

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 6

FISCAL
NOTE

BY SENATORS RUCKER AND KARNES

[Introduced January 10, 2018; Referred
to the Committee on Education; and then to the Committee
on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §18-2F-1, §18-2F-2, §18-2F-3, §18-2F-4, §18-2F-5, §18-2F-6, §18-2F-7,
3 §18-2F-8, §18-2F-9 and §18-2F-10, all relating generally to establishing education savings
4 accounts for West Virginia students; defining terms; authorizing establishment of
5 education savings accounts; granting of funds; providing restrictions on use of funds;
6 financial management of education savings funds; establishing terms of eligibility for
7 participation in program; imposing testing and data collection requirements; and
8 reaffirming independence of nonpublic schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2F. EDUCATION SAVINGS ACCOUNTS.

§18-2F-1. Definitions.

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

3 (1) "Education savings account" means an account established for a child pursuant to §18-
4 2F-2 of this code.

5 (2) "Eligible institution" means:

6 (A) A university, state college or community college within the West Virginia higher
7 education system;

8 (B) Any other college or university that:

9 (i) Was originally established in, and is organized under the laws of this state;

10 (ii) Is exempt from taxation pursuant to 26 U.S.C. §501(c)(3); and

11 (iii) Is accredited by a regional accrediting agency recognized by the United States
12 Department of Education.

13 (3) "Parent" means the parent, custodial parent, legal guardian or other person in this state
14 who has control or charge of a child and the legal right to direct the education of the child.

15 (4) "Participating entity" means a private, parochial or church school as defined in §18-28-

16 1 et seq. of this code, an eligible institution, a program of distance education that is not offered by
17 a public school or the department, a tutor or tutoring agency or a parent that has provided to the
18 State Treasurer the application described in §18-2F-6(a) of this code.

19 (5) "Resident school district" means the school district in which a child would be enrolled
20 based on his or her residence.

§18-2F-2. Establishment of education savings accounts.

1 (a) Except as otherwise provided in §18-2F-5 of this code, the parent of any child required
2 by §18-8-1 of this code to attend a public school who has been enrolled in a public school in this
3 state during the period immediately preceding the establishment of an education savings account
4 pursuant to this section for not less than one hundred school days without interruption may
5 establish an education savings account for the child by entering into a written agreement with the
6 State Treasurer, in a manner and form provided by the State Treasurer. The agreement must
7 provide that:

8 (1) The child will receive instruction in this state from a participating entity for the school
9 year for which the agreement applies;

10 (2) The child will receive a grant, in the form of money deposited pursuant to §18-2F-3 of
11 this code in the education savings account established for the child pursuant to subsection (b) of
12 this section;

13 (3) The money in the education savings account established for the child must be
14 expended only as authorized by §18-2F-4 of this code; and

15 (4) The State Treasurer will freeze money in the education savings account during any
16 break in the school year, including any break between school years.

17 (b) If an agreement is entered into pursuant to subsection (a) of this section, an education
18 savings account must be established by the parent on behalf of the child. The account must be
19 maintained with a financial management firm qualified by the State Treasurer pursuant to §18-
20 2F-5 of this code.

21 (c) The failure to enter into an agreement pursuant to subsection (a) of this section for any
22 school year for which a child is required by §18-8-1 of this code to attend a public school does
23 not preclude the parent of the child from entering into an agreement for a subsequent school year.

24 (d) An agreement entered into pursuant to subsection (a) of this section is valid for one
25 school year but may be terminated early. If the agreement is terminated early, the child may not
26 receive instruction from a public school in this state until the end of the period for which the last
27 deposit was made into the education savings account pursuant to §18-2F-3 of this code, except
28 to the extent the student was allowed to receive instruction from a public school under the
29 agreement.

30 (e) An agreement terminates automatically if the child no longer resides in this state. In
31 such a case, any money remaining in the education savings account of the child reverts to the
32 state General Fund.

33 (f) An agreement may be renewed for any school year for which the child is required by
34 §18-8-1 of this code to attend a public school. The failure to renew an agreement for any school
35 year does not preclude the parent of the child from renewing the agreement for any subsequent
36 school year.

37 (g) A parent may enter into a separate agreement pursuant to subsection (a) of this section
38 for each child of the parent. Not more than one education savings account may be established
39 for a child.

40 (h) Except as otherwise provided in subsection (j) of this section, the State Treasurer shall
41 enter into or renew an agreement pursuant to this section with any parent of a child required by
42 §18-8-1 of this code to attend a public school who applies to the State Treasurer in the manner
43 provided by the State Treasurer. The State Treasurer shall make the application available on the
44 Internet website of the State Treasurer.

45 (i) Upon entering into or renewing an agreement pursuant to this section, the State
46 Treasurer shall provide to the parent who enters into or renews the agreement a written

47 explanation of the authorized uses, pursuant to §18-2F-4 of this code, of the money in an
48 education savings account and the responsibilities of the parent and the State Treasurer pursuant
49 to the agreement and §18-2F-1 through §18-2F-10, inclusive, of this code.

