

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1132

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H.P. 795

House of Representatives, March 23, 2017

### **An Act To Create Education Savings Accounts for Students with Special Needs**

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Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative GERRISH of Lebanon.  
Cosponsored by Senator BRAKEY of Androscoggin and  
Representatives: FARNSWORTH of Portland, SAMPSON of Alfred, STEWART of Presque  
Isle, Senators: KATZ of Kennebec, MASON of Androscoggin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 20-A MRSA §7303** is enacted to read:

3 **§7303. Education savings accounts**

4 The department shall, in accordance with this section, establish education savings  
5 accounts, referred to in this section as "savings accounts," for children with disabilities.  
6 Savings accounts may be used by the parents or legal guardians of such children for  
7 educational purposes in accordance with this section.

8 **1. Establish savings accounts.** The department by rule shall establish an application  
9 process for a parent or legal guardian of a child with disabilities to request the  
10 establishment of a savings account. An application requesting establishment of a savings  
11 account must be submitted to the department no later than January 1st preceding the  
12 school year in which the account will be used. The department may establish a savings  
13 account only upon a demonstration by the parent or legal guardian that the child has been  
14 enrolled in a public school for at least one school year and that an individualized  
15 education program has been determined for the child.

16 **2. Renewal, rollover and closure.** The department may annually renew a savings  
17 account and deposit funds into the account in accordance with subsection 3 if, in  
18 accordance with rules adopted by the department, the parent or legal guardian  
19 demonstrates that the child continues to have and follow an individualized education  
20 program and has completed a national norm-referenced achievement test. Unspent funds  
21 in a savings account that is renewed remain in the savings account and may be used in  
22 accordance with subsection 4, except that no more than 75% of the funds deposited in any  
23 year may be carried forward. Any unspent amount that is in excess of 75% of the funds  
24 deposited in that year must be transferred at the end of the fiscal year to the State  
25 Controller for handling in accordance with subsection 5. If the requirements of this  
26 subsection are not met, the department shall close the savings account and transfer all  
27 funds in the savings account to the State Controller, who shall handle the funds as  
28 provided in subsection 5.

29 **3. Maintenance of fund for postsecondary education.** After a child for whom a  
30 savings account has been created graduates from high school, no further funds may be  
31 deposited in the account, but to the extent there are funds remaining in the account, the  
32 fund, at the request of the child or the parent or legal guardian of the child, must, in  
33 accordance with rules adopted by the department, remain open and available to help fund  
34 a postsecondary course of education for the child. If the child does not enroll in such a  
35 course within 4 years after graduating, the department shall close the savings account and  
36 transfer all funds in the savings account to the State Controller, who shall handle the  
37 funds as provided in subsection 5.

38 **4. Funding and oversight.** The department shall administer and oversee savings  
39 accounts as follows.

40 A. Each year the department shall deposit into each active savings account 90% of  
41 the state subsidy that is attributable to the child for whom the savings account is

1 established and that would otherwise have been provided to the child's school  
2 administrative unit under chapter 606-B. The department shall also direct that school  
3 administrative unit to deposit into the savings account 90% of the school  
4 administrative unit's required contribution to the unit's total cost of education  
5 attributable to that child. The department shall calculate these amounts and shall  
6 allocate the state funds to the extent possible in a manner consistent with the  
7 schedules applicable to state subsidy payments pursuant to section 15689-B.

8 B. The department and the State Controller may each separately receive up to 1/5 of  
9 that 10% of the state subsidy attributable to a child for whom a savings account is  
10 established that is not deposited in the savings account. Funds received under this  
11 paragraph may be used to pay the costs of administering this section.

12 C. The parent or legal guardian of a child may expend funds in a savings account  
13 only through the use of a debit card and may use funds in the account to pay for only  
14 the following educational expenses:

15 (1) Tuition and fees at a private primary or secondary school;

16 (2) Textbooks;

17 (3) Educational therapies;

18 (4) Tutoring by a certified teacher or education technician II or III;

19 (5) Online classes;

20 (6) Test fees;

21 (7) Services provided by a public school, including access to or enrollment in  
22 extracurricular activities or individual classes;

23 (8) Reimbursement of fees for transportation related to the child's education, for  
24 which receipts must be provided to the department, up to \$500 in any one year;

25 (9) Consumable materials relating to educational activities, up to \$100 in any  
26 one year; and

27 (10) Tuition and fees at a university or vocational school recognized by the  
28 department in accordance with rules adopted by the department or accredited by a  
29 regional accrediting agency approved or recognized by the United States  
30 Department of Education.

31 A parent or legal guardian of a child may not use funds in a savings account to pay in  
32 cash for any educational expense under this paragraph.

33 D. On a quarterly basis the department shall review all expenditures from savings  
34 accounts to ensure that they are in accordance with the requirements of this  
35 subsection and rules adopted under this section. If at any time the department finds  
36 that expenditures from a savings account are not in accordance with the requirements  
37 of this subsection or rules adopted under this section, the department shall notify the  
38 parent or legal guardian of the child of the apparent misuse of funds and shall freeze  
39 the account so that no further expenditures may be made. If, after an opportunity for  
40 hearing, the department determines that there was no misuse of funds, it shall  
41 unfreeze the account. If the department determined there was in fact a misuse of

1 funds, the department shall direct the parent or legal guardian to repay within 30 days  
2 to the State the amount of misused funds. All repaid funds must be transferred to the  
3 State Controller for handling in accordance with subsection 5. If the parent or legal  
4 guardian does not repay the full amount of misused funds or file an appeal of the  
5 department's decision within the 30 days, the department shall close the savings  
6 account and transfer all funds in the savings account to the State Controller for  
7 handling in accordance with subsection 5. A decision by the department under this  
8 paragraph is a final agency action that may be appealed to the Superior Court by a  
9 parent or legal guardian within 30 days of the decision in accordance with Maine  
10 Rules of Civil Procedure, Rule 80C.

11 **5. Funds returned.** Any funds transferred out of or removed from a savings account  
12 or paid to the State by the parent or legal guardian of a child under this section and  
13 received by the State Controller must be handled by the State Controller in accordance  
14 with this subsection. The State Controller shall divide the funds in the same proportion as  
15 the funds are deposited in the savings account from the State and the school  
16 administrative unit pursuant to subsection 4 and return the portion attributable to the  
17 school administrative unit to that unit and transfer the remainder to the unappropriated  
18 surplus of the General Fund.

19 **6. Rules.** The department shall adopt rules necessary to implement this section.  
20 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
21 chapter 375, subchapter 2-A.

22 **Sec. 2. 20-A MRSA §15689, sub-§14** is enacted to read:

23 **14. Adjustment for education savings accounts.** The commissioner shall reduce  
24 the state share of the total allocation to a school administrative unit in any year in which  
25 one or more education savings accounts under section 7303 are established for children  
26 within that school administrative unit. The amount of the reduction must equal the total  
27 state subsidy that is attributable to all children in that school administrative unit for whom  
28 education savings accounts have been established, as determined by the department  
29 pursuant to section 7303, subsection 3, paragraph A.

30 **SUMMARY**

31 This bill directs the Department of Education to establish education savings accounts  
32 for children with disabilities that may be used by the parents or legal guardians of such  
33 children for certain educational purposes. The funding for these accounts would come  
34 from shifting 90% of the essential programs and services funding that would otherwise be  
35 provided by the State and the school administrative unit for the child into the savings  
36 account. The bill provides mechanisms for approval of educational expenditures and  
37 review of spending from the accounts.