

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 273

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[Originating in the Committee on Education; reported

on March 24, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-21-25; and to amend said code by adding thereto a new article,
3 designated §18-31-1, §18-31-2, §18-31-3, §18-31-4, §18-31-5, §18-31-6, §18-31-7 and
4 §18-31-8, all relating to establishing education expenses income tax credits; enacting an
5 Educational Savings Account Pilot Program; providing a short title and definitions; limiting
6 number of eligible students who may receive an account at any one time; setting forth
7 conditions for qualifying for an account; requiring parent of student with disability to make
8 certain acknowledgement; requiring roll over of account funds and closure of account in
9 certain instances; allowing education savings account student to return to district school;
10 requiring forfeiture of account for failure to comply with article or certain rules relating to
11 the program; providing that certain students are exempt from compulsory school
12 attendance; providing that account funds do not constitute taxable income; providing that
13 nothing in article prohibits a parent from making certain payments from a source other
14 than account; providing that certain persons who do not apply for and receive an account
15 are eligible to apply for an income tax credit; setting forth formula for determining the
16 annual amount of funds to be deposited in an account; allowing State Treasurer to create
17 standard application form; allowing State Treasurer to qualify private financial
18 management firms to manage accounts; allowing State Treasurer to contract with qualified
19 organizations to administer the program or specific functions of the program; allowing
20 State Treasurer to conduct or contract for auditing of accounts; allowing State Treasurer
21 to make any parent of an eligible student ineligible for the program for substantial misuse
22 of funds; allowing State Treasurer to deduct a limited amount from accounts to cover the
23 costs of administering the program or any aspect of the program; requiring State Treasurer
24 to maintain a list of participating entities; requiring State Treasurer to adopt rules,
25 regulations and procedures necessary for administration of the program; requiring State
26 Treasurer under certain conditions to make quarterly deposits into the accounts of

27 education savings account students; requiring State Treasurer to develop a system for
28 parents to use account funds to pay participating entities and education service providers
29 by electronic funds transfer or by individual warrant; allowing State Treasurer to make
30 limited partial payment to participating entity prior to the first quarterly payment of the year
31 in which the account is awarded in certain instance; requiring State Treasurer to make
32 annual report to the Legislative Oversight Commission on Education Accountability;
33 allowing the State Treasurer to propose rules for legislative approval to designate certain
34 technical education or certifications eligible to participate, to determine qualified purchases
35 and to provide a method for disqualification of private schools, vendors or suppliers who
36 violate certain provisions or rules; setting forth requirements for participating entity to be
37 eligible to accept payments from an account; requiring State Treasurer to provide a
38 participating entity with certain eligibility requirements upon request and make the
39 requirements available online; allowing the State Treasurer to bar a participating entity
40 from the program in certain instances; requiring notification of parents and education
41 account students if participating entity is barred; providing that nothing in article limits the
42 independence of a participating entity or makes the actions of a participating entity the
43 actions of the state government; prohibiting any state agency from regulating the
44 educational program of a participating entity that accepts funds from an account; requiring
45 that participating entities be given the maximum freedom to provide for the educational
46 needs of education savings account student without governmental control; providing that
47 nothing in article expands the regulatory authority of the state, its officers or any county
48 school district to impose any additional regulation of participating entities beyond those
49 necessary to enforce the requirements of the program; requiring resident school district to
50 provide a participating entity that has enrolled an education savings account student with
51 a complete copy of the student's school records while complying with the Family

52 Educational Rights and Privacy Act of 1974; and setting forth certain provisions pertaining
53 to legal proceedings.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §11-21-25; and that said code be amended by adding thereto a new article,
3 designated §18-31-1, §18-31-2, §18-31-3, §18-31-4, §18-31-5, §18-31-6, §18-31-7 and §18-31-
4 8, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-25. Education expenses tax credits.

1 (a) Credit allowed. - For those tax years beginning on or after January 1, 2016, there shall
2 be allowed a nonrefundable credit for any taxpayer against the taxes imposed by this article for
3 expenses incurred relative to the education of a child under the age of twenty-one who is a
4 resident in the state or for expenses incurred for the purchase of supplementary education
5 materials or professional development costs incurred by a classroom teacher employed by a
6 public or private school.

