

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Education savings accounts.

Sponsored by: Joint Education Interim Committee

A BILL

for

1 AN ACT relating to education; authorizing education savings
2 accounts; creating the Wyoming education savings accounts
3 expenditure account; providing for a transfer of funds to
4 the Wyoming education savings accounts expenditure account;
5 providing for the use and administration of education
6 savings accounts for education; specifying duties of the
7 state superintendent of public instruction; providing
8 rulemaking authority; making conforming amendments;
9 providing appropriations; authorizing full-time positions;
10 and providing for effective dates.

11

12 *Be It Enacted by the Legislature of the State of Wyoming:*

13

1 **Section 1.** W.S. 21-2-901 through 21-2-909 are created
2 to read:

3

4

ARTICLE 9

5

WYOMING EDUCATION SAVINGS ACCOUNTS

6

7

21-2-901. Short title.

8

9 This act shall be known as the "Wyoming Education Savings
10 Accounts Act." The program created by this act shall be
11 known as the "ESA program."

12

13

21-2-902. Definitions.

14

15

(a) As used in this act:

16

17

18

19

20

21

22

(i) "Curriculum" means a course of study for
content areas or grade levels, including any supplemental
materials required or recommended by the curriculum;

(ii) "Education savings account" or "ESA" means
the spending account for a child's education to which funds

1 are allocated by the state superintendent of public
2 instruction, for which a parent of an ESA student enters
3 into an agreement with the state superintendent to choose
4 and pay for qualifying education expenses to educate the
5 ESA student, subject to the requirements and conditions of
6 this act;

7

8 (iii) "Education service provider" means a person
9 or organization, including a qualified school, that receives
10 payments authorized by a parent from education savings
11 accounts to provide educational goods and services to ESA
12 students;

13

14 (iv) "ESA student" means a student eligible for
15 an ESA pursuant to W.S. 21-2-904(a) who is participating in
16 the ESA program;

17

18 (v) "Parent" means a resident of this state who
19 is the parent or legal guardian of an eligible student or
20 ESA student and may include an eligible student or ESA
21 student who is an emancipated minor;

22

1 (vi) "Qualified school" means a preschool or a
2 nonpublic primary or secondary school, certified by the
3 state superintendent of public instruction pursuant to W.S.
4 21-2-906(a), located in or that provides education services
5 in this state, that may include through online means;

6

7 (vii) "This act" means W.S. 21-2-901 through
8 21-2-909.

9

10 **21-2-903. Education savings accounts; Wyoming**
11 **education savings accounts expenditure account.**

12

13 (a) The total amount to be deposited in an education
14 savings account for an ESA student each year shall be three
15 thousand dollars (\$3,000.00).

16

17 (b) Payments to ESAs under this act shall be made by
18 the state treasurer as certified by the state
19 superintendent of public instruction from the Wyoming
20 education savings accounts expenditure account, which is
21 hereby created. The Wyoming education savings accounts
22 expenditure account shall consist of funds transferred to

1 the expenditure account and other funds appropriated by the
2 legislature to the expenditure account. All earnings from
3 investment of the expenditure account shall be credited by
4 the state treasurer to the expenditure account. Except as
5 provided by subsection (c) of this section, any
6 unencumbered, unobligated balance of the expenditure
7 account at the end of each fiscal year shall not revert but
8 shall remain in the expenditure account and shall be
9 expended to fund ESAs as provided by this act.

10

11 (c) If at the end of a fiscal year the state
12 treasurer determines that the amount in the Wyoming
13 education savings accounts expenditure account is more than
14 forty million dollars (\$40,000,000.00) and is more than one
15 hundred and fifty percent (150%) of the amount required to
16 fund all approved ESAs for that fiscal year as certified by
17 the state superintendent, the state treasurer shall
18 transfer the excess amount determined under this subsection
19 to the general fund.

20

1 (d) Payments to each approved ESA shall be disbursed
2 on a quarterly basis by the state treasurer as certified by
3 the state superintendent.

4

5 (e) The state superintendent shall quarterly certify
6 to the state treasurer the ESAs and the amount to be
7 deposited in each ESA under this act.

8

9 **21-2-904. ESA program eligibility; parent agreement;**
10 **ESA administration.**

11

12 (a) Subject to the availability of funds as
13 determined by the legislature, any child who is a Wyoming
14 resident, who's household income is at or below two hundred
15 fifty percent (250%) of the federal poverty level,
16 determined using the most recent federal poverty guidelines
17 for the student's household size and income, and who meets
18 one (1) of the following qualifications shall be eligible
19 to receive an ESA subject to the provisions of this act:

20

21 (i) The child has not graduated from high
22 school, received a high school equivalency certificate or

1 completed the equivalent of high school through a
2 home-based educational program and is eligible to attend a
3 public school in this state; or

4

5 (ii) The child is not less than three (3) years
6 of age as of August 1 of the year in which the application
7 for an ESA is made and has not yet attained the age to
8 attend public school in this state.

