House Curriculum, Testing, & Innovation Subcommittee Am. #1

Amendment No._____

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Date _____
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Clerk _____
Comm. Amdt. _____

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Signature of Sponsor

AMEND Senate Bill No. 795 House Bill No. 939*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, is amended by adding the following language as a new part:

49-6-2601. This part shall be known and may be cited as the "Tennessee Education Savings Accounts Act."

49-6-2602.

As used in this part, unless the context otherwise requires:

(1) "Department" means the department of education;

(2) "Eligible postsecondary institution" means:

(A) An institution operated by:

(i) The board of trustees of the University of Tennessee;

(ii) The board of regents of the state university and community college system; or

(iii) A local governing board of trustees of a state university in this state; or

(B) A private postsecondary institution accredited by an accrediting organization approved by the state board of education;

(3) "Eligible student" means a resident of this state who:

(A)

(i) Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately

preceding the school year for which the student receives an education savings account;

(ii) Is eligible to enroll in a Tennessee school for the first time; or

(iii) Received an education savings account in the previous school year;

(B) Is a student in any of the grades kindergarten through twelve (K-12);

(C) Is zoned to attend a school in an LEA with three (3) or more schools among the bottom ten percent (10%) of schools in accordance with § 49-1-602(b)(3); and

(D) Is a member of a household with an annual income for the previous year that does not exceed twice the federal income eligibility guidelines for reduced-price lunch;

(4) "ESA" means an education savings account created by this part;

(5) "High school" means a school in which any combination of grades nine through twelve (9-12) are taught; provided, that the school must include grade twelve (12);

(6) "Legacy student" means a participating student who:

(A)

(i) Graduates from high school; or

(ii) Exits the program by reaching twenty-two (22) years of age;

(B) Has funds remaining in the student's education savings account; and

(C) Has an open education savings account;

(7) "Local education agency" or "LEA" has the same meaning as defined in § 49-1-103;

(8) "Parent" means the parent, guardian, person who has custody of the child, or individual who has caregiving authority under § 49-6-3001;

(9) "Participating school" means a private school, as defined by § 49-6-3001(c)(3), that meets the requirements established by the department of education and the state board of education for a Category I, II, or III private school, and that seeks to enroll eligible students;

(10) "Participating student" means:

(A) An eligible student who is seventeen (17) years of age or younger and whose parent is participating in the education savings account program; or

(B) An eligible student who has reached the age of eighteen (18) and who is participating in the education savings account program;

(11) "Program" means the education savings account program created in this part;

(12) "Provider" means an individual or business that provides educational services in accordance with this part and that meets the requirements established by the department of education and the state board of education; and

(13) "State board" means the state board of education.

49-6-2603.

(a) To participate in the program, a parent of an eligible student who is seventeen (17) years of age or younger, or an eligible student who has reached the age of eighteen (18) must agree in writing to:

(1) Ensure the provision of an education for the participating student that satisfies the compulsory school attendance requirement provided in § 49-6-3001(c)(1) and, at a minimum, includes the subjects of English language arts, mathematics, social studies, and science;

(2) Not enroll the participating student in a public school while participating in the program;

(3) Release the LEA in which the participating student resides from all obligations to educate the participating student while participating in the program. Participation in the program has the same effect as a parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1414); and

(4) Only use the funds deposited in a participating student's ESA for one (1) or more of the following expenses of the student:

(A) Tuition or fees at a participating school;

(B) Textbooks required by a participating school;

(C) Tutoring services provided by a tutor or tutoring facility that meets the requirements established by the department and the state board;

(D) Payment for purchase of curriculum, including any supplemental materials or instruments required by the curriculum. As used in this subdivision (a)(4)(D), "curriculum" means instructional educational materials for an academic course of study;

(E) Fees for transportation to and from a participating school or educational provider paid to a fee-for-service transportation provider;

(F) Tuition and fees for an eligible nonpublic online learning program or course that meets the requirements set by the department and the state board;

(G) Fees for early postsecondary opportunity courses and examinations required for college admission;

(H) Services provided under a contract with a public school, including individual classes or extracurricular programs;

(I) Computer hardware or other technological devices approved by the department, if the computer hardware or other technological device is used for the student's educational needs;

(J) School uniforms, if required by a participating school;

(K) Tuition and fees for summer education programs and specialized afterschool education programs, as approved by the department, which do not include afterschool childcare;

(L) Tuition and fees at an eligible postsecondary institution;

(M) Textbooks required by an eligible postsecondary institution;

(N) Contributions to a Tennessee state-sponsored college savings educational investment trust account established pursuant to chapter 7, part 8 of this title and § 529 of the Internal Revenue Code (26 U.S.C. § 529), in accordance with state and federal law and all relevant rules, regulations, notices, and interpretations by the United States department of the treasury, including interpretations of the Internal Revenue Code; provided, however, that the contributions and earnings from the contributions shall only be used for postsecondary educational expenses;

(O) Educational therapy services provided by therapists that meet the requirements established by the department and the state board; or

(P) Fees for the management of the ESA by a private or non-profit financial management organization, as approved by the department.

