

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

Introduced

### Senate Bill 525

FISCAL  
NOTE

BY SENATORS MAYNARD, CLINE AND BLAIR

[Introduced March 6, 2017; 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 §18-2E-1, §18-2E-2, §18-2E-3, §18-2E-4, §18-2E-5, §18-2E-6, §18-2E-7,  
 3 §18-2E-8, §18-2E-9 and §18-2E-10, all relating generally to establishing education  
 4 savings 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:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 article, designated §18-2E-1, §18-2E-2, §18-2E-3, §18-2E-4, §18-2E-5, §18-2E-6, §18-2E-7, §18-  
 3 2E-8, §18-2E-9 and §18-2E-10, all to read as follows:

**ARTICLE 2E. EDUCATION SAVINGS ACCOUNTS.**

**§18-2E-1. Definitions.**

1 (a) 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  
 4 section two of this article.

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 article  
16 twenty-eight of this chapter, an eligible institution, a program of distance education that is not  
17 offered by a public school or the department, a tutor or tutoring agency or a parent that has  
18 provided to the State Treasurer the application described in subsection (a), section six of this  
19 article.

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

**§18-2E-2. Establishment of education savings accounts.**

1 (a) Except as otherwise provided in subdivision (5), the parent of any child required by  
2 section one, article eight of this chapter to attend a public school who has been enrolled in a public  
3 school in this state during the period immediately preceding the establishment of an education  
4 savings account pursuant to this section for not less than one hundred school days without  
5 interruption may establish an education savings account for the child by entering into a written  
6 agreement with the State Treasurer, in a manner and form provided by the State Treasurer. The  
7 agreement must 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 section three  
11 of this article in the education savings account established for the child pursuant to subsection (b)  
12 of this section;

13 (3) The money in the education savings account established for the child must be  
14 expended only as authorized by section four of this article; 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 section  
20 five of this article.

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 section one, article eight of this chapter to attend a  
23 public school does not preclude the parent of the child from entering into an agreement for a  
24 subsequent school year.

25 (d) An agreement entered into pursuant to subsection (a) is valid for one school year but  
26 may be terminated early. If the agreement is terminated early, the child may not receive instruction  
27 from a public school in this state until the end of the period for which the last deposit was made  
28 into the education savings account pursuant to section three of this article, except to the extent  
29 the student was allowed to receive instruction from a public school under the 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 section one, article eight of this chapter to attend a public school. The failure to renew an  
35 agreement for any school year does not preclude the parent of the child from renewing the  
36 agreement for any subsequent 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 section one, article eight of this chapter to attend a public school who applies to the State

43 Treasurer in the manner provided by the State Treasurer. The State Treasurer shall make the  
44 application available on the 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 section four of this article, 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 sections one through ten, inclusive, of this article.

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.

**§18-2E-3. Education savings grants.**

1 (a) If a parent enters into or renews an agreement pursuant to section two of this article,  
2 a 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 section one, article twenty  
8 of this chapter, or a child with a household income that is less than one hundred and eighty-five  
9 percent of the federally designated level signifying poverty; one hundred percent of the statewide  
10 average basic 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) must be in a pro rata based on the amount percentage  
16 of the total instruction provided to the child by the participating entity in proportion to the total  
17 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 section two of this article is renewed.

25 (2) When an agreement entered into pursuant to section two of this article is not renewed  
26 or 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.

**§18-2E-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 section one, article  
11 twenty of this chapter, 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 section  
16 five of this article;

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) shall not:

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

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

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

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

**§18-2E-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.

**§18-2E-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 article twenty-  
4 eight of this chapter;

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 or request additional information to demonstrate that the person meets the criteria to serve as a  
13 participating entity. If the applicant is unable to provide such additional information, the State  
14 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) to  
26 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) against an entity  
33 described in subsection (a), the State Treasurer shall provide immediate notice of the action to  
34 each parent of a child receiving instruction from the entity who has entered into or renewed an  
35 agreement pursuant to section two of this article and on behalf of whose child a grant of money  
36 has been deposited pursuant to section three of this article.

**§18-2E-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 section three of this article 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 section; 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) according to  
17 the grade level, gender, race and family income level of each child whose examination results are  
18 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 section two of this article. 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.

**§18-2E-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 section eight  
6 of this article to provide to the participating entity any educational records of the child.

**§18-2E-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.

**§18-2E-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.