

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 90

FISCAL
NOTE

BY SENATORS RUCKER, SWOPE, KARNES, AND AZINGER

[Introduced February 10, 2021; referred
to the Committee on Education; and then to the
Committee on Finance]

1 A BILL to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended; to amend
2 said code by adding thereto a new section, designated §18-9A-10a; and to amend said
3 code by adding thereto a new article, designated §18-31-1, §18-31-2, §18-31-3, §18-31-
4 4, §18-31-5, §18-31-6, §18-31-7, §18-31-8, and §18-31-9, all relating to the Education
5 Savings Account Act; creating compulsory school attendance exemption for education
6 savings account (ESA) students; requiring the Department of Education to annually make
7 a projection of the amount required to fund ESAs and make a request for an appropriation
8 in that amount; requiring the Legislature to appropriate the amount requested; requiring
9 the Department of Education to pay to the West Virginia State Treasurer's Office the
10 amount appropriated; requiring the total amount of funds annually deposited in an ESA to
11 be 90 percent of the prior year's statewide average net state aid allotted per pupil based
12 on net enrollment adjusted for state aid purposes; providing authority for the state board
13 of education to promulgate emergency rules and propose rules for legislative approval;
14 limiting use of ESA funds to certain qualifying expenses; allowing a parent to apply to the
15 Treasurer to establish an ESA for an eligible student; establishing household income limit
16 as a condition of qualifying for the ESA program; setting forth conditions under which the
17 Treasurer is required to approve applications; requiring the Treasurer to annually renew a
18 student's ESA after making certain verifications; setting forth certain duties, obligations,
19 and authority of the Treasurer; providing authority for the Treasurer to promulgate
20 emergency rules and propose rules for legislative approval; creating a Parent Review
21 Committee to assist the Treasurer in determining whether questionable expenditures meet
22 the requirements to be considered qualifying expenses, to provide recommendations to
23 the Treasurer about how to implement, administer, and improve the ESA program, and for
24 other purposes; setting forth eligibility requirements for service providers; requiring
25 provision to an education service provider that has enrolled an ESA student with a

26 complete copy of the student's school records, while complying with the Family
27 Educational Rights and Privacy Act of 1974; and addressing legal proceedings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Compulsory school attendance; exemptions.

1 (a) Exemption from the requirements of compulsory public school attendance established
2 in §18-8-1a of this code shall be made on behalf of any child for the causes or conditions set forth
3 in this section. Each cause or condition set forth in this section is subject to confirmation by the
4 attendance authority of the county. A child who is exempt from compulsory school attendance
5 under this section is not subject to prosecution under §18-8-2 of this code, nor is such a child a
6 status offender as defined by §49-1-202 of this code.

7 (b) A child is exempt from the compulsory school attendance requirement set forth in §18-
8 8-1a of this code if the requirements of this subsection, relating to instruction in a private, parochial
9 or other approved school, are met. The instruction shall be in a school approved by the county
10 board and for a time equal to the instructional term set forth in §18-5-45 of this code. In all private,
11 parochial or other schools approved pursuant to this subsection, it is the duty of the principal or
12 other person in control, upon the request of the county superintendent, to furnish to the county
13 board such information and records as may be required with respect to attendance, instruction
14 and progress of students enrolled.

15 (c) A child is exempt from the compulsory school attendance requirement set forth in §18-
16 8-1a of this code if the requirements of either subdivision (1) or subdivision (2) of this subsection,
17 both relating to home instruction, are met.

18 (1) The instruction shall be in the home of the child or children or at some other place
19 approved by the county board and for a time equal to the instructional term set forth in §18-5-45
20 of this code. If the request for home instruction is denied by the county board, good and
21 reasonable justification for the denial shall be furnished in writing to the applicant by the county

22 board. The instruction shall be conducted by a person or persons who, in the judgment of the
23 county superintendent and county board, are qualified to give instruction in subjects required to
24 be taught in public elementary schools in the state. The person or persons providing the
25 instruction, upon request of the county superintendent, shall furnish to the county board
26 information and records as may be required periodically with respect to attendance, instruction
27 and progress of students receiving the instruction. The state board shall develop guidelines for
28 the home schooling of special education students including alternative assessment measures to
29 assure that satisfactory academic progress is achieved.

