

By Senator Negrón

28-00512B-11

20111550__

1 A bill to be entitled
2 An act relating to the Education Savings Account
3 Program; creating s. 1002.385, F.S.; providing
4 definitions; specifying criteria for students who are
5 eligible to participate in the program; identifying
6 certain students who may not participate in the
7 program; providing that a parent may direct a
8 financial institution trustee of his or her child's
9 account to use the funds for specified costs of
10 attending a private school or participating in a dual
11 enrollment program or to make a contribution to the
12 child's college savings plan or a payment to a
13 contract under the Stanley G. Tate Florida Prepaid
14 College Program; requiring a financial institution to
15 transfer an account to another participating financial
16 institution upon the request of a parent as provided
17 by the Chief Financial Officer by rule; authorizing a
18 parent to direct the trustee to donate unspent funds
19 in an account when a student graduates from high
20 school or when the student's participation in the
21 program is terminated; requiring the trustee to donate
22 the unspent funds to the student's school district if
23 a selection is not timely made; requiring a parent to
24 apply to the Department of Education for his or her
25 child to participate in the program; specifying
26 responsibilities of a parent or student for using
27 funds in an account to attend a private school or
28 private virtual school; requiring a student who
29 participates in the program and attends a private

28-00512B-11

20111550__

30 school or private virtual school to take norm-
31 referenced assessment tests required by the Department
32 of Education; specifying responsibilities of a parent
33 or student for using funds in an account to hire a
34 private tutor or private tutoring program; specifying
35 responsibilities of a parent or student for using
36 funds in an account to participate in a dual
37 enrollment program; specifying eligibility criteria
38 for private schools, private tutors, private tutoring
39 programs, and private postsecondary institutions to
40 participate in the program; providing that all state
41 postsecondary institutions are eligible to participate
42 in the program; requiring that the Department of
43 Education establish an enrollment period for the
44 program, process student applications by a certain
45 date, verify the eligibility of private schools,
46 private virtual schools, private tutors, private
47 tutoring programs, and postsecondary institutions,
48 publish a list of eligible private schools, submit the
49 list to participating financial institutions by a
50 certain date, notify the participating financial
51 institutions of certain students, establish a toll-
52 free hotline for certain information, establish a
53 process for reporting to the department violations of
54 law relating to the program, require participating
55 private schools, private virtual schools, private
56 tutors, private tutoring programs, and postsecondary
57 institutions to certify compliance with the
58 requirements of the program, compare the list of

28-00512B-11

20111550__

59 participating students with the public school
60 enrollment lists, maintain a list of nationally norm-
61 referenced assessment tests, select an independent
62 research organization that must make annual reports
63 relating to the learning gains of students in the
64 program, publish certain annual reports on its
65 website, conduct random visits to certain schools, and
66 issue a report to the Governor, the President of the
67 Senate, and the Speaker of the House of
68 Representatives; requiring that the Chief Financial
69 Officer process applications from financial
70 institutions to participate in the program, provide a
71 list of participating financial institutions to the
72 department by a certain date each year, conduct random
73 audits of participating financial institutions, revoke
74 the eligibility of a financial institutions for
75 violations of law relating to the program, and make
76 payments to the accounts of participating students in
77 specified situations; requiring financial institutions
78 to apply to the Chief Financial Officer to participate
79 in the program; providing that a participating
80 financial institution serves as a trustee for a
81 student's account; limiting the fees that may be
82 charged by a financial institution for its services
83 under the program; requiring a financial institution
84 to make timely quarterly payments directly to a
85 private school, private tutor, private tutoring
86 program, or postsecondary institution; requiring a
87 financial institution to make timely quarterly

