

118TH CONGRESS
1ST SESSION

S. 105

To have education funds follow the student.

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2023

Mr. LEE (for himself, Mr. TUBERVILLE, Mr. BUDD, Mr. SCOTT of Florida, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To have education funds follow the student.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Children Have Oppor-
5 tunities in Classrooms Everywhere Act”.

6 **SEC. 2. FEDERAL FUNDING UNDER THE ELEMENTARY AND**
7 **SECONDARY EDUCATION ACT OF 1965 TO**
8 **FOLLOW THE STUDENT.**

9 Title VIII of the Elementary and Secondary Edu-
10 cation Act of 1965 (20 U.S.C. 7801 et seq.) is amended
11 by adding at the end the following:

1 **“PART H—FUNDS TO FOLLOW THE STUDENT**

2 **“SEC. 8701. FUNDS TO FOLLOW THE STUDENT.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) 529 EDUCATION SAVINGS PLAN AC-
5 COUNT.—The term ‘529 education savings plan ac-
6 count’ means a qualified tuition program (as defined
7 in section 529(b)(1)(A) of the Internal Revenue
8 Code of 1986).

9 “(2) ELIGIBLE CHILD.—The term ‘eligible
10 child’ means a child who is from a household, the
11 taxable income of which for the most recently com-
12 pleted taxable year is not more than 130 percent of
13 an amount equal to the poverty level, as determined
14 by using criteria of poverty established by the Bu-
15 reau of the Census.

16 “(3) HOME SCHOOL.—The term ‘home school’
17 means a home school as defined by the laws of the
18 State in which the eligible child resides.

19 “(b) FUNDS TO FOLLOW THE STUDENT.—

20 “(1) IN GENERAL.—Notwithstanding any other
21 provision of law and to the extent permitted under
22 State law, a State educational agency shall allocate
23 grant funds provided under title I, subparts 2 and
24 3 of part B of title II, and titles III, IV, V, and VI,
25 for the purposes of ensuring that funding under
26 such titles follows children, to the public school the

1 children attend or for the expenses described in sec-
2 tion 529(c)(7) of the Internal Revenue Code of
3 1986.

4 “(2) PLAN.—

5 “(A) IN GENERAL.—Each State that car-
6 ries out allocations described in paragraph (1)
7 shall establish a plan that complies with the fol-
8 lowing:

9 “(i) The parent or guardian of each
10 eligible child in the State who desires ac-
11 cess to the funds described in paragraph
12 (1) shall annually submit to the State edu-
13 cational agency by not later than April 30,
14 a paper or electronic application form that
15 includes the following:

16 “(I) The parent or guardian’s
17 taxable income based on the Federal
18 tax return of the parent or guardian
19 for the prior tax year.

20 “(II) The eligible child’s date of
21 birth, place of residence, school dis-
22 trict, and school in which the eligible
23 child will be enrolled for the subse-
24 quent school year.

1 “(III) If the eligible child will be
2 enrolled in a private school or home
3 school for the subsequent school year,
4 confirmation that the eligible child
5 has a 529 education savings plan ac-
6 count, including the necessary details
7 of such account to enable the State to
8 deposit funds available under this sec-
9 tion into such account.

10 “(ii) Not later than May 14 of each
11 year, the State educational agency shall
12 submit to the Secretary the application
13 forms for all applicants under clause (i).

14 “(iii) Not later than July 1 of each
15 year and based on the information sub-
16 mitted under clause (i), the State edu-
17 cational agency shall—

18 “(I) if the eligible child will be
19 enrolled in a private school or home
20 school for the subsequent school year,
21 deposit the amount equal to the con-
22 centration distribution and basic dis-
23 tribution applicable for the eligible
24 child under subparagraphs (B) and
25 (C) of subsection (e)(2), into the 529

1 education savings plan account of the
2 eligible child; and

3 “(II) if the eligible child will be
4 enrolled in a public school for the sub-
5 sequent school year, distribute the
6 amount equal to the concentration
7 distribution and basic distribution ap-
8 plicable for the eligible child under
9 subparagraphs (B) and (C) of sub-
10 section (c)(2), to such public school.

11 “(B) DATA COLLECTION.—Information
12 collected under this section by the State shall
13 be used for the sole purposes of calculating the
14 allocation of funds and distribution of funds
15 under this section.

16 “(C) DATA PRIVACY PROTECTION.—Infor-
17 mation collected under this section shall be sub-
18 ject to the privacy protections outlined in sec-
19 tion 444 of the General Education Provisions
20 Act (20 U.S.C. 1232g; commonly referred to as
21 the ‘Family Educational Rights and Privacy
22 Act of 1974’).

