

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2013**

BY DELEGATES ELLINGTON, HIGGINBOTHAM, SUMMERS,

HANNA, PINSON, WAMSLEY, KIMBLE, AND D. JEFFRIES

[Originating in the Committee on Finance; February

13, 2021]



1 A BILL to amend and reenact §18-8-1 and §18-8-1a of the Code of West Virginia, 1931, as  
2 amended; to amend said code by adding thereto a new section, designated §18-9A-25;  
3 and to amend said code by adding thereto a new article, designated §18-31-1, §18-31-2,  
4 §18-31-3, §18-31-4, §18-31-5, §18-31-6, §18-31-7, §18-31-8, §18-31-9, §18-31-10, §18-  
5 31-11, §18-31-12, and §18-31-13, all relating to establishing the Hope Scholarship  
6 Program; providing for a short title and definitions; establishing the framework for the  
7 scholarship and establishing guidelines; creating the West Virginia Hope Scholarship  
8 Board and providing for membership qualifications therein; creating a process for  
9 awarding scholarships; establishing funding mechanisms for the scholarships;  
10 establishing qualified expense requirements; creating a renewal process for the  
11 scholarship; creating an administration process for the scholarships; establishing an  
12 auditing mechanism for the scholarships and potential suspension system for providers;  
13 creating requirements and right of education service providers; establishing  
14 responsibilities of resident school districts; and providing for legal proceedings and  
15 severability.

*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-  
20 45 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  
142 in §18-8-1a of this code if the child is an eligible recipient participating in the Hope Scholarship  
143 Program, as provided for in §18-31-1 *et seq.* of this code and provides a notice of intent to  
144 participate in the Hope Scholarship Program to the county superintendent. The county  
145 superintendent shall enter the following into the West Virginia Education Information System  
146 (WVEIS):

147 (1) The filing of the notice of intent pursuant to this subsection;

148 (2) In the case of a Hope Scholarship recipient who chooses an individualized instructional  
149 program, annually, the child's test results or determination that a student is making academic  
150 progress commensurate with his or her age and ability, as applicable, pursuant to §18-31-8(a)(4)  
151 of this code; and

152 (3) In the case of an eligible recipient enrolling in a participating school, annually, the filing  
153 of a notice of enrollment pursuant to §18-31-11(a)(6) of this code.

**§18-8-1a. Commencement and termination of compulsory school attendance; public  
school entrance requirements; exceptions.**

1 (a) Notwithstanding the provisions of section one of this article, compulsory school  
2 attendance begins with the school year in which the sixth birthday is reached prior to September  
3 1 of such year or upon enrolling in a publicly supported kindergarten program and, subject to  
4 subdivision (3) of this subsection, continues to the sixteenth birthday or for as long as the student  
5 continues to be enrolled in a school system after the sixteenth birthday.

6 (1) A child may be removed from such kindergarten program when the principal, teacher  
7 and parent or guardian concur that the best interest of the child would not be served by requiring  
8 further attendance: *Provided*, That the principal shall make the final determination with regard to  
9 compulsory school attendance in a publicly supported kindergarten program.

10 (2) The compulsory school attendance provision of this article shall be enforced against a  
11 person eighteen years of age or older for as long as the person continues to be enrolled in a  
12 school system and may not be enforced against the parent, guardian or custodian of the person.

13 (3) Notwithstanding the provisions of section one of this article, compulsory school  
14 attendance begins with the school year in which the sixth birthday is reached prior to September  
15 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to  
16 the seventeenth birthday or for as long as the student continues to be enrolled in a school system  
17 after the seventeenth birthday: *Provided*, That beginning in the school year 2019-2020,  
18 compulsory school attendance begins with the school year in which the sixth birthday is reached  
19 prior to July 1 of such year or upon enrolling in a publicly supported kindergarten program.

20 (b) A parent, as defined in §18-31-2 of this code, shall have the option, prior to enrolling  
21 in a publicly supported kindergarten program, to apply for a Hope Scholarship on behalf of his or  
22 her child as set forth in §18-31-1 et seq. of this code. Every year thereafter, a parent shall have  
23 the option to renew his or her child's enrollment in the Hope Scholarship Program pursuant to  
24 §18-31-8 of this code.

