

Model Education Savings Account Legislation

SECTION 1. NAME

This act shall be known and may be cited as the “Education Savings Account Act”.

SECTION 2. PURPOSE

- A. There is hereby created the Education Savings Account Program.
- B. The purpose of the Education Savings Account Act is to provide additional educational options to Parents for the education of students in this state, by creating Education Savings Accounts for individual students and empowering Parents to make educational decisions for their children.
- C. Education Savings Accounts shall be established for individual students beginning with the 2019-2020 school year.

SECTION 3. DEFINITIONS

As used in the Education Savings Account Act:

1. “Account” means an education savings account established for an Eligible Student pursuant to this act;
2. “Board” means the State Board of Education;
3. “Department” means the State Department of Education;
4. “Eligible Postsecondary Institution” means an accredited public or private postsecondary institution;
5. “ESA Board” means the entity created in Section 4 of this Act;
6. “Eligible Private School” means any school accredited by the [State] Private School Accrediting Council that has notified the Department of its intention to accept students who are in the Program and comply with the antidiscrimination provisions of 42 U.S.C., Section 2000(d);
7. “Eligible Student” means any student who is a legal resident of [State] and is otherwise eligible to enroll in a public elementary or secondary school;

8. "Eligible Student Originating from a [State] Public School District" means any Eligible Student who was enrolled for at least 100 days in an public elementary or secondary school in [State] prior to becoming a Participating Student;
9. "Participating Student" means any Eligible Student who establishes an Education Savings Account pursuant to the provisions of Sections 5 and 6 of this Act;
10. "Parent" means a resident of the state who is a parent, legal guardian, or other person with the authority to act on behalf of an Eligible Student;
11. "Program" means the Education Savings Account Program;
12. "Resident School District" means the public school district in which the student resides as defined in [Relevant Section] of the [State] Statutes; and
13. "Treasurer" means the Office of the State Treasurer.

SECTION 4. ADMINISTRATION OF THE PROGRAM; CREATION OF ESA BOARD.

A. There is hereby created the Education Savings Account Board, which shall have authority and responsibility to administer the Education Savings Account Program.

B. The ESA Board shall consist of five members, each serving a term of three years. The members of the ESA Board shall be appointed as follows:

1. One member by the Treasurer;
2. One member by the Lieutenant Governor; and
3. Three members by the Governor.

C. No member of the ESA Board may be:

1. A vendor of a Participating Student or Parent;
2. A vendor of the ESA Board, Treasurer, Department, or Board;
3. An employee of the State; or
4. An employee of a public school district.

D. The ESA Board shall be subject to the Open Meetings Act and shall meet as often as necessary to establish and administer the Program.

E. The ESA Board shall annually elect a chairman and vice chairman, and the Treasurer or his designee shall serve as the secretary to the ESA Board.

F. Members of the ESA Board shall not be compensated other than a mileage reimbursement to travel to the meetings of the ESA Board.

G. The ESA Board is hereby vested with the power to sue and be sued, to enter into contracts, to hire staff, to own or lease property, to open and keep accounts, and to perform any other administrative functions required to comply with the provisions of this Act.

SECTION 5. BASIC ELEMENTS OF THE EDUCATION SAVINGS ACCOUNT PROGRAM

A. To enroll an Eligible Student in the Program, a Parent of the Eligible Student shall sign an agreement to do the following:

1. Provide an education for the Eligible Student in at least the subjects of reading, grammar, mathematics, social studies, and science;
2. Not enroll the Eligible Student in a district or charter school other than for contracted services pursuant to paragraph 8 of subsection C of this Section;
3. Release the Eligible Student's Resident School District from all obligations to educate the Eligible Student; and
4. Comply with the expenditure limitations of subsection C of this Section.

