

2021 Regular Session

HOUSE BILL NO. 212

BY REPRESENTATIVE WRIGHT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SCHOOLS/CHOICE: Creates and provides for a program to provide state funding for the education of students not enrolled in public school

1 AN ACT

2 To enact Chapter 43-B of Title 17 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 17:4036.1 through 4036.8, relative to elementary and secondary
4 education; to create and provide for the administration of a program to provide state
5 funding for the education of students not enrolled in public school; to provide
6 relative to the eligibility of students, schools, and service providers participating in
7 the program; to provide relative to program funds; to provide relative to the testing
8 of students participating in the program; to require the state Department of Education
9 to submit annual reports to the legislature relative to the program; to provide relative
10 to rules; to provide relative to definitions; to provide for an effective date; and to
11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Chapter 43-B of Title 17 of the Louisiana Revised Statutes of 1950,
14 comprised of R.S. 17:4036.1 through 4036.8, is hereby enacted to read as follows:

15 CHAPTER 43-B. EDUCATION SAVINGS ACCOUNT PROGRAM

16 §4036.1. Definitions

17 As used in this Chapter, unless otherwise clearly indicated, the following
18 terms shall have the following meanings:

19 (1) "Account" means an education account established pursuant to this
20 Chapter and composed of state funds deposited on behalf of a participating student.

1 (2) "Account funds" means the funds deposited into an account on behalf of
2 a participating student.

3 (3) "Curriculum" means a complete course of study for a particular content
4 area.

5 (4) "Department" means the state Department of Education.

6 (5) "Parent" means a parent, legal guardian, custodian, or other person or
7 entity with legal authority to act on behalf of a student.

8 (6) "Participating school" means a nonpublic school participating in the
9 program pursuant to the requirements of this Chapter.

10 (7) "Participating student" means a student who has been determined to be
11 eligible to participate in the program and for whom an account has been established
12 pursuant to this Chapter.

13 (8) "Program" means the program created pursuant to this Chapter.

14 (9) "Qualified education expenses" means any of the following:

15 (a) Tuition, fees, and textbooks required by a participating school or service
16 provider.

17 (b) Tutoring services provided by an educator with a valid Louisiana
18 teaching certificate.

19 (c) Curriculum, including supplemental materials required by the curriculum.

20 (d) Technological devices used to meet the student's educational needs,
21 subject to approval by the department or a licensed physician.

22 (10) "Resident school system" means the public school system in which the
23 student would be enrolled based on his residence.

24 (11) "Service provider" means a person or an entity other than a participating
25 school that provides services that are covered as qualified education expenses.

26 (12) "State board" means the State Board of Elementary and Secondary
27 Education.

1 §4036.2. Program creation and administration; powers and duties of the State Board
2 of Elementary and Secondary Education and state Department of Education;
3 rules

4 The Education Savings Account Program is hereby created. The department
5 shall administer the program, and the state board shall adopt rules and regulations
6 for the administration of the program which shall, at minimum, provide for the
7 following:

8 (1) Determination of the eligibility of students, participating schools, and
9 service providers, including standards that schools and service providers shall meet
10 as conditions of participation in the program.

11 (2) Audits of the program and accounts.

12 (3) The authority of the department to deem any participating student
13 ineligible for the program and refer the case to the attorney general for investigation
14 in the event of the misuse of account funds.

15 (4) The authority of the department to contract with a nonprofit organization
16 for the administration of the program or parts of the program.

17 §4036.3. Account funds

18 A. The department shall allocate to each account annually, from funds
19 appropriated or otherwise available for the program, an amount equal to the state's
20 per-pupil allocation to the resident school system as provided in the minimum
21 foundation program formula, considering all student characteristics.

22 B. The department shall develop a system for parents to direct account funds
23 to participating schools and service providers by electronic funds transfer, automated
24 clearing house transfer, the use of a debit card, or another system. The department
25 may contract with a private financial management firm to manage the payment
26 system.

27 C.(1) Account funds shall be used only for qualified education expenses for
28 the participating student. Unused funds in an account, up to an amount not greater

1 than fifty percent of the total funds deposited into the account for the current school
2 year, shall be retained in the student's account for the following school year.

3 (2) The account shall be closed and the funds in the account shall be returned
4 to the state general fund if the student is determined to be no longer eligible, if an
5 account has been inactive for two consecutive years, or if a parent fails to comply
6 with the provisions of this Chapter or state board rules pertaining to the program.

7 D. Account funds shall not constitute taxable income of the parent of the
8 participating student.

9 §4036.4. Student eligibility; initial and continuing

10 A. A student shall be initially eligible for an account if he is eligible to enroll
11 in kindergarten through twelfth grade and meets all of the following criteria:

12 (1) He meets at least one of the criteria provided in this Paragraph:

13 (a) He has a parent or legal guardian who is an active duty military service
14 member.