25 ~~(b)~~ (c) Attendance at a state-approved or Montessori kindergarten, as provided in section  
26 eighteen, article five of this chapter, is deemed school attendance for purposes of this section.  
27 Prior to entrance into the first grade in accordance with section five, article two of this chapter,  
28 each child must have either:

29 (1) Successfully completed such publicly or privately supported, state-approved  
30 kindergarten program or Montessori kindergarten program; or

31 (2) Successfully completed an entrance test of basic readiness skills approved by the  
32 county in which the school is located. The test may be administered in lieu of kindergarten  
33 attendance only under extraordinary circumstances to be determined by the county board.

34 ~~(e)~~(d) Notwithstanding the provisions of this section, section five, article two of this chapter  
35 and section eighteen, article five of this chapter, a county board may provide for advanced  
36 entrance or placement under policies adopted by said board for any child who has demonstrated  
37 sufficient mental and physical competency for such entrance or placement.

38 ~~(d)~~(e) This section does not prevent a student from another state from enrolling in the  
39 same grade in a public school in West Virginia as the student was enrolled at the school from  
40 which the student transferred.

## **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

### **§18-9A-25. Funding for Hope Scholarship Program.**

1 (a) Notwithstanding any other provision of this article to the contrary, for fiscal year 2023  
2 and each fiscal year thereafter, in addition to all other amounts required by this article, the  
3 Department of Education shall include in its budget request, and the Governor shall include in  
4 each budget bill submitted to the Legislature, an appropriation to the Department of Education for  
5 the greater of an amount not less than two percent of net public school enrollment adjusted for  
6 state aid purposes or the total number of eligible Hope Scholarship applications received by the  
7 Treasurer, if available, multiplied by the prior year's statewide average net state aid allotted per  
8 pupil. The amount appropriated shall be transferred by the Department of Education to the State  
9 Treasurer to be used solely to meet the Hope Scholarship Program obligations set forth in §18-  
10 31-1 et seq. of this code except as otherwise provided in this section. The Governor shall also  
11 provide in each budget for the reappropriation for expenditure during the ensuing fiscal year for  
12 those purposes any balance of the annual appropriation to the Department of Education that was  
13 not transferred to the State Treasurer due to an accumulated balance from prior years as provided  
14 under subsection (b) of this section.

15 (b) Each fiscal year, the amount required to be requested and included in the budget bill  
16 for appropriation under subsection (a) of this section shall be reduced by the sum of:

17 (1) Any unused accumulated amounts transferred to the State Treasurer for these  
18 purposes from previous years; and

19 (2) Any unused appropriations made to the Department of Education for these purposes  
20 that were not transferred to the State Treasurer due to an accumulated balance from prior years.

**ARTICLE 31. HOPE SCHOLARSHIP PROGRAM.**

**§18-31-1. Short title.**

1 This article shall be known as the “Hope Scholarship Act.” The program created by this  
2 act shall be known as the “Hope Scholarship 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 (1) “Account” or “scholarship” means a Hope Scholarship account, awarded pursuant to  
4 this article, to which funds are allocated by the Treasurer to the parent or parents of an eligible  
5 Hope Scholarship student in order to pay qualifying education expenses to educate the student  
6 pursuant to the requirements and conditions of this article;

7 (2) “Board” means the Hope Scholarship Board created pursuant to §18-31-3 of this code;

8 (3) “Curriculum” means a complete course of study for a particular content area or grade  
9 level, including any supplemental materials required by the curriculum;

10 (4) “Education service provider” means a person or organization that receives payments  
11 from Hope Scholarship accounts to provide educational goods and services to Hope Scholarship  
12 students;

13 (5) “Eligible recipient” means a child who:

14 (A) Is a resident of this state; and

15 (B) Is enrolled in a public elementary or secondary school program in this state at the time  
16 of application, or is eligible or otherwise required to enroll in a kindergarten program in this state  
17 pursuant to §18-8-1a of this code;