B. The form of the agreement described in subsection A of this Section shall be determined by the ESA Board, but in no event shall the ESA Board create additional requirements other than those described in paragraphs 1 through 4 of subsection A of this Section. The agreement shall consist of only one page, and shall be written in simple, concise language that is comprehensible to a person of average intelligence, and the ESA Board shall establish simple procedures for Parents to submit the signed agreements to the ESA Board or the Treasurer.

C. Parents participating in the Program shall use the funds deposited in their Participating Student's Account only for the following qualifying expenses to educate the Participating Student:

1. Tuition and fees at an Eligible Private School.
2. Payment for tutoring.
3. Purchase or lease of education support materials, whether printed, digital, or online. Education support materials include, but are not limited to, curriculum, online courses, textbooks, study guides, tests, lectures, books, and educational video or audio.

4. Fees for testing, including but not limited to national norm-referenced examinations, Advanced Placement examinations or similar courses, examinations related to college or university admission, and career and technical education examinations.
5. Expenses related to traditional co-curricular and extra-curricular activities including but not limited to art, drama, music, athletics, student clubs, and other academic activities.
6. Educational therapies or services for students with special needs.
7. Tuition, fees, and instructional materials at an Eligible Postsecondary Institution or career and technical education provider.
8. Contracted educational services provided at a public school or public school district.
9. Any other valid educational expenses approved by the ESA Board and included in the annual catalogue described in subsection D of this Section.

D. Annually, the ESA Board shall publish a catalogue of vendors approved by the ESA Board to provide goods and services to participants in the Program. The catalogue shall include itemized lists with pricing information for each good or service offered by each vendor. The ESA Board shall establish procedures for receiving applications from qualified vendors and shall have discretion in the formatting and content of the catalogue, but the catalogue shall be simple to use and shall be available online. Nothing in this subsection shall be interpreted to make the catalogue the exclusive list of approved expenditures, but any item included in the catalogue shall be deemed to be conclusively qualified under paragraphs 1 through 9 of subsection C of this Section.

E. The ESA Board and the Treasurer shall develop procedures to receive and repurpose or sell used equipment that Participating Students have purchased utilizing their Education Savings Account. Proceeds derived from such resale shall be credited in the Participating Student's Account. Parents and Participating Students shall not be permitted to resell any equipment purchased utilizing an Education Savings Account, except through channels established in this subsection.

F. A Parent shall be required to annually renew the agreement described in subsection A of this Section in order for a Participating Student to continue in the Program.

G. Participating Students shall be required to annually take a nationally standardized norm-referenced achievement test and provide the results to the Department.

H. A signed agreement under this section shall be deemed school attendance and shall constitute compliance with the compulsory attendance law as set forth in [State] Statutes.

I. A Parent of an Eligible Student shall submit a request to participate in the Education Savings Account Program no later than June 15th preceding the school year for which an

Account is requested. If a request is made after June 15th the Account will not begin receiving funds until the following school year, except as provided in subsection H of this Section.

J. The Parent of an Eligible Student who requests to participate in the Education Savings Account Program after June 15th but prior to November 15th, may request permission from the ESA Board to receive one-half of the amount provided in subsection A of Section 6 for the spring semester of the school year if the Parent provides evidence to the ESA Board of extenuating circumstances that prevented the Eligible Student from submitting a request prior to June 15th, or evidence of intervening circumstances subsequent to June 15th that justify an Eligible Student's departure from a [State] public school district. Documentation that the Eligible Student resided outside of the state on June 15th but has subsequently relocated to the state shall constitute prima facie evidence of extenuating circumstances that prevented the Eligible Student from submitting a request prior to June 15th.

K. Participating Students may continue in the Program once they are determined to be eligible pursuant to this Act until they graduate, return to public school, or it has been found by the ESA Board that the agreement required in this Section has been violated.

L. Monies received and used by the Parent of a Participating Student in compliance with the provisions of this act shall not constitute taxable income to the Parent.

SECTION 6. ESA FUNDING.