28-00512B-11

20111550__

88 payments to a selected college savings plan or the
89 Stanley G. Tate Florida Prepaid College Program;
90 requiring a financial institution to notify the
91 department of the identity of certain students at
92 certain dates; requiring a financial institution to
93 annually notify the Chief Financial Officer of its
94 intent to continue to participate in, or intent to
95 withdraw from, the program; requiring a financial
96 institution to provide advance notice to the Chief
97 Financial Officer and parents of students
98 participating in the program before withdrawing from
99 the program; specifying criteria and procedures by
100 which the Commissioner of Education may deny, suspend,
101 or revoke a private school's participation in the
102 program; specifying procedures by which a private
103 school may challenge the decision of the Commissioner
104 of Education to deny, suspend, or revoke the school's
105 participation in the program; requiring the director
106 of the Division of Administrative Hearings to expedite
107 a hearing in certain situations; authorizing the
108 Commissioner of Education to order participating
109 financial institutions to immediately suspend payments
110 from a student's account to a participating private
111 school under certain circumstances; providing for
112 appeal against a payment suspension; authorizing the
113 Office of Inspector General of the Department of
114 Education to release otherwise confidential student
115 information under certain circumstances involving
116 allegations of fraudulent activity under the program;

28-00512B-11

20111550__

117 specifying a formula to be used in determining the
118 amount of annual payments made to a student's account
119 under the program; providing for the random selection
120 of applicants to the program who are attending a home
121 education program or a private school; providing a
122 calculation to determine the number of such students
123 who may participate in the program; authorizing the
124 Legislative Budget Commission to transfer funds in
125 excess of amounts required to fully fund the accounts
126 of all participating students to the Florida Education
127 Finance Program; requiring the department and the
128 Department of Financial Services to develop an
129 agreement to assist in the administration of the
130 program; requiring the State Board of Education to
131 adopt rules for the Department of Education and the
132 Commissioner of Education to administer the program;
133 requiring the Chief Financial Officer to adopt rules
134 to administer its responsibilities under the program;
135 providing for the enrollment period and for the number
136 of eligible students for the 2011-2012 school year;
137 requiring the department to randomly select
138 participating students in specified situations;
139 authorizing the State Board of Education to adopt
140 emergency rules for the department and the
141 Commissioner of Education to implement the program;
142 providing an effective date.

143
144 WHEREAS, the Legislature finds that it has a duty to
145 provide for a high-quality education for all children residing

28-00512B-11

20111550__

146 within this state, and

147 WHEREAS, the Legislature finds that it has a duty to
148 provide for the establishment, maintenance, and operation of
149 institutions of higher learning, and

150 WHEREAS, a high-quality education for children is
151 facilitated by parental involvement in educational choices for
152 their children, competition among schools and other learning
153 environments, and the measurement and evaluation of student
154 learning gains, and

155 WHEREAS, the Legislature finds that competition between
156 public schools and private schools will enhance the quality of
157 education at public schools by encouraging innovation,
158 flexibility, and efficiency, and

159 WHEREAS, providing a child with an opportunity to attend a
160 public school or with funds to pay for private schooling or
161 tutoring enables the child to access the high-quality education
162 best suited for his or her specific needs, and

163 WHEREAS, the Legislature finds that under the right to
164 religious freedom in the State Constitution, the state may not
165 prohibit a person from using private funds to pay the cost of
166 private schooling or tutoring at an institution having any
167 religious affiliation, NOW, THEREFORE,

168

169 Be It Enacted by the Legislature of the State of Florida:

170

171 Section 1. Section 1002.385, Florida Statutes, is created
172 to read:

173 1002.385 Education Savings Account Program.—

174 (1) DEFINITIONS.—As used in this section, the term:

28-00512B-11

20111550__

175 (a) "Account" means an education savings account belonging
176 to a student who is participating in, or who participated in,
177 the program. Funds in an account are private funds.

178 (b) "College savings plan" means a qualified tuition plan
179 under s. 529 of the Internal Revenue Code which allows the
180 establishment of an account for a beneficiary for the purpose of
181 paying the beneficiary's eligible college expenses.

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

183 (d) "Eligible private postsecondary institution" means a
184 private postsecondary institution that is a member of the
185 Independent Colleges and Universities of Florida and is located
186 in the state.

187 (e) "Eligible private school" means a private school that
188 offers an education to students in any grade of kindergarten
189 through grade 12, is located in this state, and meets the
190 requirements in subsection (6).

191 (f) "Financial institution" has the same meaning as defined
192 in s. 655.005.