18 (6) "Hope Scholarship student" means a student who receives a scholarship pursuant to  
19 this article;

20 (7) "Parent" means a biological parent, legal guardian, custodian, or other person with  
21 legal authority to act on behalf of an eligible recipient or Hope Scholarship student;

22 (8) "Participating school" means any private school that provides education to elementary  
23 and/or secondary students and has notified the Treasurer of its intention to participate in the  
24 program and comply with the program's requirements;

25 (9) "Resident school district" means the county school district in which the student resides;  
26 and

27 (10) "Treasurer" means the West Virginia State Treasurer's Office.

**18-31-3. West Virginia Hope Scholarship Board; members; terms; compensation;**  
**proceedings generally.**

1 (a) The West Virginia Hope Scholarship Program shall be administered by the West  
2 Virginia Hope Scholarship Board.

3 (b) The board shall consist of seven members and include the following:

4 (1) The State Treasurer;

5 (2) The State Auditor, or his or her designee;

6 (3) A representative of an organization in the state designated as a Protection and  
7 Advocacy agency, as provided in 45 CFR §1326.20, appointed by the Governor, with the advice  
8 and consent of the Senate; and

9 (4) Four members appointed by the Governor with the advice and consent of the Senate  
10 who are parents of Hope Scholarship students, or for the initial appointments of board members

11 following the effective date of this article, parents who intend to apply for the Hope Scholarship  
12 on behalf of eligible recipients, to be appointed as follows:

13 (A) Only state residents are eligible for appointment to the board;

14 (B) The members shall reside in geographically diverse areas of the state, with no more  
15 than two members residing in the same county;

16 (C) Members shall be initially appointed to staggered terms as follows:

17 (i) One member appointed by the Governor to a one-year term;

18 (ii) One member appointed by the Governor to a two-year term; and

19 (iii) Two members each appointed by the Governor to a three-year term.

20 After the initial staggering of terms, appointed board members shall serve for three-year  
21 terms and are eligible for reappointment at the expiration of their terms; and

22 (E) If there is a vacancy among appointed members, the vacancy shall be filled by  
23 appointment to the unexpired term of a person meeting the requirements of this section by the  
24 Governor with the advice and consent of the Senate. Members of the board shall serve until the  
25 later of the expiration of the term for which the member was appointed or the appointment of his  
26 or her successor.

27 (c) Members of the board shall serve without compensation. The Treasurer may pay all  
28 reasonable and necessary expenses, including travel expenses, actually incurred by board  
29 members in the conduct of their official duties. Any expense payments shall be made from the  
30 West Virginia Hope Scholarship Program Expense Fund at the same rate paid to state  
31 employees.

32 (d) The Treasurer is the chairman and presiding officer of the board. The Treasurer may  
33 provide office space and staff as requested by the board.

34 (e) A majority of the members of the board constitutes a quorum for the transaction of the  
35 business of the board.

36 (f) The board shall be subject to the Open Governmental Proceedings Act set forth in §6-  
37 9A-1 et seq. of this code and the Freedom of Information Act set forth in §29B-1-1 et seq. of this  
38 code.

**§18-31-4. Powers of the board.**

1 The board is authorized to take any action necessary to effectuate the provisions of this  
2 article and to successfully administer the Hope Scholarship Program, subject to applicable state  
3 and federal law, including, but not limited to the following:

4 (1) Adopt and amend bylaws;

5 (2) Execute contracts and other instruments for necessary goods and services, employ  
6 necessary personnel and engage the services of private consultants, actuaries, auditors, counsel,  
7 managers, trustees, and any other contractor or professional needed for rendering professional  
8 and technical assistance and advice: *Provided*, That election of these services is not subject to  
9 the provisions of §5A-3-1 et seq. of this code;

10 (3) Implement the program through the use of financial organizations as account  
11 depositories and managers;

12 (4) Develop and impose requirements, policies, procedures, and guidelines to implement  
13 and manage the program;

14 (5) Determine whether an expenditure of Hope Scholarship funds is or was a qualifying  
15 expense to educate a Hope Scholarship student pursuant to §18-31-7 of this code. The board  
16 may approve or deny expenditures by a majority vote.