7 (b) Amount of credit. - A taxpayer may claim a tax credit in an amount equal to the
8 expenses incurred per eligible dependent child not to exceed \$500 per child. A classroom teacher
9 employed by a public or private school may claim a tax credit in an amount equal to the expenses
10 incurred not to exceed \$1,000.

11 (c) Qualifying educational expenses. - Qualifying expenses include tuition and fees
12 charged by a public or private school or fees or costs associated with the education of a child
13 through graduation from a high school program including tutoring or instructional fees for
14 curricular, cocurricular and extra-curricular activities including private drivers' education
15 instruction; costs relating to computer equipment including education related software and

16 services, textbooks, workbooks, curricula and other written or supplementary materials used for
17 curricular, cocurricular or extra-curricular instruction; expenses for curricular, cocurricular
18 activities or extra-curricular activities including equipment and participation related expenses for
19 camps or similar enrichment programs.

20 (d) Unused credit. - If any credit remains after application of subsection (c) of this section,
21 that amount is forfeited. A carryback to a prior taxable year is not allowed for the amount of any
22 unused portion of any annual credit allowance.

CHAPTER 18. EDUCATION.

ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.

§18-31-1. Short title.

1 This article shall be known as the “Education Savings Account Pilot Program” or “ESA
2 Pilot Program.”

§18-31-2. Definitions.

1 The following words have the meanings ascribed to them unless the context clearly
2 indicates a different meaning:

3 (a) “Account” means an Education Saving Account awarded pursuant to this article;

4 (b) “Treasurer” means the West Virginia State Treasurer’s Office;

5 (c) “Curriculum” means the lessons and or other academic content required to teach a
6 specific course or program;

7 (d) “Education service provider” means a person or organization who receives payments
8 from an account in exchange for authorized expenditures, including, but not limited to:

9 (1) A private, parochial, or church school, or school of a religious order operating in
10 compliance with article twenty-eight of this chapter;

11 (2) A nonpublic online learning program or course;

12 (3) A state institution of higher education as defined in section two, article one, chapter
13 eighteen-b of this code;

14 (4) A private tutor; or

15 (5) A provider of educational therapies or services;

16 (e) “Educational therapies and services” means the individualized, unique, and various
17 interventions used to remediate learning problems for individuals with learning differences,
18 disabilities, and challenges, and includes, but is not limited to, occupational, behavioral, equine,
19 music, physical, and speech-language therapies;

20 (f) “Eligible student” means any elementary or secondary student who is a resident of this
21 state;

22 (g) “ESA student” means a student who receives an account pursuant to this article;

23 (h) “Parent” means a biological parent, legal guardian, custodian, or other person with
24 legal authority to act on behalf of an eligible student or ESA student;

25 (i) “Participating entity” means an education service provider that qualifies and complies
26 with the Treasurer’s guidelines;

27 (j) “Private tutor” means a certified or licensed teacher in this state or a person or institution
28 accredited as teacher, a tutor or tutoring facility by a state, regional, or national accrediting
29 organization;

30 (k) “Program” or “ESA” or “ESA program” means the education savings account pilot
31 program established pursuant to this article;

32 (l) “Resident school district” means the county school district in which the student resides;

33 (m) “Student with a disability” means an exceptional child, other than gifted, pursuant to
34 section one, article twenty of this chapter; and

35 (n) “Supplemental materials” means the books, workbooks, papers, supplies, videos,
36 digital media, presentations, readings, tests, or other assessments or apparatuses required by a
37 curriculum to teach a specific course or program.

§18-31-3. Qualifying for an education savings account.

1 (a) The number of eligible students who may receive an account under this article is limited
2 to one thousand at any one time. The priority for receiving an account shall be based on the order
3 of applications received. For any applicants for which the order of submission cannot be
4 determined, the priority shall be determined by a lottery with applicants who have a sibling who
5 currently has an account being given priority over the other applicants. The Treasurer shall
6 include in his or her rule required by section five of this article provisions for implementing this
7 subsection.