(b) This part does not prohibit a parent or third party from paying the costs of educational programs and services for a participating student that are not covered by the funds in an ESA.

(c) When a participating student reaches the age of eighteen (18), the rights accorded to, and any consent required of, the participating student's parent under this part transfer from the participating student's parent to the participating student.

(d) For purposes of continuity of educational attainment, and subject to the eligibility requirements of § 49-6-2603(a)(3), a participating student shall participate in the program until the participating student enrolls in a public school, ceases to be a

resident of Tennessee, graduates or withdraws from high school, or reaches twenty-two (22) years of age between the commencement of the school year and the conclusion of the school year, whichever occurs first, unless the student is suspended or terminated from participating in the program under § 49-6-2608.

(e) A participating student may return to the student's LEA at any time after enrolling in the program. Upon a participating student's return to the student's LEA, the student's ESA will be closed and any remaining funds must be returned to the state treasurer to be placed in the basic education program account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(f) If a participating student ceases to be a resident of this state, then the student's ESA will be closed and any remaining funds must be returned to the state treasurer to be placed in the basic education program account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(g) Any funds remaining in a participating student's ESA upon graduation from high school or exiting the program by reaching twenty-two (22) years of age may be used by the student when the student becomes a legacy student to attend or take courses from an eligible postsecondary institution, with qualifying expenses subject to the conditions of subdivision (a)(4).

(h) A participating student's ESA will be closed, and any remaining funds must be returned to the state treasurer to be placed in the basic education program account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358, after the first of the following events:

(1) Upon a legacy student's graduation from an eligible postsecondary institution;

(2) After four (4) consecutive years elapse immediately after a legacy student enrolls in an eligible postsecondary institution;

(3) After a participating student or legacy student exits the program and is not enrolled in an eligible postsecondary institution; or

(4) After a participating or legacy student reaches twenty-two (22) years of age and is not enrolled in an eligible postsecondary institution.

(i) Funds received pursuant to this part:

(1) Constitute a scholarship provided for use on qualified educational expenses listed in subdivision (a)(4); and

(2) Do not constitute income of a parent of a participating student under title 67, chapter 2 or any other state law.

(j) A student who is eligible for both the program created under this part and an individualized education account under the Individualized Education Act, compiled in chapter 10, part 14 of this title, may apply for both programs but must only participate and receive assistance from one (1) program.

(k) The state board shall adopt rules regarding the spending requirements for ESA funds and the use of any unspent funds. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

49-6-2604.

(a) The department shall establish:

(1) Procedures to determine student eligibility in accordance with the requirements established by this part;

(2) An application form that a parent of a student or a student who has reached the age of eighteen (18), may submit to the department to determine the student's eligibility for an ESA and make the application form readily available on the department's website;

(3) An approval process for a private school to become a participating school;

(4) An application form that a private school may submit to the department to become a participating school and make the application form readily available on the department's website; and

(5) An annual application period for a parent of a student, or a student who has reached the age of eighteen (18), to apply for the program.

(b) The program shall begin enrolling participating students no later than the 2021-2022 school year.

(c) The number of participating students enrolled in the program must not exceed:

(1) For the first school year of operation, five thousand (5,000) students;

(2) For the second school year of operation, seven thousand five hundred (7,500) students;

(3) For the third school year of operation, ten thousand (10,000) students;

(4) For the fourth school year of operation, twelve thousand five hundred (12,500) students;

(5) For the fifth school year of operation, fifteen thousand (15,000) students; and

(6) For the sixth school year of operation, and for each school year thereafter, the maximum number of students permitted to participate in the program in the previous school year plus one thousand (1,000) additional students.

(d)

(1) Notwithstanding subsection (c), if, in the application period for a school year, the number of program applications received by the department does not exceed the maximum number of students that may participate in the program for that school year under subsection (c), then the maximum number of students that may participate in the program for that school year must remain in place for subsequent school years until the number of applications during a subsequent program application period exceeds that maximum number.