17 (6) Review any appeals made pursuant to §18-31-10(b) and §18-31-10(d) of this code.

18 (7) Establish the method by which funds shall be allocated to pay for administrative costs  
19 and assess, collect and expend administrative fees, charges, and penalties;

20 (8) Authorize the assessment, collection and retention of fees and charges against the  
21 amounts paid into and the earnings on the trust funds by a financial institution, investment

22 manager, fund manager, West Virginia Investment Management Board, West Virginia Board of  
23 Treasury Investments, or other professional managing or investing the trust funds and accounts;

24 (9) Invest and reinvest any of the funds and accounts under the Treasurer and board's  
25 control with a financial institution, an investment manager, a fund manager, the West Virginia  
26 Investment Management Board, West Virginia Board of Treasury Investments, or other  
27 professionals investing the funds and accounts: *Provided*, That investments made under this  
28 article shall be made in accordance with the provisions of §44-6C-1 *et seq.* of this code.

29 (10) Solicit and accept gifts, including bequests and other testamentary gifts made by will,  
30 trust, or other disposition; grants; loans; aid; and property, real or personal of any nature and from  
31 any source, or to participate in any other way in any federal, state, or local governmental programs  
32 in carrying out the purposes of this article: *Provided*, That the Treasurer and board shall use the  
33 property received to effectuate the desires of the donor, and shall convert the property received  
34 into cash within 180 days of receipt;

**§18-31-5. Award of Hope Scholarships.**

1 (a) The Hope Scholarship Program is established to provide the option for a parent to  
2 better meet the individual education needs of his or her eligible child. The program shall be  
3 operational no later than July 1, 2022.

4 (b) The board shall create a standard application form that a parent can submit to establish  
5 his or her student's eligibility for the award of Hope Scholarship funds, to be placed in a personal  
6 education savings account to be used for qualifying education expenses on behalf of the eligible  
7 recipient as provided for in §18-31-7 of this code. Information about scholarship funds and the  
8 application process shall be made available on the Treasurer's website.

9 (c) The Treasurer's Office shall make such applications available no later than March 1,  
10 2022 and shall begin accepting applications immediately thereafter. The board may update the  
11 application as needed. The board shall issue an award letter to eligible recipients within 45 days  
12 of receipt of a completed application and all required documentation.

13 (d) The board shall approve an application for a Hope Scholarship if all of the following  
14 circumstances are met:

15 (1) A parent submits an application for a Hope Scholarship in accordance with the  
16 procedures established by legislative rule by the board;

17 (2) A student on whose behalf the parent is applying is an eligible recipient, as provided  
18 for in §18-31-2(5) of this code;

19 (3) The parent signs an agreement with the board, promising to do all of the following:

20 (A) To provide an education for the eligible recipient in at least the subjects of reading,  
21 language, mathematics, science, and social studies;

22 (B) To use the Hope Scholarship funds exclusively for qualifying expenses as provided for  
23 in §18-31-7 of this code;

24 (C) To comply with the rules and requirements of the Hope Scholarship program; and

25 (D) To afford the Hope Scholarship student opportunities for educational enrichment such  
26 as organized athletics, art, music, or literature; and

27 (4) The Treasurer confirms with the West Virginia Department of Education that the  
28 student satisfies §18-31-2(5)(B) of this code: *Provided*, That if the department does not reply  
29 within 30 days, this criteria is considered satisfied.

30 (e) An application for a Hope Scholarship is confidential and not a public record subject to  
31 release pursuant to the West Virginia Freedom of Information Act, as codified in §29B-1-1 *et seq.*  
32 of this code.

**§18-31-6. Funding of Hope Scholarships.**

1 (a) There is hereby created in the State Treasury a special revenue fund designated and  
2 known as the West Virginia Hope Scholarship Program Trust Fund. The fund shall be  
3 administered by the Treasurer and shall consist of funds transferred by the Department of  
4 Education in accordance with §18-9A-10(a)(6) and §18-31-6(b) of this code.