30 (2) The child meets the requirements set forth in this subdivision: *Provided*, That the
31 county superintendent may, after a showing of probable cause, seek from the circuit court of the
32 county an order denying home instruction of the child. The order may be granted upon a showing
33 of clear and convincing evidence that the child will suffer neglect in his or her education or that
34 there are other compelling reasons to deny home instruction.

35 (A) Upon commencing home instruction under this section the parent of a child receiving
36 home instruction shall present to the county superintendent or county board a notice of intent to
37 provide home instruction that includes the name, address, and age of any child of compulsory
38 school age to be instructed and assurance that the child shall receive instruction in reading,
39 language, mathematics, science and social studies and that the child shall be assessed annually
40 in accordance with this subdivision. The person providing home instruction shall notify the county
41 superintendent upon termination of home instruction for a child who is of compulsory attendance
42 age. Upon establishing residence in a new county, the person providing home instruction shall
43 notify the previous county superintendent and submit a new notice of intent to the superintendent
44 of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of
45 intent to provide home instruction shall be given on or before the date home instruction is to begin.

46 (B) The person or persons providing home instruction shall submit satisfactory evidence
47 of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally

48 accredited institution or from an institution of higher education that has been authorized to confer
49 a post-secondary degree or certificate in West Virginia by the West Virginia Council for
50 Community and Technical College Education or by the West Virginia Higher Education Policy
51 Commission.

52 (C) Annually, the person or persons providing home instruction shall obtain an academic
53 assessment of the child for the previous school year in one of the following ways:

54 (i) The child receiving home instruction takes a nationally normed standardized
55 achievement test published or normed not more than 10 years from the date of administration
56 and administered under the conditions as set forth by the published instructions of the selected
57 test and by a person qualified in accordance with the test's published guidelines in the subjects
58 of reading, language, mathematics, science and social studies. The child is considered to have
59 made acceptable progress when the mean of the child's test results in the required subject areas
60 for any single year is within or above the fourth stanine or, if below the fourth stanine, shows
61 improvement from the previous year's results;

62 (ii) The child participates in the testing program currently in use in the state's public
63 schools. The test shall be administered to the child at a public school in the county of residence.
64 Determination of acceptable progress shall be based on current guidelines of the state testing
65 program;

66 (iii) A portfolio of samples of the child's work is reviewed by a certified teacher who
67 determines whether the child's academic progress for the year is in accordance with the child's
68 abilities. The teacher shall provide a written narrative about the child's progress in the areas of
69 reading, language, mathematics, science and social studies and shall note any areas which, in
70 the professional opinion of the reviewer, show need for improvement or remediation. If the
71 narrative indicates that the child's academic progress for the year is in accordance with the child's
72 abilities, the child is considered to have made acceptable progress; or

73 (iv) The child completes an alternative academic assessment of proficiency that is

74 mutually agreed upon by the parent or legal guardian and the county superintendent.

75 (D) A parent or legal guardian shall maintain copies of each student's academic
76 assessment for three years. When the annual assessment fails to show acceptable progress, the
77 person or persons providing home instruction shall initiate a remedial program to foster
78 acceptable progress. The county board upon request shall notify the parents or legal guardian of
79 the child, in writing, of the services available to assist in the assessment of the child's eligibility
80 for special education services. Identification of a disability does not preclude the continuation of
81 home schooling. In the event that the child does not achieve acceptable progress for a second
82 consecutive year, the person or persons providing instruction shall submit to the county
83 superintendent additional evidence that appropriate instruction is being provided.

84 (E) The parent or legal guardian shall submit to the county superintendent the results of
85 the academic assessment of the child at grade levels three, five, eight and 11, as applicable, by
86 June 30 of the year in which the assessment was administered.

87 (3) This subdivision applies to both home instruction exemptions set forth in subdivisions
88 (1) and (2) of this subsection. The county superintendent or a designee shall offer such
89 assistance, including textbooks, other teaching materials and available resources, all subject to
90 availability, as may assist the person or persons providing home instruction. Any child receiving
91 home instruction may upon approval of the county board exercise the option to attend any class
92 offered by the county board as the person or persons providing home instruction may consider
93 appropriate subject to normal registration and attendance requirements.