(2) Once the number of applications during a subsequent program application period exceeds the maximum number that has remained in place under subdivision (d)(1), then, during the next school year for which an increase is practicable, the maximum number of students that may participate in the program for that school year shall increase to the number of students provided for under subsection (c) that is closest to, and in excess of, the number of applications received.

(3) This subsection (d) is subject to the caps on the maximum number of students that may participate in the program for a particular school year under subsection (c).

(e) If, in the application period for a school year, the number of program applications received by the department exceeds the maximum number of students that may participate in the program for that school year under subsection (c), then the department shall select students for participation in the program through an enrollment lottery process. Students who participated in the program in the previous school year receive enrollment preference and, as a result, are excluded from entering into an enrollment lottery. If an enrollment lottery is conducted, then enrollment preference must be granted in the following order:

(1) Students who have a sibling participating in the program;

(2) Students zoned to attend a priority school as defined by the state's accountability system pursuant to § 49-1-602;

(3) Students eligible for direct certification under 42 U.S.C. § 1758(b)(4); and

(4) All other eligible students.

49-6-2605.

(a) The maximum annual amount to which a participating student is entitled under the program must be equal to the amount representing the per pupil state and

local funds generated and required through the basic education program (BEP) for the LEA in which the participating student resides.

(b)

(1) For the purpose of funding calculations, each participating student must be counted in the enrollment figures for the LEA in which the participating student resides. The ESA funds for participating students must be subtracted from the state BEP funds otherwise payable to the LEA. The department shall remit funds to a participating student's ESA on at least a quarterly basis. Any funds awarded under this part are the entitlement of the participating student or legacy student, under the supervision of the participating student's or legacy student's parent if the participating student or legacy student is seventeen (17) years of age or younger.

(2)

(A) There is established a school improvement fund to be administered by the department that, for the first three (3) fiscal years in which the program accepts participating students and subject to appropriation, shall disburse an annual grant to each LEA to be used for school improvement in an amount equal to the ESA amount for participating students under the program who:

(i) Were enrolled in and attended a school in the LEA for the one (1) full school year immediately preceding the school year in which the student began participating in the program; and

(ii) Generate BEP funds for the LEA in the applicable fiscal year that will be subtracted from the state BEP funds payable to the LEA under subdivision (b)(1).

(B) After the first three (3) fiscal years in which the program accepts participating students, the department shall disburse any appropriations to the fund established in this subdivision (b)(2) as school

improvement grants for programs to support priority schools as defined by the state's accountability system pursuant to § 49-1-602.

(3) Any balance in the fund established in subdivision (b)(2) remaining unexpended on the program at the end of any fiscal year does not revert to the general fund, but is carried forward for expenditure in subsequent years.

(c) The department shall provide parents of participating students or students, as applicable, with a written explanation of the allowable uses of ESA funds, the responsibilities of parents regarding ESA funds and the parents' participating students, and the department's duties regarding ESA funds and eligible students, participating students, and legacy students.

(d) The department shall post on the department's website a list of participating schools for each school year, the grades taught in each participating school, and any other information that the department determines may assist parents in selecting a participating school.

(e) The department shall strive to ensure that lower-income families and families with students listed under § 49-6-2604(e) are notified of the program and of the eligibility requirements to participate in the program.

(f) The department shall strive to ensure that parents of students with disabilities receive notice that participation in the program has the same effect as a parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1414).

(g) The department shall adopt policies and procedures necessary for the administration of the program, including, but not limited to, policies for establishing, or contracting for the establishment of, an anonymous online fraud reporting service and telephone hotline, for reporting fraudulent activity related to ESAs, and for conducting or contracting for random, quarterly, or annual review of accounts.

(h) The department may deduct six percent (6%) from the annual ESA award amount to cover the costs of overseeing the funds and administering the program.

(i) The department may contract with a nonprofit organization to administer some or all portions of the program.

49-6-2606.

(a)

(1) Parents of participating students in grades three through eleven (3-11) shall ensure that the parent's participating student is annually administered the Tennessee comprehensive assessment program (TCAP) tests for math and English language arts, or successor tests authorized by the state board of education for math and English language arts.

(2) For participating students enrolled full-time in a participating school, the participating school shall annually administer the tests required in subdivision (a)(1) to participating students.