5           (b) The amount of Hope Scholarship funding granted to an eligible recipient on a yearly  
6 basis shall be equal to 100 percent of the prior year's statewide average net state aid share  
7 allotted per pupil based on net enrollment adjusted for state aid purposes, subject to the provisions  
8 of subsection (c) of this section: *Provided*, That the amount of the funding to an eligible recipient  
9 who is awarded a Hope Scholarship account for less than a full fiscal year shall be prorated based  
10 on the portion of the fiscal year the eligible recipient is awarded the Hope Scholarship account.  
11 On or prior to the submission of the Department of Education's budget request each year, the  
12 Treasurer shall notify the Department of Education of the total number of eligible Hope  
13 Scholarship applications received by the Treasurer, for purposes of facilitating the necessary  
14 transfer of funds pursuant to §18-9A-10(a)(6) of this code.

15           (c) Expenditures from the Hope Scholarship Fund shall be limited to the purposes set forth  
16 in this article: *Provided*, That an amount not to exceed five percent of the fund shall be transferred  
17 annually to the West Virginia Hope Scholarship Program Expense Fund established in subsection  
18 (h) of this section to cover the annual administrative costs of the Hope Scholarship Program. If  
19 the number of Hope Scholarship accounts increases significantly after any fiscal year, the  
20 Treasurer may request an appropriation by the Legislature to the West Virginia Hope Scholarship  
21 Program Expense Fund in an amount equal to the administrative costs associated with the  
22 increase in Hope Scholarship accounts.

23           (d) The first deposit of Hope Scholarship funds into an eligible recipient account shall be  
24 subject to the execution of the parental agreement required by §18-31-5 of this code. Upon  
25 execution of the required parental agreement, and subject to the provisions of §18-31-9(7) of this  
26 code, one half of the total annually required deposit shall be made no later than August 15 of  
27 every year into an eligible recipient's Hope Scholarship account, and one half of the total annually  
28 required deposit shall be made no later than January 15 of every year. Any funds remaining in a  
29 Hope Scholarship account at the end of the fiscal year may be carried over to the next fiscal year  
30 upon successful renewal of the account.

31 (e) Funds deposited in a student's Hope Scholarship account, other than those funds  
32 expended on transportation services pursuant to §18-31-7(11) of this code, do not constitute  
33 taxable income to the parent or the Hope Scholarship student.

34 (f) The Treasurer shall continue to make deposits into an eligible recipient's Hope  
35 Scholarship account in accordance with the provisions of this section unless any of the following  
36 conditions have occurred:

37 (1) A parent of an eligible recipient fails to renew a Hope Scholarship account or withdraws  
38 from the Hope Scholarship Program;

39 (2) The board determines that a student is no longer eligible for a Hope Scholarship;

40 (3) The board suspends or revokes participation in the Hope Scholarship Program for  
41 failure to comply with the requirements of this article;

42 (4) The Hope Scholarship student successfully completes a secondary education  
43 program; or

44 (5) The Hope Scholarship student reaches 21 years of age.

45 (g) If any of the conditions in subsection (f) of this section occur, the board shall notify the  
46 parent that the eligible recipient's account will be closed in 45 calendar days. If a parent fails to  
47 adequately address the condition or conditions upon which closure is based or does not respond  
48 within 30 calendar days of receipt of notice, the board shall close the account and any remaining  
49 moneys shall be returned to the state.

50 (h)(1) There is hereby created in the State Treasury a special revenue fund designated  
51 and known as the West Virginia Hope Scholarship Program Expense Fund. The account shall  
52 consist of moneys received pursuant to §18-31-6(c) of this code, or any governmental or private  
53 grants and any state general fund appropriations, if any, for the Hope Scholarship Program.

54 (2) All expenses incurred by the Treasurer or the board in developing and administering  
55 the Hope Scholarship Program shall be payable from the West Virginia Hope Scholarship  
56 Expense Fund.