193 (g) "Program" means the Education Savings Account Program.

194 (2) ELIGIBLE STUDENTS.—

195 (a) A student is eligible to receive funds under the
196 program if the student resides in this state and:

197 1. Is eligible to enter kindergarten or first grade;

198 2. Is the sibling of a student who participates in the
199 program and who resides in the same household;

200 3. Was counted as a full-time equivalent student during the
201 previous state fiscal year for purposes of state per-student
202 funding; or

203 4. Attends a home education program or a private school and

28-00512B-11

20111550

204 was randomly selected to participate in the program pursuant to
205 subsection (13).

206 (b) A student remains eligible for the program until he or
207 she graduates from high school and as long as the student does
208 not enroll in a public school, charter school, or a virtual
209 instruction program, excluding the Florida Virtual School, which
210 receives state funding as a result of the student's
211 participation.

212 (3) INELIGIBLE STUDENTS.—A student may not participate in
213 the program if he or she:

214 (a) Is enrolled in a school operating for the purpose of
215 providing educational services to youth in a commitment program
216 for the Department of Juvenile Justice;

217 (b) Participates in a virtual school, correspondence
218 school, or distance learning program that receives state funding
219 for the student's participation;

220 (c) Is enrolled in the Florida School for the Deaf and the
221 Blind; or

222 (d) Is receiving an educational scholarship pursuant to
223 chapter 1002.

224 (4) PARENT AND STUDENT OPTIONS.—

225 (a) A parent may direct the trustee to use the funds in his
226 or her child's account, in whole or in combination, to:

227 1. Pay the tuition and fees for the child to attend an
228 eligible private school;

229 2. Pay the tuition and fees for the child to attend an
230 eligible private virtual school;

231 3. Pay a private tutor or private tutoring program
232 qualified under s. 1002.43 for supplemental educational

28-00512B-11

20111550__

233 services;

234 4. Pay the cost of tuition, books, or fees for the child to
235 enroll in a dual enrollment program at a state postsecondary
236 institution;

237 5. Pay the cost of tuition, books, or fees for the child to
238 enroll in a dual enrollment program at an eligible private
239 postsecondary institution;

240 6. Contribute to the child's college savings plan; or

241 7. Make a payment toward the purchase of a contract under
242 the Stanley G. Tate Florida Prepaid College Program in s.
243 1009.98.

244 (b) A parent may direct the trustee to transfer the account
245 to another financial institution participating in the program as
246 provided by the Chief Financial Officer by rule.

247 (c) Within 3 months after the child graduates from high
248 school or no longer participates in the program, a parent may
249 direct the trustee to donate any unspent funds in the account to
250 any institution identified in subparagraphs 1.-5. or to the
251 school district for the county in which the child last resided
252 before the child's participation in the program was terminated.

253 If a parent fails to identify an institution to which the
254 trustee must donate the funds, the trustee shall donate the
255 funds to the school district for the county in which the child
256 last resided before the child's participation in the program was
257 terminated.

258 (5) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM
259 PARTICIPATION.—

260 (a) A parent must annually apply to the department on
261 behalf of the child during the annual enrollment period. As part

28-00512B-11

20111550__

262 of the enrollment, the parent must identify the educational
263 option chosen to meet the compulsory attendance requirements of
264 state law whether through attendance at a private school or
265 private virtual school, enrollment in a home education program
266 under s. 1002.41, or a private tutoring program under s.
267 1002.43.

268 (b)1. If a parent elects for the child to attend an
269 eligible private school or private virtual school, the parent or
270 the child must:

271 a. Select an eligible private school or private virtual
272 school and apply for admission.

273 b. Inform the child's school district when the parent
274 withdraws the child to attend the private school or private
275 virtual school.

276 c. Remain in attendance in the selected school throughout
277 the school year unless excused by the school for illness or
278 other good cause.

279 d. Comply with the school's published policies.

280 e. Ensure that the child participating in the program takes
281 the nationally norm-referenced assessment tests administered by
282 the school which are required by the department. The parent may
283 also choose to have the child participate in a statewide
284 assessment test pursuant to s. 1008.22. If the parent requests
285 that the child take a statewide assessment test, the parent is
286 responsible for transporting the child to the testing site
287 designated by the school district.