8 (b) An eligible student shall qualify for an account under this article if:

9 (1) The parent is eligible to claim the federal earned income tax credit;

10 (2) The parent submits an application for an account in accordance with any application
11 procedures established by the Treasurer which at least shall include an annual period for
12 accepting applications that begins June 1 and ends July 15 of each year;

13 (3) The parent signs an agreement promising:

14 (A) To provide an education for the ESA student in at least the subjects of reading,
15 language, mathematics, science, and social studies;

16 (B) To afford the ESA student with opportunities for educational enrichment such as
17 organized athletics, art, music, or literature;

18 (C) Not to enroll the ESA student, full time, in a district school, an Innovation in Education
19 School, the West Virginia Virtual School, or a West Virginia School for the Deaf and Blind;

20 (D) To use account funds only for the following authorized expenses to educate the ESA
21 student:

22 (i) Payment of tuition and or fees at a participating entity;

23 (ii) Payment for textbooks and other supplemental materials required by a participating
24 entity;

25 (iii) Payment for a dual credit or dual enrollment course offered by a state institution of

26 higher education as defined in section two, article one, chapter eighteen-b of this code;

27 (iv) Payment to a private tutor;

28 (v) Payment for the purchase of curriculum, including any supplemental materials required
29 by the curriculum;

30 (vi) Payment of no more than \$750 per year to a fee-for-service transportation provider for
31 transportation to or from a participating entity;

32 (vii) Payment for educational therapies or services;

33 (viii) Payment for educational services provided by a district school, including individual
34 classes, extracurricular programs or other services;

35 (ix) Payment of fees for the management of account funds by an approved private financial
36 management firm;

37 (x) Payment of fees for national norm-referenced examinations, Advanced Placement
38 examinations or similar courses, and any examinations related to college or university admission;

39 (xi) Payment for computer hardware or other technological devices approved in advance
40 by the Treasurer, in accordance with any rules promulgated by the Treasurer to govern such
41 approval;

42 (xii) Contributions to a Coverdell Education Savings Account established under 26 U.S.C.
43 §530 for the benefit of the ESA student, except that funds used for elementary or secondary
44 education expenses shall be for expenses otherwise allowed under this section;

45 (xiii) Payment for school supplies.

46 (E) To ensure that the ESA student is annually administered a nationally norm-referenced
47 test. The Treasurer shall identify a multitude of qualifying tests which shall, at a minimum,
48 measure learning in mathematics and English language arts. Students with disabilities for whom
49 standardized testing is not appropriate shall be exempt from this requirement;

50 (F) To use account funds only for educational purposes for the ESA student pursuant to
51 paragraph (D) of this subdivision;

52 (G) To comply with the rules and requirements of the program; and

53 (H) Not to deposit personal funds into an account; and

54 (4) The student is currently enrolled in the public school system, otherwise, the student
55 must wait two years to be eligible: *Provided*, That new students moving into the state and students
56 eligible for kindergarten in the school year beginning July 1, 2017 are not subject to the two year
57 wait requirement.

58 (c) A parent of a student with a disability shall acknowledge, in writing, that acceptance of
59 an account by a student with a disability has the same effect as a parental placement under 20
60 U.S.C. § 1412(A)(10) of the Individuals with Disabilities Education Act (IDEA).

61 (d) The account shall remain in force, and any unused funds shall roll over from quarter-
62 to-quarter and from year-to-year, until the ESA student returns, full time, to a district school or
63 graduates from college with a bachelor's degree, whichever occurs first, unless the account is
64 revoked for misuse of funds. However, after four consecutive years after high school graduation
65 if the ESA student has not enrolled in a post-secondary institution, or if the ESA student turns
66 twenty-five years of age, the account shall be closed and any unused funds returned to the State
67 Treasury: *Provided*, That the expiration period shall toll for any individual who enlists full time in
68 a branch of the Armed Forces of the United States for the United States for up to four additional
69 years.

70 (e) An ESA student may return to a district school at any time after enrolling in the program.
71 The Treasurer shall promulgate rules to allow ESA students to return to a district school at any
72 time. The rules shall include stopping the quarterly deposits into the account and closing the
73 account.