94 (d) A child is exempt from the compulsory school attendance requirement set forth in §18-
95 8-1a of this code if the requirements of this subsection, relating to physical or mental incapacity,
96 are met. Physical or mental incapacity consists of incapacity for school attendance and the
97 performance of school work. In all cases of prolonged absence from school due to incapacity of
98 the child to attend, the written statement of a licensed physician or authorized school nurse is
99 required. Incapacity shall be narrowly defined and in any case the provisions of this article may

100 not allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped
101 child otherwise entitled to a free appropriate education.

102 (e) A child is exempt from the compulsory school attendance requirement set forth in §18-
103 8-1a of this code if conditions rendering school attendance impossible or hazardous to the life,
104 health or safety of the child exist.

105 (f) A child is exempt from the compulsory school attendance requirement set forth in §18-
106 8-1a of this code upon regular graduation from a standard senior high school or alternate
107 secondary program completion as determined by the state board.

108 (g) A child is exempt from the compulsory school attendance requirement set forth in §18-
109 8-1a of this code if the child is granted a work permit pursuant to the subsection. After due
110 investigation the county superintendent may grant work permits to youths under the termination
111 age designated in §18-8-1a of this code, subject to state and federal labor laws and regulations.
112 A work permit may not be granted on behalf of any youth who has not completed the eighth grade
113 of school.

114 (h) A child is exempt from the compulsory school attendance requirement set forth in §18-
115 8-1a of this code if a serious illness or death in the immediate family of the child has occurred. It
116 is expected that the county attendance director will ascertain the facts in all cases of such
117 absences about which information is inadequate and report the facts to the county superintendent.

118 (i) A child is exempt from the compulsory school attendance requirement set forth in §18-
119 8-1a of this code if the requirements of this subsection, relating to destitution in the home, are
120 met. Exemption based on a condition of extreme destitution in the home may be granted only
121 upon the written recommendation of the county attendance director to the county superintendent
122 following careful investigation of the case. A copy of the report confirming the condition and school
123 exemption shall be placed with the county director of public assistance. This enactment
124 contemplates every reasonable effort that may properly be taken on the part of both school and
125 public assistance authorities for the relief of home conditions officially recognized as being so

126 destitute as to deprive children of the privilege of school attendance. Exemption for this cause is
 127 not allowed when the destitution is relieved through public or private means.

128 (j) A child is exempt from the compulsory school attendance requirement set forth in §18-
 129 8-1a of this code if the requirements of this subsection, relating to church ordinances and
 130 observances of regular church ordinances, are met. The county board may approve exemption
 131 for religious instruction upon written request of the person having legal or actual charge of a child
 132 or children. This exemption is subject to the rules prescribed by the county superintendent and
 133 approved by the county board.

134 (k) A child is exempt from the compulsory school attendance requirement set forth in §18-
 135 8-1a of this code if the requirements of this subsection, relating to alternative private, parochial,
 136 church or religious school instruction, are met. Exemption shall be made for any child attending
 137 any private school, parochial school, church school, school operated by a religious order or other
 138 nonpublic school which elects to comply with the provisions of §18-28-1 *et seq.* of this code.

139 (l) Completion of the eighth grade does not exempt any child under the termination age
 140 designated in §18-8-1a of this code from the compulsory attendance provision of this article.

141 (m) A child is exempt from the compulsory school attendance requirements set forth in
 142 §18-8-1a of this code if the parent, as defined in §18-31-2 of this code, of the child has applied to
 143 the Treasurer to establish an education savings account pursuant to §18-31-1 *et seq.* of this code,
 144 the Treasurer has approved the application, the education savings account remains open, and
 145 payments continue to be made into the education savings account.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10a. Allowance for education savings accounts.

1 (a) The Department of Education annually shall make a projection of the amount required
 2 to fund education savings accounts pursuant to §18-31-1 *et seq.* of this code, and shall request
 3 an appropriation for that amount. The Legislature shall appropriate the amount requested by the
 4 Department of Education pursuant to this subsection, and the Department of Education shall pay

5 to the West Virginia State Treasurer's Office the amount appropriated pursuant to this subsection.