(b) The department shall ensure that:

(1) Parents report the participating student's graduation from high school to the department; and

(2) A parental satisfaction survey is created and annually disseminated to parents of participating students that requests the following information:

(A) Parental satisfaction with the program, including parental recommendations, comments, and concerns;

(B) Whether the parent terminated the participating student's participation in the program and the reason for termination;

(C) Methods to improve the effectiveness of the program, including parental recommendations for doing so; and

(D) The number of years the parent's participating student has participated in the program.

(c) In compliance with all state and federal student privacy laws, beginning at the conclusion of the third fiscal year in which the program enrolls participating students, the department shall produce an annual report that is accessible on the department's

website with information about the program for the previous school year. The report must include:

(1) The number of students participating in the program;

(2) Aggregate participating student performance on annual assessments required by this section;

(3) Aggregate graduation outcomes for participating students in grade twelve (12); and

(4) Results from the parental satisfaction survey required in subdivision (b)(2).

49-6-2607.

(a) ESA funds shall only be used for the expenses listed in § 49-6-2603(a)(4).

(b) To document compliance with subsection (a), participating schools, providers, and eligible postsecondary institutions shall provide parents of participating students or participating students, as applicable, with a receipt for all expenses paid to the participating school, provider, or eligible postsecondary institution using ESA funds.

(c) A participating school, provider, or eligible postsecondary institution shall not, in any manner, refund, rebate, or share funds from an ESA with a parent of a participating student or a participating student. The department shall establish a process for funds to be returned to an ESA by a participating school, provider, or eligible postsecondary institution.

(d) To ensure the safety and equitable treatment of participating students, participating schools shall:

(1) Comply with all state and federal health and safety laws applicable to nonpublic schools;

(2) Certify that the participating school will not discriminate against participating students or applicants on the basis of race, color, or national origin;

(3) Comply with § 49-5-202;

(4) Conduct criminal background checks on employees; and

(5) Exclude from employment:

(A) Any person who is not permitted by state law to work in a nonpublic school; and

(B) Any person who might reasonably pose a threat to the safety of students.

(e) An LEA shall provide a participating school that has admitted a participating student with a complete copy of the participating student's school records in the LEA's possession to the extent permitted by state and federal student privacy laws.

49-6-2608.

(a)

(1) The department may suspend or terminate a participating school's or provider's participation in the program if the department determines that the participating school or provider has failed to comply with the requirements of this part.

(2) The state board shall promulgate rules allowing the department to suspend or terminate a participating school's participation in the program due to low academic performance, as determined by the department.

(3) If the department suspends or terminates a participating school's or provider's participation under this subsection (a), then the department shall notify affected participating students and the parents of participating students of the decision. If a participating school's or provider's participation in the program is suspended or terminated, or if a participating school or provider withdraws from the program, then affected participating students remain eligible to participate in the program.

(b) The department may suspend or terminate a participating student from the program, or close a legacy student's ESA, if the department determines that the participating student's or legacy student's parent or the participating student or legacy student has failed to comply with the requirements of this part. If the department

terminates a participating student's or legacy student's participation in the program, then the department shall close the participating student's or legacy student's ESA.

(c) Any funds remaining in an ESA that is closed in accordance with subsection (b) must be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(d) The state board shall promulgate rules to effectuate this section including rules to establish a process for a participating school's, provider's, participating student's, or legacy student's suspension or termination from the program. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

49-6-2609.

(a) A participating school or provider is autonomous and not an agent of this state.

(b) The creation of the ESA program does not expand the regulatory authority of this state, the officers of this state, or an LEA to impose any additional regulation of participating schools or providers, including home schools, beyond the rules and regulations necessary to enforce the requirements of the program.

(c) This state gives participating schools and providers maximum freedom to provide for the educational needs of participating students without governmental control. Neither a participating school nor a provider is required to alter its creed, practices, admissions policies, or curriculum in order to accept participating students, other than as is necessary to comply with the requirements of the program.

49-6-2610.

The state board is authorized to promulgate rules to effectuate the purposes of this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that

can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

House Curriculum, Testing, & Innovation Subcommittee Am. #1

Amendment No._____

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Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____
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AMEND Senate Bill No. 1241 **House Bill No. 737***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 49-1-311(b), is amended by designating the current language as subdivision (b)(1) and adding the following language as a new subdivision:

(2) Notwithstanding subdivision (b)(1), the state board may extend the six-year period required for the standards review and development committees and advisory teams to review the standards for English language arts and mathematics under subdivision (b)(1) one (1) time for a period not to exceed three (3) years.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.