288 f. Pay the balance of the school's tuition and fees in
289 excess of the funds in the child's account.

290 2. A parent who chooses to comply with the compulsory

28-00512B-11

20111550

291 attendance requirements by enrolling his or her child in a
292 private school or private virtual school may also choose to
293 enroll the child in a dual enrollment program through a public
294 postsecondary institution or an eligible private postsecondary
295 institution and use funds from the child's account for such
296 purposes. The parent and child must register and apply for
297 admission during the institution's registration or application
298 period and are responsible for paying the balance of tuition and
299 fees which is not covered by the payments from the child's
300 account.

301 (c)1. If a parent elects for his or her child to
302 participate in a home education program, the parent and child
303 must comply with s. 1002.41.

304 2. A parent who chooses to comply with the compulsory
305 attendance requirements by enrolling his or her child in a home
306 education program may also choose to enroll the child in a dual
307 enrollment program through a public postsecondary institution or
308 an eligible private postsecondary institution and use funds from
309 the child's account for such purpose. The parent and child must
310 register and apply for admission during the institution's
311 registration or application period and are responsible for
312 paying the balance of tuition and fees which is not covered by
313 payments from the child's account.

314 (d)1. If a parent elects for the child to receive an
315 education from an eligible private tutor or private tutoring
316 program, the parent and the child must comply with this chapter.

317 2. A parent who chooses to comply with the compulsory
318 attendance requirements through use of a private tutor or
319 private tutoring program may also choose to enroll his or her

28-00512B-11

20111550__

320 child in a dual enrollment program through a public
321 postsecondary institution or an eligible private postsecondary
322 institution and use funds from the child's account for such
323 purpose. The parent and child must register and apply for
324 admission during the institution's registration or application
325 period and are responsible for paying the balance of tuition and
326 fees which is not covered by payments from the child's account.

327 (e) If a parent elects to use any portion of his or her
328 child's account as payment for private tutoring through an
329 eligible supplemental educational services provider, the parent
330 is responsible for payments to the provider which are not
331 covered by the child's account.

332 (f) If a parent elects for the child to participate in dual
333 enrollment at a state postsecondary institution or an eligible
334 private postsecondary institution, the parent or the child must:

335 1. Register or apply for admission during the institution's
336 registration or application period.

337 2. Inform the child's school district when the parent
338 withdraws the child to attend the postsecondary institution.

339 3. Remain in attendance in the postsecondary institution
340 throughout the school year unless excused by the institution for
341 illness or other good cause.

342 4. Comply with the institution's published policies.

343 5. Pay the balance of the postsecondary institution's
344 tuition and fees in excess of the funds in the child's account.

345 (g) If a parent elects to use any of the funds in the
346 child's account to make a contribution to a college savings
347 plan, the parent must comply with all federal and state laws
348 related to contributions to college savings plan.

28-00512B-11

20111550__

349 (h) If a parent elects to use any of the funds in the
350 child's account toward the purchase of a contract under the
351 Stanley G. Tate Florida Prepaid College Program, the parent must
352 comply with all rules and requirements of the program and is
353 responsible for payments in excess of the funds in the account.

354
355 A child may return to the public school system at any time and
356 quarterly payments to the child's account shall cease. The
357 parent of a child who chooses to return to the public school
358 system is responsible for the payment of any outstanding balance
359 owed to the private school, private virtual school, private
360 tutor, private tutoring program, state postsecondary
361 institution, or private postsecondary education institution
362 which was in excess of the funds in the account when payments to
363 the account ceased.

364 (6) EDUCATIONAL INSTITUTION ELIGIBILITY AND OBLIGATIONS.—

365 (a) A private school is eligible to participate in the
366 program, whether sectarian or nonsectarian, if the school:

367 1. Is accredited by the Southern Association of Colleges
368 and Schools or is eligible to participate in the Tax Credit
369 Scholarship Program or the John M. McKay Scholarships for
370 Students with Disabilities Program; and

371 2. Complies with rules adopted by the department for
372 participation in the program.