**§18-31-7. Qualifying Expenses for Hope Scholarship Accounts.**

1           (a) Parents of a Hope Scholarship student shall agree to use the funds deposited in their  
2 student's Hope Scholarship account only for the following qualifying expenses to educate the  
3 student:

4           (1) Ongoing services provided by a public school district pursuant to §18-31-8(f) of this  
5 code, including without limitation, individual classes and extracurricular activities and programs;

6           (2) Tuition and/or fees at a participating school;

7           (3) Tutoring services provided by an individual or a tutoring facility: *Provided*, That such  
8 tutoring services are not provided by a member of the Hope Scholarship student's immediate  
9 family;

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

13           (5) Tuition and/or fees for programs of study or the curriculum of courses that lead to an  
14 industry-recognized credential that satisfies a workforce need;

15           (6) Tuition and/or fees for nonpublic online learning programs;

16           (7) Tuition and/or fees for alternative education programs;

17           (8) Fees for after-school or summer education programs;

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

20           (10) Curriculum as defined in §18-31-2 of this code;

21           (11) Fees for transportation paid to a fee-for-service transportation provider for the student  
22 to travel to and from an education service provider; and

23           (12) Any other qualified expenses as approved by the board established pursuant to §18-  
24 31-3 of this code.

25 (b) The funds in a Hope Scholarship account may only be used for educational purposes  
26 in accordance with subsection (a) of this section. Nothing in this section requires that a Hope  
27 Scholarship student be enrolled, full- or part-time, in either a private school or nonpublic online  
28 school.

29 (c) Hope Scholarship funds may not be refunded, rebated, or shared with a parent or  
30 student in any manner. Any refund or rebate for goods or services purchased with Hope  
31 Scholarship funds shall be credited directly to a student's Hope Scholarship account.

32 (d) Nothing in this section prohibits the parents of a Hope Scholarship student from making  
33 payments for the costs of educational goods and services not covered by the funds in their  
34 student's Hope Scholarship account. However, personal deposits into a Hope Scholarship  
35 account are not permitted.

**§18-31-8. Renewal of Hope Scholarship Accounts; participation in public school system.**

1 (a) A parent must renew an eligible recipient's Hope Scholarship on an annual basis.  
2 Notwithstanding any changes in eligibility, a Hope Scholarship student who has previously  
3 qualified for a Hope Scholarship account remains eligible to apply for renewal until one of the  
4 conditions set forth in §18-31-6(f) occurs: *Provided*, That the board shall verify with the  
5 Department of Education the following information by July 1 of every year:

- 6 (1) A list of all active Hope Scholarship Accounts;  
7 (2) The resident school district of each Hope Scholarship student;  
8 (3) For a Hope Scholarship student who chooses to attend a participating school, annual  
9 confirmation of his or her continued attendance at a nonpublic school that complies with all  
10 requirements that other nonpublic school students must comply with; and  
11 (4) For a Hope Scholarship student who chooses an individualized instructional program:  
12 (A) (i) He or she has annually taken a nationally normed standardized achievement test  
13 of academic achievement;

14 (ii) The mean of the child's test results in the subject areas of reading, language,  
15 mathematics, science and social studies for any single year is within or above the fourth stanine  
16 or, if below the fourth stanine, show improvement from the previous year's results; and

17 (iii) The child's test results are reported to the county superintendent; or

18 (B) (i) A certified teacher conducts a review of the student's academic work annually;

19 (ii) The certified teacher determines that the student is making academic progress  
20 commensurate with his or her age and ability; and

21 (iii) The certified teacher's determination is reported to the county superintendent.

22 (b) Each county superintendent shall submit the test results and determinations reported  
23 to him or her pursuant to subsection (a) of this section to the Department of Education each year  
24 on or before June 15.

25 (c) If a parent fails to renew an eligible recipient's Hope Scholarship, the board shall notify  
26 the parent that the eligible recipient's account will be closed in 45 calendar days. If a parent  
27 chooses not to renew or does not respond within 30 calendar days of receipt of notice, the board  
28 shall close the account and any remaining moneys shall be returned to the state.