6 (b) The state board may propose rules for legislative approval in accordance with the
7 provisions of §29A-3-1 et seq. of this code and may promulgate emergency rules pursuant to the
8 provisions of §29A-3-15 of this code to determine how the fund transfer to the Treasurer shall be
9 accomplished.

ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.

§18-31-1. Short title.

1 This article shall be known as the "Education Savings Account Act" or "ESA Act". The
2 program created by the ESA Act shall be known as the "Education Savings Account Program" or
3 "ESA 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 "Account" or "ESA" means an education savings account, awarded pursuant to this article,
4 to which funds are allocated by the Treasurer to the parent or parents of an ESA student in order
5 to pay qualifying education expenses to educate the student pursuant to the requirements and
6 conditions of this article;

7 "Curriculum" means a complete course of study for a particular content area or grade level,
8 including any supplemental materials required by the curriculum;

9 "Education service provider" means a person or organization that receives payments from
10 education savings accounts to provide educational goods and services to ESA students;

11 "Eligible student" means an elementary or secondary student who has attended a West
12 Virginia public school in the prior school year and is not attending a public school outside of West
13 Virginia;

14 "ESA student" means a student who receives an account pursuant to this article;

15 "Parent" means a biological parent, legal guardian, custodian, or other person with legal

16 authority to act on behalf of an eligible student or ESA student;

17 “Participating school” means any private school that provides education to elementary
18 and/or secondary students and has notified the Treasurer of its intention to participate in the
19 program and comply with the program’s requirements;

20 “Resident school district” means the county school district in which the student resides;
21 and

22 “Treasurer” means the West Virginia State Treasurer’s Office or an organization that the
23 Treasurer has contracted with to carry out any or all portions of this article.

§18-31-3. Basic elements of the Education Savings Account Program.

1 (a) The total amount of funds annually deposited in an account pursuant to this article shall
2 be an amount equivalent to 90 percent of the prior year’s statewide average net state aid allotted
3 per pupil based on net enrollment adjusted for state aid purposes, subject to the following:

4 (1) The Treasurer may deduct an amount from education savings accounts to cover
5 administrative costs pursuant to §18-31-5(5) of this code;

6 (2) Subject to §18-31-5(8) of this code, one half of the total annually required deposit shall
7 be made during the first half of the fiscal year, and one half of the total annually required deposit
8 shall be made during the second half of the fiscal year;

9 (3) Funds in the account may not accumulate from one year to the next;

10 (4) The funds deposited shall be derived from the amount paid by the Department of
11 Education to the Treasurer pursuant to §18-9A-10a of this code; and

12 (5) If insufficient funding is available, priority shall be given to making deposits into the
13 accounts of ESA students whose approved applications were submitted first.

14 (b) Parents of an ESA student shall agree to use the funds deposited in their student’s
15 ESA only for the following qualifying expenses to educate the ESA student:

16 (1) Tuition and/or fees at a private school;

17 (2) Public school fees in instances where a student exempt from compulsory school

18 attendance elects to take a course or obtain a service from the public schools and a fee is
19 charged;

20 (3) Tutoring services provided by an individual or a tutoring facility;

21 (4) Fees for nationally standardized assessments, advanced placement examinations,
22 any examinations related to college or university admission, and tuition and/or fees for preparatory
23 courses for the aforementioned exams;

24 (5) Tuition and/or fees for nonpublic online learning programs;

25 (6) Tutoring services provided by an individual or a tutoring facility;

26 (7) Services contracted for, and provided by, a public district, charter, or magnet school,
27 including without limitation, individual classes and extracurricular activities and programs;

28 (8) Educational software and applications;

29 (9) Educational services and therapies, including, but not limited to, occupational,
30 behavioral, physical speech-language, and audiology therapies; and

31 (10) Fees for transportation paid to a fee-for-service transportation provider for the student
32 to travel to and from an education service provider.

33 (c) The funds in an ESA may only be used for educational purposes in accordance with
34 subsection (b) of this section.