373 (b) A private virtual school is eligible to participate in
374 the program, whether sectarian or nonsectarian, if the school:

375 1. Is approved by the department to participate in the
376 school district virtual instruction program under s. 1002.45;
377 and

28-00512B-11

20111550__

378 2. Complies with rules adopted by the department for
379 participation in the program.

380 (c) A private tutor or private tutoring program is eligible
381 to participate in the program if the private tutor or private
382 tutoring program:

383 1. Is qualified under s. 1002.43;

384 2. Complies with rules adopted by the department for
385 participation in the program; and

386 3. Is a supplemental educational services provider under
387 the federal Elementary and Secondary Education Act.

388 (d) All state postsecondary institutions are eligible to
389 participate in the program and must comply with rules adopted by
390 the department for participation in the program.

391 (e) A private postsecondary institution is eligible to
392 participate in the program, whether sectarian or nonsectarian,
393 if the institution is a member of the Independent Colleges and
394 Universities of Florida and complies with rules adopted by the
395 department for participation in the program.

396 (7) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of
397 Education shall:

398 (a) Establish an annual enrollment period and a process in
399 which a parent may apply to enroll his or her child in the
400 program. The enrollment period shall begin by January 1 and end
401 by March 1 before the school year in which funding for the
402 child's account is sought. All applications must be processed by
403 May 1 of each year.

404 (b) Randomly select students attending a home education
405 program, private school, or private virtual school who are
406 eligible under subparagraph (2)(a)4. to participate in the

28-00512B-11

20111550__

407 program if the appropriation to the program is sufficient to
408 fully fund the accounts of all other applicants but is
409 insufficient to fully fund the accounts of all applicants who
410 are attending a home education program or private school.

411 (c) Annually verify the eligibility of private schools,
412 private virtual schools, private tutors, private tutoring
413 programs, and postsecondary institutions to participate in the
414 program and publish a list of eligible schools, tutors, tutoring
415 programs, and postsecondary institutions.

416 (d) Annually, by March 15, submit to participating
417 financial institutions a list of eligible private schools,
418 private virtual schools, private tutors, private tutoring
419 programs, and private postsecondary institutions.

420 (e) Notify participating financial institutions of students
421 who are approved to participate in the program. The notice must
422 be made annually, by May 1, after the department processes all
423 applications to participate in the program.

424 (f) Establish a toll-free hotline that provides parents and
425 private schools with information on the program.

426 (g) Establish a process by which a person may notify the
427 department of any violation of laws or rules relating to
428 participation in the program. The department shall conduct an
429 inquiry of all signed, written, and legally sufficient
430 complaints that allege a violation of this section, or must make
431 a referral to the appropriate agency for an investigation. A
432 complaint is legally sufficient if it states ultimate facts
433 showing that this section or a rule adopted under this section
434 has been violated.

435 (h) Require participating private schools and private

28-00512B-11

20111550__

436 virtual schools to annually certify compliance with the
437 requirements of the program. The certification must be made in a
438 sworn and notarized statement by the head of the private school.

439 (i) Compare the list of students participating in the
440 program with the public school enrollment lists to avoid
441 duplicate payments.

442 (j) Maintain a list of nationally norm-referenced
443 assessment tests identified by the department which must be
444 administered by a participating private school or private
445 virtual school to students participating in the program. The
446 tests must meet industry standards of quality under rules of the
447 State Board of Education.

448 (k) Select an independent research organization, which may
449 be a public or private entity or university, to which
450 participating private schools and private virtual schools must
451 report the scores of participating students on the nationally
452 norm-referenced assessment tests administered by the schools in
453 grades 3 through 10.

454 1. The independent research organization must annually
455 issue a report to the department which includes:

456 a. The year-to-year learning gains of students in the
457 program;

458 b. To the extent possible, a comparison of the learning
459 gains of students in the program to the statewide learning gains
460 of public school students having backgrounds similar to those of
461 the students in the program. In order to minimize the costs and
462 time that the independent research organization requires for
463 analysis and evaluation, the department shall conduct analyses
464 of assessment data from matched students in public schools and

28-00512B-11

20111550__

465 shall calculate learning gains of control groups using a
466 methodology outlined in the contract with the independent
467 research organization; and

468 c. The aggregate year-to-year learning gains of students in
469 the program in each participating private school in which there
470 are at least 30 participating students having scores for tests
471 for 2 consecutive years at that private school.