29 (d) If an eligible recipient decides to return to the Hope Scholarship Program after failing  
30 to renew, they must reapply.

31 (e) The board, in consultation with the Department of Education, may adopt rules and  
32 policies to provide the least disruptive process for Hope Scholarship students who desire to stop  
33 receiving Hope Scholarship payments and return full-time to a public school.

34 (f) The board, in consultation with the Department of Education, may adopt rules and  
35 policies for Hope Scholarship students who want to continue to receive services provided by a  
36 public school or district, including individual classes and extracurricular programs, in combination  
37 with an individualized instructional program. The board, in consultation with the Department of  
38 Education, shall ensure that any public school or school district providing such services receives  
39 the appropriate pro rata share of a student's Hope Scholarship funds based on the percentage of

40 total instruction provided to the student by the public school or school district. County boards shall  
41 charge tuition to Hope Scholarship students who enroll for services in a public school within the  
42 county. Hope Scholarship students who enroll for services part-time in public school shall not be  
43 included in net enrollment for state aid funding purposes under §18-9A-2 of this code. Nothing in  
44 this subsection prohibits a Hope Scholarship student from using the funds deposited in his or her  
45 account on both services provided by a public school or district and other qualifying expenses as  
46 provided for in §18-31-7 of this code.

**§18-31-9. Administration of Hope Scholarship Accounts.**

1 In addition to the duties, obligations, and authority stated in other parts of this article, the  
2 board has the following duties, obligations, and authority with respect to the administration of  
3 Hope Scholarship accounts:

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

6 (2) To provide parents with a written explanation of the allowable uses of Hope Scholarship  
7 funds, the responsibilities of parents, the duties of the Treasurer and the board and the role of  
8 any private financial management firms or other private organizations that the board may contract  
9 with to administer the Hope Scholarship Program or any aspect of the program.

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

14 (4) The board may contract with private organizations to administer the Hope Scholarship  
15 Program. This includes, but is not limited to, private financial management firms to manage Hope  
16 Scholarship accounts.

17 (5) The board 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 Hope

19 Scholarship accounts to participating schools or education service providers, including, but not  
20 limited to, the use of debit cards or other electronic or online fund transfers: *Provided*, That a Hope  
21 Scholarship account may not be reduced for debit card or electronic payment fees.

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

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

35 (8) The Treasurer may accept gifts and grants from any source to cover administrative  
36 costs, to inform the public about the Hope Scholarship Program, or to provide additional funding  
37 for Hope Scholarship Accounts.

38 (9) The board may propose legislative rules for legislative approval pursuant to §29A-3-1  
39 et seq. of this code, including emergency rules, if necessary, to meet timelines set forth in this  
40 article, that are not inconsistent with this article and that are necessary for the administration of  
41 this article, including:

42 (A) Establishing or contracting for the establishment of a fraud reporting system;

43 (B) Policies that require a surety bond for education service providers receiving more than  
44 \$100,000 in Hope Scholarship funds;

45 (C) Procedures for refunding payments from education service providers back to Hope  
46 Scholarship accounts; and

47 (D) Procedures for entering into reciprocal agreements with other state education savings  
48 account agencies or entities, whether public or private, to recognize and allow education service  
49 providers approved in other states to receive payments from Hope Scholarship accounts under  
50 this article.

51 (10) Any rules or policies adopted by the board should avoid excessive bureaucracy and  
52 overly prescriptive mandates and instead focus on easing parental involvement and encouraging  
53 education service providers to provide parents and Hope Scholarship students with a broad array  
54 of educational options.

**§18-31-10. Auditing of Hope Scholarship Program; suspension of accounts and providers.**

1 (a) The board may propose legislative rules for legislative approval pursuant to §29A-3-1  
2 et seq. of this code for the auditing of individual Hope Scholarship accounts and shall conduct or  
3 contract for the random auditing of individual Hope Scholarship accounts as needed to ensure  
4 compliance with the requirements of this article and rules promulgated pursuant to this article.