23 “(c) CALCULATION OF AMOUNTS TO BE DISTRIB-
24 UTED.—

1 “(1) IN GENERAL.—From the amounts pro-
 2 vided to carry out title I, subparts 2 and 3 of part
 3 B of title II, and titles III, IV, V, and VI, and based
 4 on the information submitted by State educational
 5 agencies under subsection (b)(2)(A)(ii), the Sec-
 6 retary shall—

7 “(A) determine the eligibility based on the
 8 information provided under subsection
 9 (b)(2)(A)(i) and verify that the child for whom
 10 the information is submitted is an eligible child;

11 “(B) determine the income bracket for
 12 such eligible child; and

13 “(C) make grants to State educational
 14 agencies in the amount determined under para-
 15 graph (2) by not later than 30 days after the
 16 date the Secretary receives the information
 17 under subsection (b)(2)(A)(ii).

18 “(2) AMOUNT OF GRANTS.—

19 “(A) IN GENERAL.—The grant amount
 20 provided to a State educational agency shall be
 21 equal to the total distribution amount deter-
 22 mined under subparagraphs (B) and (C) for all
 23 eligible children in the State.

24 “(B) CONCENTRATION DISTRIBUTION.—

25 An eligible child who is from a household, the

1 taxable income of which for the most recently
2 completed taxable year is not more than 100
3 percent of an amount equal to the poverty level,
4 as measured by the most recent Small Area In-
5 come and Poverty Estimates of the Bureau of
6 the Census, shall receive a concentration dis-
7 tribution according to the following:

8 “(i) If the eligible child resides in an
9 area served by a school district in which
10 not less than 1 percent and not more than
11 9 percent of the elementary school and sec-
12 ondary school students are from a house-
13 hold, the taxable income of which for the
14 most recently completed taxable year is not
15 more than 100 percent of an amount equal
16 to the poverty level, as measured by the
17 most recent Small Area Income and Pov-
18 erty Estimates of the Bureau of the Cen-
19 sus, the eligible child shall receive \$50.

20 “(ii) If the eligible child resides in an
21 area served by a school district in which
22 not less than 10 percent and not more
23 than 19 percent of the elementary school
24 and secondary school students are from a
25 household, the taxable income of which for

1 the most recently completed taxable year is
2 not more than 100 percent of an amount
3 equal to the poverty level, as measured by
4 the most recent Small Area Income and
5 Poverty Estimates of the Bureau of the
6 Census, the eligible child shall receive
7 \$100.

8 “(iii) If the eligible child resides in an
9 area served by a school district in which
10 not less than 20 percent and not more
11 than 29 percent of the elementary school
12 and secondary school students are from a
13 household, the taxable income of which for
14 the most recently completed taxable year is
15 not more than 100 percent of an amount
16 equal to the poverty level, as measured by
17 the most recent Small Area Income and
18 Poverty Estimates of the Bureau of the
19 Census, the eligible child shall receive
20 \$150.

21 “(iv) If the eligible child resides in an
22 area served by a school district in which
23 not less than 30 percent and not more
24 than 39 percent of the elementary school
25 and secondary school students are from a

1 household, the taxable income of which for
2 the most recently completed taxable year is
3 not more than 100 percent of an amount
4 equal to the poverty level, as measured by
5 the most recent Small Area Income and
6 Poverty Estimates of the Bureau of the
7 Census, the eligible child shall receive
8 \$200.

9 “(v) If the eligible child resides in an
10 area served by a school district in which
11 not less than 40 percent and not more
12 than 49 percent of the elementary school
13 and secondary school students are from a
14 household, the taxable income of which for
15 the most recently completed taxable year is
16 not more than 100 percent of an amount
17 equal to the poverty level, as measured by
18 the most recent Small Area Income and
19 Poverty Estimates of the Bureau of the
20 Census, the eligible child shall receive
21 \$250.

22 “(vi) If the eligible child resides in an
23 area served by a school district in which 50
24 percent or more of the elementary school
25 and secondary school students are from a

1 household, the taxable income of which for
2 the most recently completed taxable year is
3 not more than 100 percent of an amount
4 equal to the poverty level, as measured by
5 the most recent Small Area Income and
6 Poverty Estimates of the Bureau of the
7 Census, the eligible child shall receive
8 \$300.

9 “(C) BASIC DISTRIBUTION.—In addition to
10 a concentration distribution under subpara-
11 graph (B), an eligible child shall receive a basic
12 distribution based on the income bracket appli-
13 cable for such eligible child and according to a
14 formula established by the Secretary in which
15 benefits are flat for everyone at or below 100
16 percent of the Federal poverty level and de-
17 crease at an even rate from 100 percent to 130
18 percent of the Federal poverty level.