472 2. The sharing and reporting of the learning gains of
473 students pursuant to this paragraph must be in accordance with
474 s. 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy
475 Act, and may be for the sole purpose of creating the annual
476 report required by subparagraph 1. The department and the
477 independent research organization shall preserve the
478 confidentiality of such information as required by law. The
479 organization may not disaggregate data in its annual report to a
480 level that will identify individual participating schools,
481 except as required under sub-subparagraph 1.c., or disclose the
482 academic level of individual students.

483 3. The department shall publish the annual report on its
484 website.

485 (1) Conduct random site visits to private schools, private
486 tutors, private tutoring programs, and private postsecondary
487 institutions participating in the program. During a site visit,
488 the department may conduct only activities to verify the
489 information reported by the schools concerning the enrollment
490 and attendance of students, the credentials of teachers, and the
491 results of criminal history record checks of teachers.

492 (m) Annually, by December 15, issue a report to the
493 Governor, the President of the Senate, and the Speaker of the

28-00512B-11

20111550__

494 House of Representatives describing the implementation of
495 accountability mechanisms for the program; identifying any
496 violations of a law or rule governing the program concerning the
497 enrollment and attendance of students, the credentials of
498 teachers, or the background screening of teachers; and
499 describing the corrective actions taken by the department
500 relating to violations of a law or rule governing the program.

501 (8) CHIEF FINANCIAL OFFICER OBLIGATIONS.—The Chief
502 Financial Officer shall:

503 (a) Process applications from financial institutions
504 applying to participate in the program.

505 (b) Provide a list of participating financial institutions
506 to the department by March 1 of each year.

507 (c) Conduct random audits of financial institutions
508 participating in the program to ensure compliance with this
509 section.

510 (d) Revoke the eligibility of a financial institution that
511 fails to comply with its obligations under this section.

512 (e) Upon notice from the department, make payments to the
513 accounts of participating students in four equal installments by
514 September 1, November 1, February 1, and April 1.

515 (9) OBLIGATIONS OF FINANCIAL INSTITUTIONS.—

516 (a) A financial institution must apply to the Chief
517 Financial Officer for approval to participate in the program.
518 The Chief Financial Officer shall approve the application of a
519 financial institution if the institution agrees to:

- 520 1. Serve as a trustee of the funds in a student's account.
521 2. Limit its fees imposed on each account to 3 percent or
522 less of each payment it makes from an account.

28-00512B-11

20111550

523 3. Make timely quarterly payments directly to the eligible
524 private school, private virtual school, private tutor, private
525 tutoring program, or eligible private postsecondary institution
526 selected by the parent. The amount of the quarterly payment to
527 these institutions may not exceed:

528 a. The amount of the state quarterly payment to the
529 financial institution, less the financial institution's fees.

530 b. The reported tuition and fee schedule provided to the
531 department for the educational institution.

532 4. Make timely quarterly payments directly to a state
533 postsecondary institution selected by the parent for the payment
534 of books, tuition, and fees charged for a student's
535 participation in a dual enrollment program. The amount of the
536 quarterly payment to these institutions may not exceed:

537 a. The amount of the state quarterly payment to the
538 financial institution, less the financial institution's fees.

539 b. The full cost of books, tuition, and fees charged for
540 the student's participation in the dual enrollment program.

541 5. Make timely quarterly payments directly to the selected
542 college savings plan or the Stanley G. Tate Florida Prepaid
543 College Program. The amount of such quarterly payment may not
544 exceed the amount of the state quarterly payment to the
545 financial institution, less the financial institution's fees.

546 6. Notify the department by February 1, July 1, September
547 1, and December 1 of the identity of students who have accounts
548 with the institution under this section.