74 (f) Any parent or ESA student who fails to comply with the provisions of this article or with
75 any rules promulgated by the Treasurer relating to the program shall forfeit the account and all
76 account funds therein will be returned to the State Treasury.

77 (g) ESA students whose parents have signed an agreement pursuant to this article shall
78 be exempt from the compulsory school attendance requirements of article eight, chapter eighteen
79 of this code.

80 (h) Account funds received pursuant to this article shall not constitute taxable income of
81 the parent or the ESA student.

82 (i) Nothing in this article shall be deemed to prohibit a parent from making a payment for
83 any tuition, fee, service, or product described in this article to a participating entity or educational
84 service provider from a source other than the account.

85 (j) The parent, guardian or other person responsible for educating a child who does not
86 apply for, and receive, an ESA account is eligible to apply for a tax credit in the amount of \$2,500
87 per child against their state income tax liability for funds expended in accordance with this section.

§18-31-4. Amount of account.

1 From a separate line item appropriation, the annual amount of funds deposited in an
2 account pursuant to this article shall be an amount equivalent to seventy-five percent of the prior
3 year's statewide average net state aid per pupil based on adjusted enrollment for state aid
4 purposes. The state board shall, by rule, determine how the fund transfer to the Treasurer shall
5 be accomplished.

18-31-5. Responsibilities of the Treasurer.

1 The Treasurer shall have the following duties, obligations, and authority:

2 (a) The Treasurer shall create a standard form that parents of eligible students can submit
3 to establish their student's eligibility for the program and shall ensure that the application is readily
4 available through various sources, including the Internet;

5 (b) The Treasurer may qualify private financial management firms to manage accounts. If
6 the Treasurer does qualify private financial management firms to manage accounts, the Treasurer
7 shall establish and provide reasonable fees for such private financial management firms based
8 upon market rates;

9 (c) The Treasurer may contract with qualified organizations to administer the program or
10 specific functions of the program;

11 (d) The Treasurer may conduct or contract for the auditing of accounts, and shall at a
12 minimum conduct random audits of accounts on an annual basis;

13 (e) The Treasurer may make any parent of an eligible student ineligible for the program in
14 the event of substantial misuse of the funds in the account;

15 (f) The Treasurer may refer cases of substantial misuse of funds to the Attorney General
16 for investigation if evidence of fraudulent use of an account is obtained;

17 (g) The Treasurer may deduct an amount from accounts to cover the costs of
18 administering the program, up to a maximum of three percent annually;

19 (h) The Treasurer shall provide parents of ESA students with a written explanation of the
20 allowable uses of account funds, the responsibilities of parents, and the duties of the Treasurer
21 and any private financial management firms or other qualified organizations that may be
22 administering the program or any aspect of the program;

23 (i) The Treasurer shall maintain a list of participating entities and shall ensure that the list
24 of participating entities is readily available through various sources, including the Internet;

25 (j) The Treasurer shall adopt rules, regulations and procedures necessary for the
26 administration of the program;

27 (k) The Treasurer shall, upon approval of a proper application and receipt of a signed
28 agreement from the parent, make quarterly deposits into the account of ESA students during each
29 academic year in which an account is in operation;

30 (l) The Treasurer shall develop a system for parents to use account funds to pay
31 participating entities and education service providers by electronic funds transfer or by individual
32 warrant;

33 (1) This system shall be a commercially viable, cost-effective, and parent friendly system;

34 (2) The system shall not rely solely on reimbursements for purchases made by parents
35 out-of-pocket;

36 (3) Private financial management firms or other qualified organizations may manage the
37 payment system;

38 (4) The system may include individually funded accounts or notional accounts funded
39 through a single state omnibus account;

40 (5) If a participating entity requires partial payment of tuition or fees prior to the start of the
41 academic year to reserve space for ESA students admitted to the participating entity, such partial
42 payment may be paid by the Treasurer prior to the first quarterly payment of the year in which the
43 account is awarded, up to a maximum of \$1,000, and deducted from subsequent account
44 payments, but if an ESA student decides not to attend the participating entity, the partial
45 reservation payment must be returned to the Treasurer by such participating entity.