50 (j) A parent may not establish an education savings account for a child who will be
51 homeschooled, who will receive instruction outside this state or will remain enrolled full-time in a
52 public school, regardless of whether such a child receives instruction from a participating entity.

53 A parent may establish an education savings account for a child who receives a portion of his or
54 her instruction from a public school and a portion of his or her instruction from a participating
55 entity.

§18-2F-3. Education savings grants.

1 (a) If a parent enters into or renews an agreement pursuant to §18-2F-2 of this code, a
2 grant of money on behalf of the child must be deposited in the education savings account of the
3 child.

4 (b) Except as otherwise provided in subsections (c) and (d) of this section, the grant
5 required by subsection (a) of this section must, for the school year for which the grant is made,
6 be in an amount equal to:

7 (1) For a child who is a student with a disability, as defined in §18-20-1 of this code, or a
8 child with a household income that is less than one hundred and eighty-five percent of the
9 federally designated level signifying poverty; one hundred percent of the statewide average basic
10 support per student; and

11 (2) For all other children, ninety percent of the statewide average basic support per
12 student.

13 (c) If a child receives a portion of his or her instruction from a participating entity and a
14 portion of his or her instruction from a public school, for the school year for which the grant is
15 made, the grant required by subsection (a) of this section must be in a pro rata based on the

16 amount percentage of the total instruction provided to the child by the participating entity in
17 proportion to the total instruction provided to the child.

18 (d) The State Treasurer may deduct not more than three percent of each grant for the
19 administrative costs of implementing the provisions of this article.

20 (e) The State Treasurer shall deposit the money for each grant in quarterly installments
21 pursuant to a schedule determined by the State Treasurer.

22 (f) Any money remaining in an education savings account:

23 (1) At the end of a school year may be carried forward to the next school year if the
24 agreement entered into pursuant to §18-2F-2 of this code is renewed.

25 (2) When an agreement entered into pursuant to §18-2F-2 of this code is not renewed or
26 is terminated, because the child for whom the account was established graduates from high
27 school or for any other reason, reverts to the state General Fund at the end of the last day of the
28 agreement.

§18-2F-4. Restrictions on use of education savings funds.

1 (a) Money deposited in an education savings account must be used only to pay for:

2 (1) Tuition and fees at a school that is a participating entity in which the child is enrolled;

3 (2) Textbooks required for a child who enrolls in a school that is a participating entity;

4 (3) Tutoring or other teaching services provided by a tutor or tutoring facility that is a
5 participating entity;

6 (4) Tuition and fees for a program of distance education that is a participating entity;

7 (5) Fees for any national norm-referenced achievement examination, advanced
8 placement or similar examination or standardized examination required for admission to a college
9 or university;

10 (6) If the child is a student with a disability, as that term is defined in §18-20-1 of this code
11 fees for any special instruction or special services provided to the child;

12 (7) Tuition and fees at an eligible institution that is a participating entity;

13 (8) Textbooks required for the child at an eligible institution that is a participating entity or
14 to receive instruction from any other participating entity;

15 (9) Fees for the management of the education savings account, as described in §18-2F-5
16 of this code;

17 (10) Transportation required for the child to travel to and from a participating entity or any
18 combination of participating entities up to but not to exceed \$750 per school year; or

19 (11) Purchasing a curriculum or any supplemental materials required to administer the
20 curriculum.

21 (b) A participating entity that receives a payment authorized by subsection (a) of this
22 section shall not:

23 (1) Refund any portion of the payment to the parent who made the payment, unless the
24 refund is for an item that is being returned or an item or service that has not been provided; or

25 (2) Rebate or otherwise share any portion of the payment with the parent who made the
26 payment.

27 (c) A parent who receives a refund pursuant to subdivision (2) shall deposit the refund in
28 the education savings account from which the money refunded was paid.

29 (d) Nothing in this section shall be deemed to prohibit a parent or child from making a
30 payment for any tuition, fee, service or product described in subsection (a) of this section from a
31 source other than the education savings account of the child.

§18-2F-5. Financial management of education savings accounts; required auditing; misuse
of funds.

1 (a) The State Treasurer shall qualify one or more private financial management firms to
2 manage education savings accounts and shall establish reasonable fees, based on market rates,
3 for the management of education savings accounts.

4 (b) An education savings account must be audited randomly each year by a certified or
5 licensed public accountant. The State Treasurer may provide for additional audits of an education
6 savings account as it determines necessary.

7 (c) If the State Treasurer determines that there has been substantial misuse of the money
8 in an education savings account, the State Treasurer may:

9 (1) Freeze or dissolve the account, subject to any regulations adopted by the State
10 Treasurer providing for notice of such action and opportunity to respond to the notice; and

11 (2) Give notice of his or her determination to the Attorney General or the district attorney
12 of the county in which the parent resides.

§18-2F-6. Eligibility for participation; application process; required posting of surety
bonds; disqualification from participation.