549 (b) A participating financial institution must annually
550 notify the Chief Financial Officer of its intent to continue
551 participating in or its intent to withdraw from the program. A

28-00512B-11

20111550__

552 financial institution must provide 180 days' notice to the Chief
553 Financial Officer and to the parents of students having an
554 account at the institution before it may withdraw from the
555 program. The institution must also transfer each account to
556 another participating institution selected by a parent or to
557 another participating institution randomly selected by the Chief
558 Financial Officer if the parent fails to timely make a
559 selection.

560 (10) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.-

561 (a)1. The Commissioner of Education shall deny, suspend, or
562 revoke the participation of a private school, private virtual
563 school, private tutor, or private tutoring program in the
564 program if the commissioner determines that the school, tutor,
565 or tutoring program has failed to comply with this section or
566 the rules of the department adopted under this section. However,
567 if the noncompliance is correctable within a reasonable amount
568 of time and the health, safety, or welfare of the students is
569 not threatened, the commissioner may issue a notice of
570 noncompliance that shall provide the school, tutor, or tutoring
571 program with a timeframe within which to show evidence of
572 compliance before action may be taken to suspend or revoke the
573 private school's participation in the program.

574 2. The commissioner may deny, suspend, or revoke a private
575 school's participation in the program if the commissioner
576 determines that an owner or operator of the private school is
577 operating or has operated an educational institution in this
578 state or another state in a manner that is contrary to the
579 health, safety, or welfare of the public. In making this
580 determination, the commissioner may consider factors, including,

28-00512B-11

20111550__

581 but not limited to, acts or omissions by the owner or operator
582 which led to a previous denial or revocation of participation in
583 an education scholarship program or an education savings account
584 program; an owner's or operator's failure to reimburse a
585 student's account for funds improperly received or retained by a
586 school; imposition of a prior criminal or civil administrative
587 sanction related to an owner's or operator's management or
588 operation of an educational institution; or the existence of
589 other types of criminal proceedings in which the owner or
590 operator was found guilty of, regardless of adjudication, or
591 entered a plea of nolo contendere or guilty to any offense
592 involving fraud, deceit, dishonesty, or moral turpitude.

593 (b) The commissioner's determination to deny, suspend, or
594 revoke a private school's participation in the program is
595 subject to the following:

596 1. The department must notify the private school of the
597 proposed action in writing by certified mail and regular mail to
598 the private school's address of record with the department. The
599 notice shall state the reasons for the proposed action and
600 notice of the timelines and procedures set forth in this
601 paragraph.

602 2. The private school that is adversely affected by the
603 proposed action has 15 days following receipt of the notice of
604 proposed action to file with the clerk of the department a
605 request for a proceeding pursuant to ss. 120.569 and 120.57. If
606 the private school is entitled to a hearing under s. 120.57(1),
607 the department shall forward the request to the Division of
608 Administrative Hearings.

609 3. Upon receipt of a request referred pursuant to this

28-00512B-11

20111550__

610 paragraph, the director of the Division of Administrative
611 Hearings shall expedite the hearing and assign an administrative
612 law judge who shall commence a hearing within 30 days after the
613 receipt of the formal written request from the department and
614 enter a recommended order within 30 days after the hearing or
615 within 30 days after receipt of the hearing transcript,
616 whichever is later. Each party may submit written exceptions to
617 the recommended order within 10 days after the recommended order
618 is entered. The department shall enter a final order within 30
619 days after the entry of the recommended order. The provisions of
620 this subparagraph may be waived upon stipulation by all parties.

621 (c) The commissioner may order participating financial
622 institutions to suspend payment of funds from accounts to a
623 private school if the commissioner finds that probable cause of
624 any of the following exists:

625 1. An imminent threat to the health, safety, and welfare of
626 a student.

627 2. Fraudulent activity on the part of the private school.

628
629 The commissioner's order suspending payment pursuant to this
630 paragraph may be appealed pursuant to the same procedures and
631 timelines as the notice of proposed action set forth in
632 paragraph (b).