46 Only one reservation payment per student may be made per year;

47 (m) The Treasurer shall provide the legislative oversight commission on education
48 accountability, not later than December 1, of each year, with a report regarding the program for
49 the previous fiscal year;

50 (1) The Treasurer may choose a qualified organization to produce the report;

51 (2) The report shall protect the identity of ESA students and participating entities,
52 including, but not limited to, by keeping anonymous all disaggregated data and maintaining state
53 and federal guidelines for student privacy;

54 (3) The report shall also be posted on the Treasurer's website;

55 (4) The report shall include:

56 (A) The number and demographic data of ESA students;

57 (B) The number and types of participating entities;

58 (C) Parental satisfaction with the program, via a survey that shall ask parents to express:

59 (i) Their satisfaction with the program; and

- 60 (ii) The number of years the ESA student has participated in the program;
61 (D) The percentage of funds used for each authorized expense included in paragraph (D),
62 subdivision (3), subsection (b), section (3) of this article.
63 (n) The Treasurer may propose rules for legislative approval in accordance with the
64 provisions of article three, chapter twenty-nine-a of this code to designate technical education or
65 certifications eligible to participate under this article, to determine qualified purchases and to
66 provide a method for disqualification of private schools, vendors or suppliers who violate the
67 provisions of this article or the rules of this program.

§18-31-6. Eligibility requirements for participating entities.

- 1 (a) To be eligible to accept payments from an account, a participating entity shall:
2 (1) Provide parents with a receipt for all qualifying expenses at the school; and
3 (2) Agree not to refund, rebate, or share account funds with parents or ESA students in
4 any manner, except that funds may be remitted or refunded to an account in accordance with
5 procedures established by the Treasurer;
6 (b) The Treasurer shall provide a participating entity with eligibility requirements of this
7 article upon request and make the requirements available online;
8 (c) The Treasurer may bar a participating entity from the program if the participating entity
9 has:
10 (1) Routinely failed to comply with the requirements of this article or with any rules or
11 regulations governing the program;
12 (2) Intentionally and substantially misrepresented information or failed to refund any
13 overpayments in a timely manner; or
14 (3) Failed to provide ESA students with the educational services funded by accounts.
15 (d) If the Treasurer bars a participating entity from the program, it shall notify parents and
16 ESA students of this decision as quickly as possible;

17 (e) Nothing in the provisions of this article shall be deemed to limit the independence or
18 autonomy of a participating entity or to make the actions of a participating entity the actions of the
19 state government;

20 (f) Neither the Treasurer nor any other state agency may in any way regulate the
21 educational program of a participating entity that accepts funds from an account;

22 (g) Participating entities shall be given the maximum freedom to provide for the
23 educational needs of ESA students without governmental control; and

24 (h) Nothing in this article shall be construed to expand the regulatory authority of the state,
25 its officers, or any county school district to impose any additional regulation of participating entities
26 beyond those necessary to enforce the requirements of the program.

§18-31-7. Responsibilities of resident school districts.

1 The resident school district shall provide a participating entity that has enrolled an ESA
2 student with a complete copy of the student's school records, while complying with the Family
3 Educational Rights and Privacy Act of 1974 (20 USC Section 1232g).

§18-31-8. Legal proceedings.

1 (a) In any legal proceeding challenging the application of this chapter to a participating
2 entity, the state bears the burden of establishing that the challenged action, rule or requirement
3 is necessary and does not impose any undue burden on participating entities;

4 (b) No liability shall arise on the part of the Treasurer or the state or of any county school
5 district based on the award or use of an account awarded pursuant to this article;

6 (c) If any part of this article is challenged in a state court as violating either the state or
7 federal Constitutions, parents shall be permitted to intervene in such lawsuit for the purposes of
8 defending the act's constitutionality. However, for the purposes of judicial administration, a court
9 may limit the number of parents permitted to intervene or require that all parents file a joint brief,
10 so long as they are not required to join any brief filed on behalf of any named state defendant;
11 and

12 (d) If any provision of this article, or the application thereof to any person or circumstances,
13 is held invalid, such invalidity shall not affect other provisions or applications of the article which
14 can be given effect without the invalid provision or application, and to this end the provisions of
15 this article are declared to be severable.