35 (d) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in
36 any manner. Any refund or rebate for goods or services purchased with ESA funds shall be
37 credited directly to the student's ESA.

38 (e) Parents are allowed to make payments for the costs of educational goods and services
39 not covered by the funds in their student's ESA. However, personal deposits into an ESA are not
40 permitted.

41 (f) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA
42 student.

43 (g) An ESA shall remain in force until the parent withdraws the ESA student from the ESA

44 Program, unless the ESA is closed because of a substantial misuse of funds. However, if an ESA
45 student turns 21 years of age or completes secondary education, the ESA shall be closed and
46 any unused funds revert to the Treasurer and be allocated to fund other ESAs.

47 (h) Nothing in this article requires that an ESA student must be enrolled, full- or part-time,
48 in either a private school or nonpublic online school.

§18-31-4. Application for an Education Savings Account.

1 (a) A parent may apply to the Treasurer to establish an ESA for an eligible student at any
2 point on or after July 1, 2021. The household income of an eligible student shall be less than
3 \$150,000 per year to qualify for the education savings account program. For purposes of this
4 article, the household income shall be the adjusted gross income claimed for federal income tax
5 purposes by the biological parent or parents, legal guardian or guardians, custodian or
6 custodians, or person or persons with legal authority to act on behalf of an eligible student plus
7 any income of the eligible student. The Treasurer shall develop a process for verifying the income
8 of any applicant for the ESA.

9 (b) The Treasurer shall accept and approve applications year-round and shall establish
10 procedures for approving applications in an expeditious manner.

11 (c) The Treasurer shall create a standard form that parents can submit to establish their
12 student's eligibility for the ESA Program and shall ensure that the application is readily available
13 and may be submitted through various sources, including the internet.

14 (d) The Treasurer shall approve an application for an ESA if:

15 (1) The parent submits an application for an ESA in accordance with any application
16 procedures established by the Treasurer;

17 (2) The student on whose behalf the parent is applying is an eligible student;

18 (3) Funds are available for the ESA: *Provided*, That if insufficient funding is available,
19 priority shall be given to approving applications meeting the requirements of this subsection that
20 were submitted first; and

- 21 (4) The parent signs an agreement with the Treasurer, promising:
- 22 (A) To provide an education for the eligible student in at least the subjects of reading,
23 language, mathematics, science, and social studies;
- 24 (B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education
25 School, the West Virginia Virtual School, or a West Virginia Schools for the Deaf and Blind;
- 26 (C) To use the funds in the ESA only for qualifying expenses to educate the eligible student
27 as established by the ESA Program;
- 28 (D) To comply with the rules and requirements of the ESA Program; and
- 29 (E) To afford the ESA student opportunities for educational enrichment such as organized
30 athletics, art, music, or literature.
- 31 (e) The Treasurer shall verify with the Department of Education within 30 days of
32 approving an application that the student has withdrawn from public school under §18-8-1(m) of
33 this code.
- 34 (f) The Treasurer shall annually renew a student's ESA after verifying with the Department
35 of Education that:
- 36 (1) For an ESA student who chooses to attend a private school, the school board
37 communicates his or her continued attendance at a nonpublic school that complies with all
38 requirements that other nonpublic school students must comply with; or
- 39 (2) For an ESA student who chooses an individualized instructional program, he or she
40 has annually taken a nationally normed standardized test of academic achievement and received
41 a score within or above the fourth stanine or if below the fourth stanine, shown improvement from
42 the previous year's results; or a certified teacher conducts a review of the student's academic
43 work and determines that the student is making academic progress commensurate with his or her
44 age and ability and reports the results to the county board in which the student resides no later
45 than July 30.
- 46 (g) Upon notice to the Treasurer, an ESA student may choose to stop receiving ESA

47 funding and enroll full-time in a public school.

48 (h) Enrolling as a full-time student in a public school shall result in the immediate
49 suspension of payment of additional funds into and closure of the student’s ESA.

50 (i) If an eligible student decides to return to the ESA Program, they must reapply.

51 (j) The Treasurer may adopt rules and policies to provide the least disruptive process for
52 ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

§18-31-5. Responsibilities of the Treasurer; rulemaking authority.