A. From funds specifically appropriated by the legislature for this purpose, the annual amount to be deposited into the Education Savings Account of a Participating Student shall be four thousand five hundred dollars (\$4,500.00). One half of the foregoing sum shall be deposited on July 1 preceding the school year for which an Account is requested, and one half of the foregoing sum shall be deposited on December 1 during the school year during for which and Account is requested.

B. Unused funds in an Education Savings Account shall be permitted to accumulate and to be spent in subsequent years within the parameters provided in subsection C of Section 5 of this Act.

C. A Participating Student's Education Savings Account shall be closed on the student's twenty-fifth birthday and any remaining funds shall be returned to the General Revenue Fund of the State.

D. Upon submission of the signed agreement by the Parent as required pursuant to Section 5 of this Act, the Treasurer shall notify the State Department of Education and the ESA Board, and the Treasurer shall:

1. Establish an Education Savings Account in the name of the Participating Student and the Parent;

2. Deposit the amount provided in subsection A of this Section into the Education Savings Account for each Participating Student; and

3. Notify the Participating Student and Parent that the Account has been established and provide instructions for use of the Account.

4. Monies for deposit into the Education Savings Accounts shall be from the funds provided for in Section 11 of this Act for purposes of the Education Savings Account Program and as directed by the Education Savings Account Act.

E. Any Eligible Student who enters the Program shall be removed from the Weighted Average Daily Attendance (WADA) computation for the school district of origin.

F. The Treasurer may retain an amount equal to up to three percent (3%) of the total amount set aside for the Program for administrative services. The retained funds shall be deposited in the Education Savings Account Administrative Fund established in subsection G of this Section.

G. There is hereby established the Education Savings Account Administrative Fund. The fund shall consist of monies retained by the Treasurer pursuant to subsection F of this Section. The Treasurer shall administer the fund, with expenditures subject to the approval of the ESA Board. Monies in the fund shall be used by the Treasurer for the costs of administering the Education Savings Account Program. Monies in the fund shall be exempt from the provisions of law relating to lapsing of appropriations. The legislature may appropriate additional monies to the fund as required to ensure success of the Program. The Treasurer may transfer monies from his general operating fund to the Education Savings Account Administrative Fund as required to ensure the establishment and success of the Program.

H. Subject to approval of the ESA Board, the Treasurer may contract with private financial management firms to manage Education Savings Accounts with the supervision of the Treasurer.

I. The ESA Board may contract with private firms to conduct random audits of Education Savings Accounts to ensure compliance with the provisions of this Act.

J. The ESA Board shall contract with a private firm to conduct an annual financial audit of the Program and shall make the findings of the audit available online.

SECTION 7. NO REBATES TO PARENTS

A. No individual or entity receiving payment from an Education Savings Account shall share with, refund to, or provide a rebate to the Parent or Participating Student any of the funds from an Education Savings Account.

B. Parents shall not receive or accept rebates, refunds, or payments from an Eligible Private School or a provider of educational services using funds from an Education Savings Account.

C. Unless granted permission after application to the ESA Board, Parents shall not use funds in an Education Savings Account to pay themselves or their relatives within the second degree of consanguinity for educational services.

D. Violation of the provisions of this section shall be punishable as a misdemeanor.

SECTION 8. ENFORCEMENT STANDARDS

A. Upon finding that a Parent or Participating Student has intentionally failed to comply with the provisions of this Act, the ESA Board may suspend a Participating Student from the Education Savings Account Program. Provided, the ESA Board must first provide the Parent and Participating Student with written notice and an administrative telephone hearing, or at the Parent's or Participating Student's request, an opportunity to appear at the ESA Board and present evidence refuting the charge. Any Participating Student at risk of being suspended from the Program may appoint an advocate to represent him or her in addition to the Parent.

B. Upon a finding that a Participating Student should be suspended from the Program, and after an appeal as described in subsection C shall have been decided against the Participating Student or the time for appeal has expired, the ESA Board shall:

1. Notify the Treasurer to terminate the Account of the Participating Student;
2. Notify the Parent in writing that the Account has been terminated and that no further transactions will be allowed;
3. Transfer any remaining funds to the general revenue fund.