15 (b) During the previous school year, he was enrolled in a school that did not
16 offer an option for students to receive one hundred percent of instruction
17 continuously in person for at least one semester.

18 (c) Pursuant to foster care placement through the Department of Children
19 and Family Services, he is residing with a prospective permanent placement or has
20 achieved permanency through adoption or permanent guardianship.

21 (2) The student's parent submits an application for an account to the
22 department in accordance with program timelines.

23 (3)(a) The student's parent signs an agreement promising all of the
24 following:

25 (i) To provide an education for the participating student in at least the
26 subjects of English language arts, mathematics, social studies, and science.

27 (ii) Not to enroll the student in a public school while participating in the
28 program.

1 (iii) To use account funds only for qualified education expenses of the
2 participating student.

3 (iv) To comply with all program requirements.

4 (b) The signed agreement shall satisfy the compulsory school attendance
5 requirements of R.S. 17:221.

6 B. A participating student shall continue to be eligible to participate in the
7 program until he enrolls in a public school, he receives a high school diploma or its
8 equivalent, or his account is closed.

9 C. A participating student shall not participate concurrently in the Course
10 Choice Program, the Student Scholarships for Excellence Program, the School
11 Choice Program for Certain Students with Exceptionalities, or the Tuition Donation
12 Credit Program.

13 §4036.5. Schools and service providers; eligibility; participation

14 A. To be eligible to participate in the program, a school shall meet all of the
15 following criteria:

16 (1) Be approved, provisionally approved, or probationally approved by the
17 state board pursuant to R.S. 17:11.

18 (2) Comply with the criteria set forth in Brumfield, et al. v. Dodd, et al. 425
19 F. Supp. 528.

20 (3) Any other eligibility criteria set by the state board in program rules.

21 B. The state board shall provide eligibility criteria for service providers in
22 program rules.

23 C. To be eligible to participate in the program, a school or service provider
24 shall apply to the department to participate in the program and, if determined to be
25 eligible, accept account funds for providing services covered as qualified education
26 expenses.

27 §4036.6. Student with exceptionalities

28 A. If a participating student enrolled in a participating school would have
29 been entitled to receive special education services in the resident school system, his

1 parent shall acknowledge in writing as part of the program enrollment process that
2 the parent agrees to accept only such services as are available to all students enrolled
3 in the participating school.

4 B. A parent may make a parental placement to receive special education and
5 related services from a participating school that has demonstrated the capacity to
6 offer such services.

7 C.(1) A participating school shall not discriminate against a child with
8 special educational needs during the program admissions process. However, a
9 participating school is required to offer only those services that it already provides
10 or such services as necessary to assist students with special needs that it can provide
11 with minor adjustments. A participating school may partner with the local school
12 system to provide special education services.

13 (2) Information regarding the services a participating school is able to and
14 shall provide, the services the local school system is able to and shall provide, and
15 the services the local school system currently provides to children with special needs
16 who are enrolled in a participating school shall be made available by the department
17 to parents prior to the enrollment process.

18 D. To be determined to have demonstrated capacity to offer special
19 education services pursuant to Subsection B of this Section, a participating school
20 shall meet all of the following criteria:

21 (1) It has existed and provided educational services to students with
22 exceptionalities as defined in R.S. 17:1942, excluding students deemed to be gifted
23 or talented, for at least two years prior to participation in the program and such
24 provision of services shall be pursuant to an established program in place at the
25 school that includes instruction by teachers holding appropriate certification in
26 special education or other appropriate education or training as defined by the
27 department and that is in accordance with a student's Individual Education Plan.

1 (2) In accordance with time lines as determined by the department, it informs
2 the department of the types of student exceptionalities as defined in R.S. 17:1942
3 that the school is able to serve.

4 §4036.7. Testing

5 A. A participating school shall ensure that participating students are
6 administered all examinations required pursuant to the school and district
7 accountability system at the prescribed grade levels and that the results of such
8 examinations are provided to parents.

9 B. The department shall develop a process for the annual administration of
10 a nationally norm-referenced test or a statewide assessment and the collection of
11 results for participating students not enrolled full time in a participating school.

12 §4036.8. Reports

13 Not later than April thirtieth of each year, the department shall submit a
14 written report to the House Committee on Education, the Senate Committee on
15 Education, and the Joint Legislative Committee on the Budget regarding the
16 implementation of the program. The report, at a minimum, shall include the
17 following information:

18 (1) The total number of students participating in the program.

19 (2) A list of all participating schools and service providers.