9

10 (b) To participate in the ESA program, parents of an
11 ESA student shall sign an agreement with the state
12 superintendent that:

13

14 (i) Requires use of the ESA funds for the
15 following qualifying expenses to educate the ESA student:

16

17 (A) Tuition and fees at a qualified school;

18

19 (B) Tutoring services provided by an
20 individual or a tutoring facility. The tutoring services
21 shall not be provided by an ESA student's immediate family;

22

1 (C) Services contracted for and provided by
2 a public school district, including services provided by a
3 public charter school. Services under this subparagraph may
4 include, without limitation, individual classes and
5 extracurricular activities and programs;

6
7 (D) Textbooks, curriculum and other
8 instructional materials, including, but not limited to, any
9 supplemental materials or associated online instruction
10 required by either a curriculum or an education service
11 provider;

12
13 (E) Computer hardware or other
14 technological devices that are primarily used to help meet
15 an ESA student's educational needs;

16
17 (F) Educational software and applications;

18
19 (G) School uniforms;

20
21 (H) Fees for nationally standardized
22 assessments, advanced placement examinations, examinations

1 related to college or university admission and tuition and
2 fees for preparatory courses for the exams;

3

4 (J) Tuition and fees for summer education
5 programs and specialized after school education programs;

6

7 (K) Tuition, fees, instructional materials
8 and examination fees at a career or technical school;

9

10 (M) Educational services and therapies
11 including, but not limited to, occupational, behavioral,
12 physical, speech-language and audiology therapies;

13

14 (N) Tuition and fees at an institution of
15 higher education;

16

17 (O) Fees for transportation paid to a
18 fee-for-service transportation provider for the student to
19 travel to and from an education service provider;

20

21 (P) Any other educational expense approved
22 by the state superintendent.

1

2 (ii) For students eligible for an ESA under
3 paragraph (a)(i) of this section:

4

5 (A) Requires that the ESA student receive
6 instruction in, at minimum, reading, writing, mathematics,
7 civics, history, literature and science;

8

9 (B) Requires that the ESA student take the
10 statewide assessments administered pursuant to W.S.
11 21-2-304(a);

12

13 (C) Certifies that the ESA student is not,
14 or will not be, enrolled in a public school district upon
15 receipt of the ESA and releases the applicable school
16 district from all obligations to educate the ESA student.
17 This subparagraph shall not:

18

19 (I) Require an eligible student to
20 withdraw from a public school district before applying for
21 or receiving an ESA if the student withdraws from the

1 public school district before receiving or expending any
2 monies in the student's ESA;

3

4 (II) Prevent a qualified student from
5 applying in advance for an ESA student to be funded
6 beginning the following school year; or

7

8 (III) Prevent a public school district
9 from charging an ESA for any services provided to the
10 qualified student to the extent authorized by law.

11

12 (c) Funds in an ESA shall not be refunded, rebated or
13 shared with a parent of an ESA student in any manner. Any
14 refund or rebate for goods or services purchased with ESA
15 funds shall be credited directly to the student's ESA.

16

17 (d) Parents may make payments for costs of
18 educational goods and services not covered by the funds in
19 the ESA. Personal deposits into an ESA shall not be
20 permitted.

21

1 (e) An ESA shall remain active and any unused funds
2 shall not revert until the parent withdraws the ESA student
3 from the ESA program or until the ESA student is no longer
4 eligible for the ESA program, unless the ESA is closed
5 because of a substantial misuse of funds. When an ESA is
6 closed, any unused funds shall revert to the Wyoming
7 education savings accounts expenditure account.

8

9 (f) Nothing in this act shall be construed to require
10 an ESA student to be enrolled, full-time or part-time, in a
11 nonpublic school.

12

13 **21-2-905. Application, award and allocation of ESAs.**

14

15 (a) A parent may apply to the state superintendent of
16 public instruction to establish an ESA for an eligible
17 student.

18

19 (b) The state superintendent shall establish
20 procedures for approving applications in an expeditious
21 manner.

22

1 (c) The state superintendent shall create a standard
2 form that parents may submit to establish their student's
3 eligibility for the ESA program and shall ensure that the
4 application form is publicly available and that completed
5 applications may be submitted through various sources,
6 including the internet.

7

8 (d) Except as provided under subsection (e) of this
9 section, the state superintendent shall approve an
10 application for an ESA if:

11

12 (i) The parent submits an application for an ESA
13 in accordance with application procedures established by
14 the state superintendent;

15

16 (ii) The student is an eligible student pursuant
17 to W.S. 21-2-904(a);

18

19 (iii) Funds are available for the ESA;

20

21 (iv) The parent signs an agreement with the
22 state superintendent as provided in W.S. 21-2-904(b).

1

2 (e) Fifty percent (50%) of the ESAs shall be awarded
3 to students eligible pursuant to W.S. 21-2-904(a)(i) and
4 the remaining fifty percent (50%) shall be awarded to
5 students eligible pursuant to W.S. 21-2-904(a)(ii) each
6 year. If the number of applications for ESAs exceeds the
7 available funds for any school year, the students shall be
8 selected on a first-come, first-served basis, except
9 preference shall be given to an eligible student who
10 received funds under the ESA program in the immediately
11 preceding school year.