19 “(d) NOTIFICATION OF AVAILABILITY OF FUNDS.—
20 Not later than 100 days after the date of enactment of
21 the Children Have Opportunities in Classrooms Every-
22 where Act, and annually for each of the 5 years thereafter,
23 each State that carries out allocations described in sub-
24 section (b)(1) shall inform each parent or guardian of a
25 child eligible for assistance under the supplemental nutri-

1 tion assistance program under the Food and Nutrition Act
2 of 2008 (7 U.S.C. 2011 et seq.) or the program of block
3 grants for States for temporary assistance for needy fami-
4 lies established under part A of title IV of the Social Secu-
5 rity Act (42 U.S.C. 601 et seq.) of the availability of as-
6 sistance under this section.

7 “(e) APPLICATION OF PARTICIPATION OF CHILDREN
8 ENROLLED IN PRIVATE SCHOOLS.—The provisions of sec-
9 tion 1117 shall apply to this section.

10 “(f) RULE OF CONSTRUCTION.—

11 “(1) FEDERALLY FUNDED SCHOOL FOOD PRO-
12 GRAMS.—Nothing in this section shall be construed
13 to preclude a child eligible for assistance under the
14 free and reduced price school lunch program estab-
15 lished under the Richard B. Russell National School
16 Lunch Act (42 U.S.C. 1751 et seq.) from receiving
17 assistance under such program.

18 “(2) PROHIBITION OF CONTROL OVER NON-
19 PUBLIC EDUCATION PROVIDERS.—Nothing in this
20 section shall permit, allow, encourage, or authorize
21 Federal or State control over non-public education
22 providers.”.

1 **SEC. 3. 529 ACCOUNT FUNDING FOR HOMESCHOOL AND AD-**
2 **DITIONAL ELEMENTARY AND SECONDARY EX-**
3 **PENSES.**

4 (a) IN GENERAL.—Section 529(c)(7) of the Internal
5 Revenue Code of 1986 is amended to read as follows:

6 “(7) TREATMENT OF ELEMENTARY AND SEC-
7 ONDARY TUITION AND RESOURCES.—Any reference
8 in this section to the term ‘qualified higher edu-
9 cation expense’ shall include a reference to the fol-
10 lowing expenses in connection with enrollment or at-
11 tendance at, or for students enrolled at or attending,
12 an elementary or secondary public, private, or reli-
13 gious school:

14 “(A) Tuition.

15 “(B) Curriculum and curricular materials.

16 “(C) Books or other instructional mate-
17 rials.

18 “(D) Online educational materials.

19 “(E) Tuition for tutoring or educational
20 classes outside of the home, including at a tu-
21 toring facility, but only if the tutor or instruc-
22 tor is not related to the student.

23 “(F) Fees for a nationally standardized
24 norm-referenced achievement test, an advanced
25 placement examination, or any examinations re-
26 lated to college or university admission.

1 “(G) Fees for dual enrollment in an insti-
2 tution of higher education.

3 “(H) Educational therapies for students
4 with disabilities provided by a licensed or ac-
5 credited practitioner or provider, including oc-
6 cupational, behavioral, physical, and speech-lan-
7 guage therapies.

8 Such term shall include expenses for the purposes
9 described in subparagraphs (A) through (H) in con-
10 nection with a homeschool (whether treated as a
11 homeschool or a private school for purposes of appli-
12 cable State law).”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to distributions made after the
15 date of the enactment of this Act.

16 **SEC. 4. INCREASED ADDITIONAL TAX ON GRANTS NOT**
17 **USED FOR EDUCATIONAL PURPOSES.**

18 Section 529(c)(6) of the Internal Revenue Code of
19 1986 is amended—

20 (1) by striking “The tax” and inserting the fol-
21 lowing:

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), the tax”, and

24 (2) by adding at the end the following new sub-
25 paragraph:

1 “(B) INCREASED TAX ON AMOUNTS AT-
2 TRIBUTABLE TO CERTAIN GRANTS.—

3 “(i) IN GENERAL.—In the case of any
4 distribution from a qualified contribution
5 program that includes amounts attrib-
6 utable to a qualified grant—

7 “(I) section 530(d)(4) shall be
8 applied separately to amounts attrib-
9 utable to qualified grants and to other
10 amounts, and

11 “(II) in applying such section to
12 amounts attributable to qualified
13 grants, such section shall be applied
14 by substituting ‘100 percent’ for ‘10
15 percent’.

16 “(ii) CONTRIBUTION RULES.—For pur-
17 poses of this subparagraph—

18 “(I) any earnings on contribu-
19 tions from a qualified grant shall not
20 be treated as attributed to a qualified
21 grant, and

22 “(II) distributions from a quali-
23 fied tuition program described in
24 clause (i) shall be treated as distrib-
25 uted first from amounts other than

1 amounts attributable to a qualified
2 grant and then from amounts attrib-
3 utable to a qualified grant.

4 “(iii) QUALIFIED GRANT.—For pur-
5 poses of this subparagraph, the term
6 ‘qualified grant’ means any grant under
7 section 8701 of the Elementary and Sec-
8 ondary Education Act of 1965.”.

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