633 (11) AUTHORIZED RELEASE OF CONFIDENTIAL INFORMATION.-
634 Notwithstanding s. 1002.22, in incidents of alleged fraudulent
635 activity relating to participation in the program, the Office of
636 Inspector General of the department may release personally
637 identifiable records or reports of students to the following
638 persons or organizations:

28-00512B-11

20111550__

639 (a) A court of competent jurisdiction in compliance with an
640 order of that court or the attorney of record in accordance with
641 a lawfully issued subpoena, consistent with the Family
642 Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.

643 (b) A person or entity authorized by a court of competent
644 jurisdiction in compliance with an order of that court or the
645 attorney of record pursuant to a lawfully issued subpoena,
646 consistent with the Family Educational Rights and Privacy Act,
647 20 U.S.C. s. 1232g.

648 (c) A person, entity, or authority issuing a subpoena for
649 law enforcement purposes if the court or other issuing agency
650 has ordered that the existence or the contents of the subpoena
651 or the information furnished in response to the subpoena not be
652 disclosed, consistent with the Family Educational Rights and
653 Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.

654 (12) EDUCATION SAVINGS ACCOUNT AMOUNT.—The total amount of
655 payments to a participating student's account for a single
656 school year shall be equal to 40 percent of the base student
657 allocation under the Florida Education Finance Program
658 multiplied by the appropriate cost factor for the educational
659 program that would have been provided for the student in the
660 district school to which he or she was assigned, multiplied by
661 the district cost differential plus the per-student share of
662 instructional materials funds and other categorical funds as
663 appropriated in the General Appropriations Act.

664 (13) RANDOM SELECTION OF PROGRAM PARTICIPANTS.—By April 1
665 of each year, the department shall randomly select applicants to
666 participate in the program who are in home education programs
667 and private schools and who did not participate in the program

28-00512B-11

20111550__

668 during the prior school year. The number of spaces available for
669 these students shall equal the number of students who enrolled
670 in the program during the annual enrollment period and were
671 counted as full-time equivalent students at a public school
672 during the previous state fiscal year for purposes of state per-
673 student funding. For purposes of this calculation, the number of
674 new participants in the program who were public school students
675 does not include kindergarten and first grade students and
676 siblings of other students participating in the program.

677 (14) LEGISLATIVE BUDGET COMMISSION.—Each quarter the
678 Legislative Budget Commission may transfer any funds
679 appropriated for the program in excess of amounts required to
680 fully fund the accounts of all participating students to the
681 Florida Education Finance Program.

682 (15) ADMINISTRATION; RULES.—

683 (a) The department and the Department of Financial Services
684 shall develop a cooperative agreement to assist in the
685 administration of this section.

686 (b) The State Board of Education shall adopt rules
687 necessary for the department and the Commissioner of Education
688 to administer this section, including rules relating to the
689 establishment of the enrollment period, enrollment forms, and
690 reporting requirements for financial institutions and schools.

691 (c) The Chief Financial Officer shall adopt rules necessary
692 to administer this section, including rules relating to the
693 eligibility and auditing of participating financial
694 institutions.

695 Section 2. Enrollment period for the 2011-2012 school
696 year.—

28-00512B-11

20111550

697 (1) Notwithstanding s. 1002.385(7), Florida Statutes, the
698 enrollment period to participate in the Education Savings
699 Account Program for the 2011-2012 school year is July 1 through
700 July 31. The number of students who may participate is limited
701 to the number of participants specified in the General
702 Appropriations Act.

703 (2) Notwithstanding s. 1002.385(2), Florida Statutes, the
704 students eligible to participate in the education savings
705 account program during the 2011-2012 school year are limited to
706 students identified in s. 1002.385(2)a.1. and 3., Florida
707 Statutes.

708 (3) If the Department of Education receives more
709 applications for eligible students during the enrollment period
710 for the 2011-2012 school year than the number specified in the
711 General Appropriations Act, the department shall randomly select
712 students who may participate in the program.

713 (4) (a) The State Board of Education may adopt emergency
714 rules for the department and the Commissioner of Education to
715 implement the program.

716 (b) The Chief Financial Officer may adopt emergency rules
717 to implement the program.

718 Section 3. This act shall take effect upon becoming a law.