1 (a) In addition to the Treasurer’s duties, obligations, and authority stated in other parts of
2 this article, the Treasurer has the following duties, obligations, and authority:

3 (1) The Treasurer shall maintain an updated list of participating schools and shall ensure
4 that the list is publicly available through various sources, including the internet.

5 (2) The Treasurer shall provide parents with a written explanation of the allowable uses of
6 ESA funds, the responsibilities of parents, the duties of the Treasurer and the role of any private
7 financial management firms or other private organizations that the Treasurer may contract with to
8 administer the ESA Program or any aspect of the ESA Program.

9 (3) The Treasurer shall ensure that parents of students with a disability receive notice that
10 participation in the ESA Program is a parental placement under 20 U.S.C. §1412 of the Individuals
11 with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed
12 students possess under (IDEA) and any applicable state laws and regulations.

13 (4) The Treasurer shall contract with private organizations to administer the ESA Program.
14 This includes, but is not limited to, private financial management firms to manage ESAs.

15 (5) The Treasurer may deduct an amount from education savings accounts to cover the
16 costs of administering the ESA Program, up to a maximum of three percent annually.

17 (6) The Treasurer shall implement or contract with a private organization to implement a
18 commercially viable, cost-effective, and parent-friendly system for payment for services from
19 ESAs to education service providers by electronic or online funds transfer and by debit card. The

20 Treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed
21 for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating
22 direct payments to education service providers as well as requests for preapproval of and
23 reimbursements for qualifying expenses.

24 (7) The Treasurer shall also seek to implement a commercially viable, cost-effective, and
25 parent-friendly system for publicly rating, reviewing, and sharing information about education
26 service providers, ideally as part of the same system that facilitates the electronic or online funds
27 transfers so as to create a one-stop-shop for parents and ESA students.

28 (8) If an education service provider requires partial payment of tuition or fees prior to the
29 start of the academic year to reserve space for an ESA student admitted to the education service
30 provider, such partial payment may be paid by the Treasurer prior to the start of the school year
31 in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA
32 deposits to ensure adequate funds remain available throughout the school year; but if an ESA
33 student decides not to use the education service provider, the partial reservation payment must
34 be returned to the Treasurer by such education service provider and credited to the student's
35 ESA.

36 (9) The Treasurer shall continue making deposits into a student's ESA until:

37 (A) The Treasurer determines that the ESA student is no longer an eligible student;

38 (B) The Treasurer determines that there was substantial misuse of the funds in the ESA;

39 (C) The parent or ESA student withdraws from the ESA Program;

40 (D) The ESA student enrolls full-time in a public school; or

41 (E) The ESA student completes a secondary education program.

42 (10) The Treasurer may conduct or contract for the auditing of individual ESAs, and shall,
43 at a minimum, conduct random audits of ESAs on an annual basis.

44 (11) The Treasurer may make any parent or ESA student ineligible for the ESA Program
45 in the event of intentional and substantial misuse of ESA funds.

46 (A) The Treasurer shall establish procedures to ensure that a fair process exists to
47 determine whether an intentional and substantial misuse of ESA funds has occurred.

48 (B) The Treasurer may refer suspected cases of intentional and substantial misuse of ESA
49 funds to the Attorney General for investigation if evidence of fraudulent use of ESA funds is
50 obtained.

51 (C) A parent or ESA student may appeal the Treasurer's decision to make a parent or
52 ESA student ineligible for the ESA Program.

53 (12) The Treasurer may bar an education service provider from accepting payments from
54 ESAs if the Treasurer determines that the education service provider has:

55 (A) Intentionally and substantially misrepresented information or failed to refund any
56 overpayments in a timely manner; or

57 (B) Routinely failed to provide students with promised educational goods or services.

58 (13) The Treasurer shall establish procedures to ensure that a fair process exists to
59 determine whether an education service provider may be barred from receiving payment from
60 ESAs.

61 (A) If the Treasurer bars an education service provider from receiving payments from
62 ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

63 (B) Education service providers may appeal the Treasurer's decision to bar them from
64 receiving payments from ESAs.

65 (14) The Treasurer may accept gifts and grants from any source to cover administrative
66 costs, to inform the public about the ESA Program, or to fund additional ESAs.