1 (a) The following persons may become a participating entity by submitting an application
2 demonstrating that the person is:

3 (1) A private, public or parochial school in compliance with the provisions of §18-28-1 et
4 seq. of this code;

5 (2) An eligible institution;

6 (3) A program of distance education that is not operated by a public school or the
7 department;

8 (4) A tutor or tutoring facility that is accredited by a state, regional or national accrediting
9 organization; or

10 (5) The parent of a child.

11 (b) The State Treasurer shall approve an application submitted pursuant to subsection (a)
12 of this section or request additional information to demonstrate that the person meets the criteria
13 to serve as a participating entity. If the applicant is unable to provide such additional information,
14 the State Treasurer may deny the application.

15 (c) If it is reasonably expected that a participating entity will receive, from payments made

16 from education savings accounts, more than \$50,000 during any school year, the participating
17 entity shall annually, on or before the date prescribed by the State Treasurer by regulation:

18 (1) Post a surety bond in an amount equal to the amount reasonably expected to be paid
19 to the participating entity from education savings accounts during the school year; or

20 (2) Provide evidence satisfactory to the State Treasurer that the participating entity
21 otherwise has unencumbered assets sufficient to pay to the State Treasurer an amount equal to
22 the amount described in subdivision (1) of this subsection.

23 (d) Each participating entity that accepts payments made from education savings accounts
24 shall provide a receipt for each such payment to the parent who makes the payment.

25 (e) The State Treasurer may refuse to allow an entity described in subsection (a) of this
26 section to continue to participate in the grant program provided in this article if the State Treasurer
27 determines that the entity:

28 (1) Has routinely failed to comply with the provisions of this article; or

29 (2) Has failed to provide any educational services required by law to a child receiving
30 instruction from the entity if the entity is accepting payments made from the education savings
31 account of the child.

32 (f) If the State Treasurer takes an action described in subsection (e) of this section against
33 an entity described in subsection (a) of this section, the State Treasurer shall provide immediate
34 notice of the action to each parent of a child receiving instruction from the entity who has entered
35 into or renewed an agreement pursuant to §18-2F-2 of this code and on behalf of whose child a
36 grant of money has been deposited pursuant to §18-2F-3 of this code.

§18-2F-7. Testing requirements; data collection.

1 (a) Each participating entity that accepts payments for tuition and fees made from
2 education savings account shall:

3 (1) Ensure that each child on whose behalf a grant of money has been deposited pursuant
4 to §18-2F-3 of this code and who is receiving instruction from the participating entity takes:

5 (A) Any examinations in mathematics and English language arts required for students of
6 the same grade; or

7 (B) Norm-referenced achievement examinations in mathematics and English language
8 arts each school year;

9 (2) Provide for value-added assessments of the results of the examinations described in
10 subdivision (1) of this subsection; and

11 (3) Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g,
12 and any regulations adopted pursuant thereto, provide the results of the examinations described
13 in paragraph (A) to the department or an organization designated by the department pursuant to
14 subsection (d) of this section.

15 (b) The department shall:

16 (1) Aggregate the examination results provided pursuant to subsection (a) of this section
17 according to the grade level, gender, race and family income level of each child whose
18 examination results are provided; and

19 (2) Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g,
20 and any regulations adopted pursuant thereto, make available on the Internet website of the
21 department:

22 (A) The aggregated results and any associated learning gains; and

23 (B) After three school years for which examination data has been collected, the graduation
24 rates, as applicable, of children whose examination results are provided.

25 (c) The State Treasurer shall administer an annual survey of parents who enter into or
26 renew an agreement pursuant to §18-2F-2 of this code. The survey must ask each parent to
27 indicate the number of years the parent has entered into or renewed such an agreement and to
28 express:

29 (1) The relative satisfaction of the parent with the grant program established pursuant to
30 this article; and

31 (2) The opinions of the parent regarding any topics, items or issues that the State
 32 Treasurer determines may aid the State Treasurer in evaluating and improving the effectiveness
 33 of the grant program established pursuant to this article.

34 (d) The department may arrange for a third-party organization to perform the duties of the
 35 department prescribed by this section.

§18-2F-8. Data collection and retention.

1 (a) The State Treasurer shall annually make available a list of participating entities, other
 2 than any parent of a child.

3 (b) Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g,
 4 and any regulations adopted pursuant thereto, the department shall annually require the resident
 5 school district of each child on whose behalf a grant of money is made pursuant to §18-2F-8 of
 6 this code to provide to the participating entity any educational records of the child.

§18-2F-9. Independence of participating entities.

1 Except as otherwise provided in this article, nothing in the provisions of this article, shall
 2 be deemed to limit the independence or autonomy of a participating entity or to make the actions
 3 of a participating entity the actions of the state government.

§18-2F-10. Rulemaking authority.

1 The State Treasurer shall adopt any rules necessary or convenient to carry out the
 2 provisions of this article.

NOTE: The purpose of this bill is to establish an education savings account program for West Virginia students.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.