 all required documentation. If an eligible applicant completes an
8 application in advance for an Arizona empowerment scholarship account to
9 be funded beginning on a later date, the department may enroll the
10 eligible applicant on the later date, except that the department may not
11 enroll the applicant more than two fiscal quarters after the fiscal
12 quarter in which the application is completed or on a date that is after
13 March 31 and before July 1. If an eligible applicant completes an
14 application after March 31 and before July 1, the department shall enroll
15 the applicant on or after July 1. The department shall enroll all other
16 eligible applicants when the department issues an award letter pursuant to
17 this subsection. This subsection does not allow a qualified student to
18 receive monies in an Arizona empowerment scholarship account while the
19 qualified student is enrolled in a school district or charter school. On
20 or before September 1 and November 1 of each year, the department shall
21 furnish to the joint legislative budget committee and the governor's
22 office of strategic planning and budgeting an estimate of the amount
23 required to fund Arizona empowerment scholarship accounts for the
24 following fiscal year. The department shall include in its budget request
25 for the following fiscal year the amount estimated pursuant to section
26 15-2402, subsection C for each qualified student.

27 I. The state board of education may adopt rules and policies
28 necessary to administer Arizona empowerment scholarship accounts,
29 including rules and policies:

30 1. For establishing an appeals process pursuant to subsection D of
31 this section.

32 2. For conducting or contracting for examinations of the use of
33 account monies, consistent with subsection L of this section.

34 3. For conducting or contracting for random, quarterly and annual
35 reviews of accounts.

36 4. For establishing or contracting for the establishment of an
37 online anonymous fraud reporting service.

38 5. For establishing an anonymous telephone hotline for fraud
39 reporting.

40 6. That require a surety bond or insurance for account holders.

41 7. FOR DETERMINING WHETHER AN EXPENSE IS ALLOWED, INCLUDING
42 DETERMINING WHETHER A LESS EXPENSIVE ALTERNATIVE GOOD OR SERVICE IS
43 AVAILABLE FOR THE PURPOSE OF SECTION 15-2402, SUBSECTION B, PARAGRAPH 9.

44 J. The department shall contract with an independent third party
45 for the purposes of determining whether a qualified student is eligible to

1 receive educational therapies or services pursuant to section 15-2402,
2 subsection B, paragraph 4, subdivision (c). If during any period on or
3 after January 1, 2023 the department fails to ensure that a contract with
4 an independent third party is in effect, during that period:

5 1. The county school superintendent of each county may approve a
6 list of independent third parties within the county whose evaluation may
7 be used to determine whether a qualified student who resides within the
8 county is eligible to receive educational therapies or services pursuant
9 to section 15-2402, subsection B, paragraph 4, subdivision (c).

10 2. If the county school superintendent of a county does not provide
11 a list of approved independent third parties within ninety days after the
12 beginning of any period during which the department does not have a
13 contract with an independent third party in effect as described in this
14 subsection, the parent of a qualified student who resides within the
15 county has the right to obtain an independent educational evaluation from
16 a qualified examiner to determine whether the qualified student is
17 eligible to receive educational therapies or services pursuant to section
18 15-2402, subsection B, paragraph 4, subdivision (c). The expense for an
19 educational evaluation undertaken pursuant to this paragraph shall be
20 provided by the school district within which the qualified student resides
21 and that serves the grade level of the qualified student. For the
22 purposes of this paragraph, "qualified examiner" means a licensed
23 physician, psychiatrist or psychologist.

24 K. On or before July 1 of each year, the department shall develop
25 an applicant and participant handbook that includes information relating
26 to policies and processes of Arizona empowerment scholarship
27 accounts. The policy handbook shall comply with the rules adopted by the
28 state board of education pursuant to this section. The department shall
29 post the handbook on the department's website.

30 L. The department shall:

31 1. Establish and maintain an online database of allowable and
32 disallowed categories of expenses and provide a link to the database on
33 the department's website.

34 2. Allow the use of account monies to reimburse the parent of a
35 qualified student or a qualified student for the purchase of a good or
36 educational service that is an allowable expense pursuant to section
37 15-2402, subsection B. THE DEPARTMENT SHALL REVIEW EACH REQUEST FOR
38 REIMBURSEMENT AND DETERMINE WHETHER THE PURCHASE IS AN ALLOWABLE EXPENSE
39 BEFORE REIMBURSING THE PARENT OF A QUALIFIED STUDENT OR A QUALIFIED
40 STUDENT PURSUANT TO THIS PARAGRAPH.

41 M. Except for cases in which the attorney general determines that a
42 parent or account holder has committed fraud, any expenditure from an
43 Arizona empowerment scholarship account for a purchase that the department
44 determines is not an allowable expense pursuant to section 15-2402 and
45 that is subsequently repaid by the parent or account holder shall be

1 credited back to the Arizona empowerment scholarship account balance
2 within thirty days after the receipt of payment.

3 N. If, in response to an appeal of an administrative decision made
4 by the department, the state board of education issues a stay of an
5 Arizona empowerment scholarship account suspension pursuant to rules
6 adopted by the board, the department may not withhold funding or contract
7 renewal for the account holder because of the appealed administrative
8 decision during the stay unless directed by the board to do so.