67 (b)(1) The Treasurer may propose rules for legislative approval in accordance with the
68 provisions of §29A-3-1 et seq. of this code and may promulgate emergency rules pursuant to the
69 provisions of §29A-3-15 of this code for the administration of this article, and may also include:

70 (A) Establishing or contracting for the establishment of an online anonymous fraud
71 reporting service;

- 72 (B) Establishing an anonymous telephone hotline for fraud reporting;
73 (C) Policies that require a surety bond for education service providers receiving more than
74 \$100,000 in ESA funds;
75 (D) Procedures for refunding payments from education service providers back to ESAs;
76 and
77 (E) Procedures for entering into reciprocal agreements with other state ESA agencies or
78 entities, whether public or private, to recognize and allow education service providers approved
79 in other states to receive payments from ESAs under this article.
- 80 (2) Any rules or policies adopted by the Treasurer should avoid excessive bureaucracy
81 and overly prescriptive mandates and instead focus on easing parental involvement and
82 encouraging education service providers to provide parents and ESA students with a broad array
83 of educational options.

§18-31-6. Parent Review Committee.

- 1 (a) There is created the Parent Review Committee to assist the Treasurer in determining
2 whether questionable expenditures meet the requirements to be considered qualifying expenses
3 to educate the ESA student pursuant to §18-31-3(b) of this code, and to provide recommendations
4 to the Treasurer about how to implement, administer, and improve the ESA Program.
- 5 (b) (1) The Parent Review Committee:
6 (A) Consists of seven members who are parents of ESA students and represent no fewer
7 than four counties in the state; and
8 (B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure
9 for one calendar year and may be reappointed.
- 10 (2) The State Treasurer, or the director's designee, serves as the nonvoting chair of the
11 committee.
- 12 (c) The Treasurer may request the committee to meet, in person or virtually, to determine
13 whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student

14 pursuant to §18-31-3(b) of this code. The committee may deny or approve questionable
15 expenditures by a majority vote.

16 (d) The Treasurer may also request the committee to meet, in person or virtually, to review
17 appeals of education service provider denials pursuant to §18-31-7 of this code, and to provide a
18 recommendation to the Treasurer as to whether an education service provider should be allowed
19 to receive, or continue receiving, payments from ESAs.

§18-31-7. Requirements for and rights of education service providers.

1 (a) To be eligible to accept payments from an ESA, an education service provider shall:

2 (1) Submit notice to the Treasurer that they wish to participate in the ESA Program;

3 (2) Provide parents with a receipt for all qualifying educational expenses;

4 (3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any
5 manner, except that funds may be remitted or refunded to an ESA in accordance with procedures
6 established by the Treasurer;

7 (4) Certify that it will not discriminate on any basis prohibited by any federal law for any
8 purpose; and

9 (5) Agree to submit any employee who will have contact with ESA students to a criminal
10 background check.

11 (b) This article does not limit the independence or autonomy of an education service
12 provider or make the actions of an education service provider the actions of the state government.

13 (c) Education service providers shall be given maximum freedom to provide for the
14 educational needs of ESA students without governmental control.

15 (d) This article does not expand the regulatory authority of the State, its officers, or any
16 school district to impose any additional regulation of education service providers beyond those
17 necessary to enforce the requirements of the program.

§18-31-8. Responsibilities of resident school districts.

1 The resident school district or school district in which the student was last enrolled, as

2 applicable, shall provide an education service provider that has enrolled an ESA student with a
3 complete copy of the student's school records, while complying with the Family Educational
4 Rights and Privacy Act of 1974 (20 U.S.C. §1232 g).

§18-31-9. Legal proceedings.

1 (a) In any legal proceeding challenging the application of this article 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 education service providers.

4 (b) No liability arises on the part of the Treasurer or the State or of any county school
5 district based on the award or use of an ESA 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 of eligible and/or ESA students are permitted to intervene in the
8 lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of
9 judicial administration, a court may limit the number of parents permitted to intervene or require
10 that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of
11 any named state defendant.

NOTE: The purpose of this bill is to create an Education Savings Account Program.

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