C. A Parent may appeal to the district court of the county in which the Participating Student resides within thirty days after the decision made by the ESA Board pursuant to subsection B of this Section. Any appeal shall be governed by the usual rules of civil procedure for district courts.

D. In any appeal from a ruling of the ESA Board, the ESA Board shall be represented by the District Attorney for the county in which the appeal is being litigated.

E. If a Parent or Participating Student prevails in the appeal described in this Section, the Parent shall be awarded costs of court and reasonable attorneys' fees and the Treasurer

shall immediately reinstate the Education Savings Account. The ESA Board shall have no right of appeal beyond the district court, but the Parent or Eligible Student shall have an appeal by right to the Court of Civil Appeals.

SECTION 9. NO NEW REGULATION OF PRIVATE SCHOOLS

A. Acceptance by private schools of Participating Students in the Education Savings Account Program shall not expand the regulatory authority of the state or any school district to impose any additional regulation on private schools.

B. Nothing in this Act shall be construed to authorize or permit any state agency to exercise control or supervision over any nonpublic school or students being educated by other means.

C. Educational service providers which accept payment from an Education Savings Account shall not be considered agents of the state or federal government.

D. No liability shall arise on the part of the state, the Treasurer, the ESA Board, the State Board of Education, the State Department of Education, or a school district based on participation in the Program by an Eligible Student.

SECTION 10. REPORTING AND PUBLIC INFORMATION

A. All records related to the administration of the Program shall be subject to the Open Records Act, except as prohibited by federal and state privacy laws, including the Family Educational Rights and Privacy Act (FERPA).

B. The ESA Board shall develop procedures to track and report to the public the progress of the Program and academic outcomes of Participating Students, and may contract with a private firm or a state agency to accomplish this purpose.

C. The Department shall maintain and publish a list of nationally norm-referenced tests identified for purposes of satisfying the testing requirements of this Act. The tests shall meet industry standards of quality in accordance with rules promulgated by the State Board of Education.

D. Upon request of the ESA Board, the Department shall compile test results submitted by Participating Students and develop reports summarizing the results of those tests. Any unique identifying information about Participating Students shall be removed so that no Participating Student may be identifiable. The provisions of this subsection shall not be effective until at least fifty Eligible Students have enrolled in the program.

SECTION 11. APPROPRIATIONS

A. The legislature shall appropriate funds specifically for the purpose of funding Participating Students' Education Savings Accounts, and shall appropriate funds to the ESA Board and Treasurer sufficient to establish and administer the Program.

B. For the fiscal year beginning in 2019, and annually for a period of four (4) years thereafter, the ESA Board, in consultation with the [State] Department of Education, shall:

1. Prior to July 15, determine the number of Eligible Students Originating from a [State] Public School District that have enrolled in the Program for the following school year;

2. Determine the maximum number of students not originating from [State] public school districts who can enroll in the Program for that year, ensuring that students not originating from [State] public school districts do not exceed forty percent (40%) of the total population of students in the Program; and

3. On July 15, conduct a lottery to determine which students not originating from [State] public school districts will be permitted to enroll in the Program if the number of applicants exceeds the number determined pursuant to paragraph 1 of this subsection.

C. The purpose of subsection B of this Section is to ensure that the cost savings associated with Eligible Students leaving the [State] public school system meets or exceeds the cost to the State of funding Education Savings Accounts for students already not in public schools. The intent of the legislature is that the overall ratio of students in the Program consists of at least sixty percent (60%) Eligible Students originating from public schools, and not more than forty percent (40%) not originating from public schools.

D. Beginning on the first day of fiscal year 2024-25, and thereafter, the provisions of subsections B and C of this Section shall become inoperable, and there shall be no limit on the number of students not originating from [State] public school districts that can enroll in the Program.