5 (b) As part of the auditing process, the board may remove a parent or eligible recipient  
6 from the Hope Scholarship program and close a Hope Scholarship account for failure to comply  
7 with the terms of the parental agreement required by §18-31-5 of this code, failure to comply with  
8 the applicable laws, failure of the student to remain eligible, or intentional and fraudulent misuse  
9 of Hope Scholarship funds: *Provided*, That the board shall create procedures to ensure that a fair  
10 process exists to determine the removal of a parent or eligible recipient from the Hope Scholarship  
11 program and a parent or Hope Scholarship student may appeal the decision to make the student  
12 ineligible for funds to the board.

13 (c) The board may conduct or contract for the audit of education service providers  
14 accepting payments from Hope Scholarship accounts if it determines that the education service  
15 provider has:

16 (1) Intentionally and substantially misrepresented information or failed to refund any  
17 overpayments in a timely manner; or

18 (2) Routinely failed to provide students with promised educational goods or services.

19 (d) If the board determines that an education service provider has intentionally and  
20 substantially misused Hope Scholarship funds, the board may bar the education service provider  
21 from continuing to receive payments. The board shall create procedures to ensure that a fair  
22 process exists to determine whether an education service provider may be barred from receiving  
23 payment from Hope Scholarship accounts and an education service provider may appeal a  
24 decision to bar it from receiving payments to the board. If the board bars an education service  
25 provider from receiving payments from Hope Scholarship accounts, it shall notify parents and  
26 students of its decision as quickly as possible.

27 (e) If the board obtains evidence of potential fraudulent use of Hope Scholarship funds, it  
28 may refer suspected cases to the State Auditor for purposes of investigation, collection and  
29 potential criminal investigation.

**§ 18-31-11. Requirements for and rights of education service providers.**

1 (a) To be eligible to accept payments from a Hope Scholarship account, an education  
2 service provider shall:

3 (1) Submit notice to the Treasurer that they wish to participate in the Hope Scholarship  
4 Program;

5 (2) Provide participating parents with a receipt for all qualifying educational expenses for  
6 the Hope Scholarship student;

7 (3) Agree not to refund, rebate, or share Hope Scholarship funds with parents or students  
8 in any manner, except that funds may be remitted or refunded to a Hope Scholarship account in  
9 accordance with §18-31-7(c) of this code;

10 (4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981;

11 (5) Agree to submit any employee who will have contact with Hope Scholarship students  
12 to a criminal background check; and

13 (6) In the case of a participating school, provide notice of enrollment annually to the county  
14 superintendent of any student for which a student's tuition is being paid through the Hope  
15 Scholarship Program.

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

18 (c) Education service providers shall be given maximum freedom to provide for the  
19 educational needs of Hope Scholarship students without governmental control.

20 (d) A participating school or education service provider is not required to alter its creed,  
21 practices, admission policy, hiring policy or curriculum in order to accept eligible recipients whose  
22 parents pay tuition or fees from a Hope Scholarship account pursuant to this article.

23 (e) This article does not expand the regulatory authority of the state, its officers, or any  
24 school district to impose any additional regulation of education service providers beyond those  
25 necessary to enforce the requirements of the program.

**§18-31-12. Responsibilities of resident school districts.**

1 The resident school district or school district in which a Hope Scholarship student was last  
2 enrolled, as applicable, shall provide an education service provider that has enrolled the student  
3 with a 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).

**§18-31-13. Legal proceedings; severability.**

1 (a) In any legal proceeding challenging the application of this article to a participating  
2 education service provider, the state bears the burden of establishing that the challenged action,  
3 rule, or requirement is necessary and does not impose any undue burden on education service  
4 providers.

5           (b) No liability arises on the part of the board or the state or of any county school district  
6 based on the award or use of a Hope Scholarship awarded pursuant to this article.

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

13           (d) If any provision of this article or the application of any such provision of this article to  
14 any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of  
15 this article or the application of its provisions to persons or circumstances other than those to  
16 which it is held invalid is not affected thereby.