20 (3) The total student enrollment of each participating school, the number of
21 participating students enrolled in each school, and the percentage of the total
22 enrollment of each school represented by program participants.

23 (4) Aggregate test result data for participating students.

24 (5) The percentage of funds used for each type of qualified education
25 expense.

26 (6) An analysis of the program's fiscal impact on the state and on local public
27 school systems.

28 Section 2. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature

- 1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 3 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 212 Original

2021 Regular Session

Wright

Abstract: Creates and provides for the administration of a program for the purpose of providing state funding for qualified education expenses for students in grades kindergarten through 12 who are not enrolled in a public school.

Education Savings Account (ESA) Program; creation and administration

Proposed law creates the Education Savings Account (ESA) Program and provides for program administration by the state Dept. of Education (DOE) in accordance with State Board of Elementary and Secondary Education (BESE) rules which shall, at minimum, provide for:

- (1) Determination of eligibility of students, participating schools, and service providers.
- (2) Audits of the program and accounts.
- (3) DOE's authority to:
 - (a) Deem any participating student ineligible for the program in the event of the misuse of account funds and to refer cases of misuse of account funds to the attorney general for investigation.
 - (b) Contract with a nonprofit organization for the administration of the program or parts of the program.

Funds

Proposed law requires DOE to:

- (1) Allocate to each account annually, from funds appropriated or otherwise available for the program, an amount equal to the state's per-pupil allocation as provided in the minimum foundation program (MFP) formula, considering all student characteristics.
- (2) Develop a system for parents to direct account funds to participating schools and service providers by electronic funds transfer, automated clearing house transfer, the use of a debit card, or another system.

Proposed law further provides as follows:

- (1) Limits authorized use of funds to qualified education expenses.

- (2) Unused funds in an account, up to an amount not greater than 50% of the total funds deposited into the account for the current school year, shall remain in the account for the following school year.
- (3) The account shall be closed and the funds in the account shall be returned to the state general fund if a student is no longer eligible, if an account has been inactive for two consecutive years, or if a parent fails to comply with program requirements.

Eligibility; students

Proposed law provides that a student shall be initially eligible for an account if he is eligible to enroll in kindergarten through 12th grade and meets all of the following criteria:

- (1) He meets at least one of these criteria:
 - (a) He has a parent or legal guardian who is an active duty military service member.
 - (b) During the previous school year, he was enrolled in a school that did not offer an option for students to receive 100% of instruction continuously in person for at least one semester.
 - (c) Pursuant to foster care placement through the Dept. of Children and Family Services, he is residing with a prospective permanent placement or has achieved permanency through adoption or permanent guardianship.
- (2) The student's parent submits an application for an ESA in accordance with program timelines.
- (3) The student's parent signs an agreement promising all of the following:
 - (a) To provide an education for the participating student in at least the subjects of English language arts, math, social studies, and science.
 - (b) Not to enroll the student in a public school while participating in the program.
 - (c) To use account funds only for qualified education expenses of the participating student.
 - (d) To comply with all program requirements.

Proposed law further provides that a participating student:

- (1) Is eligible until he enrolls in a public school, he receives a high school diploma or its equivalent, or his account is closed.
- (2) Is prohibited from participating concurrently in the ESA program and the Course Choice Program, the Student Scholarships for Excellence Program, the School Choice Program for Certain Students with Exceptionalities, or the Tuition Donation Credit Program.

Students with exceptionalities

Proposed law requires, if a student would have been entitled to special education services in his resident school system, his parent to acknowledge in writing that he agrees to accept only such services as are available to all students enrolled in the participating school. Requires participating schools to meet certain criteria to be eligible to offer such services.

Eligibility; schools and service providers

Proposed law provides to be eligible to participate in the program, a school shall meet all of the following criteria:

- (1) Be approved, provisionally approved, or probationally approved by BESE.
- (2) Comply with the criteria set forth in federal nondiscrimination requirements (Brumfield, et al. v. Dodd, et al. 425 F. Supp. 528).
- (3) Any other criteria set by BESE.

Proposed law requires BESE to set eligibility criteria for service providers and provides that to be eligible to participate in the program, both schools and service providers shall apply to DOE and, if determined to be eligible, accept ESA funds for providing services covered as qualified education expenses.

Testing

Proposed law requires:

- (1) Participating schools to ensure that participating students are administered all examinations required pursuant to present law at the prescribed grade levels and that the results of such examinations are provided to parents.
- (2) DOE to develop a process for the annual administration of a nationally norm-referenced test or a statewide assessment and the collection of results for participating students not enrolled full time in a participating school.

Reporting

Proposed law requires DOE, by April 30th annually, to submit to the House and Senate education committees and the Jt. Legislative Committee on the Budget regarding program implementation.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 17:4036.1 - 4036.8)