12

13 (f) For students eligible for an ESA under W.S.
14 21-2-904(a)(i), the following shall apply:

15

16 (i) A signed agreement between the parent and
17 state superintendent under W.S. 21-2-904(b) shall satisfy
18 the compulsory school attendance requirements of W.S.
19 21-4-102 and the parent shall annually provide the
20 student's resident public school district notice of intent
21 to participate in the ESA program;

22

1 (ii) Upon notice to the state superintendent, an
2 ESA student may choose to stop receiving an ESA and enroll
3 full-time in a public school. Enrolling as a full-time
4 student in a public school shall result in the immediate
5 suspension of payment of additional funds to the student's
6 ESA and the state superintendent may close the ESA. If an
7 eligible student applies to the state superintendent to
8 return to the ESA program, payments into the student's
9 existing ESA may resume if the ESA is still open and
10 active. A new ESA may be established if an eligible
11 student's ESA was closed;

12

13 (iii) The state superintendent may adopt rules
14 and policies to provide the least disruptive process for
15 ESA students who choose to enroll full-time in a public
16 school.

17

18 **21-2-906. Duties of the state superintendent of**
19 **public instruction to administer the education savings**
20 **accounts program.**

21

1 (a) The state superintendent of public instruction
2 shall:

3

4 (i) Establish a certification process for
5 education service providers, which shall, at minimum,
6 ensure ESA students attending qualified schools in
7 kindergarten through grade twelve (12) receive instruction
8 in reading, writing, mathematics, civics, history,
9 literature and science;

10

11 (ii) Maintain a list of certified education
12 service providers and ensure the list is available to
13 parents of ESA students. The list shall enable the
14 education service provider to indicate if the education
15 service provider is accepting new ESA students;

16

17 (iii) Provide parents with a written explanation
18 of the qualified expenses for ESA funds, the
19 responsibilities of parents and the duties of the state
20 superintendent related to administration of the ESA
21 program;

22

1 (iv) For students eligible for an ESA under W.S.
2 21-2-904(a)(i), ensure that parents of ESA students with
3 disabilities receive notice that participation in the ESA
4 program is a parental placement under 20 U.S.C. § 1412,
5 Individuals with Disabilities Education Act (IDEA), along
6 with an explanation of the rights that parentally placed
7 students possess under IDEA and any applicable state laws
8 and regulations;

9

10 (v) If determined necessary by the state
11 superintendent, contract with one (1) or more private
12 organizations to administer the ESA program or specific
13 functions of the ESA program including, without limitation,
14 contracting with private financial management firms to
15 manage ESAs. The state superintendent shall comply with
16 applicable procurement statutes and rules in securing
17 services under this paragraph;

18

19 (vi) Implement a commercially viable,
20 cost-effective and user-friendly system for payment of
21 services from ESAs to education service providers by
22 electronic or online funds transfer. The payment system

1 shall not rely exclusively on requiring parents to be
2 reimbursed for out-of-pocket expenses. The payment system
3 shall provide maximum flexibility to parents by
4 facilitating direct payments to education service providers
5 as well as requests for pre-approval of and reimbursements
6 for qualifying expenses listed in W.S. 21-2-904(b)(i). The
7 state superintendent may contract with private
8 organizations to develop the payment system;

9

10 (vii) Continue certifying deposits into a
11 student's ESA until:

12

13 (A) The state superintendent determines
14 that the ESA student is no longer an eligible student;

15

16 (B) The state superintendent determines
17 there was an intentional and substantial misuse of the
18 funds in the ESA;

19

20 (C) The ESA student withdraws from the ESA
21 program; or

22

1 (D) The ESA student enrolls full-time in a
2 public school.

3

4 (viii) Conduct or contract for the auditing of
5 individual ESAs and shall at a minimum conduct or contract
6 for audits of not less than twenty percent (20%) of all
7 ESAs, selected randomly, on an annual basis;

8

9 (ix) Investigate reports of intentional and
10 substantial misuse of ESA funds and prohibit an eligible
11 ESA student from receipt of ESA funds if the state
12 superintendent determines that the ESA student or ESA
13 student's parent intentionally and substantially misused
14 ESA funds. The state superintendent shall by rule create
15 procedures to ensure that a fair process exists to
16 determine whether an intentional and substantial misuse of
17 ESA funds has occurred. The state superintendent shall have
18 the authority to refer suspected cases of intentional and
19 substantial misuse of ESA funds to the department of audit
20 or the attorney general for investigation if evidence of
21 fraudulent use of ESA funds is obtained;

22

1 (x) Establish rules to prohibit an education
2 service provider from accepting payments from ESAs if the
3 state superintendent determines the education service
4 provider has:

5

6 (A) Intentionally and substantially
7 misrepresented information or failed to refund any
8 overpayments in a timely manner; or

9

10 (B) Routinely failed to provide students
11 with required educational goods or services.

12

13 (xi) Shall notify parents and ESA students
14 within ten (10) business days if the state superintendent
15 prohibits an education service provider from receiving ESA
16 funds under paragraph (x) of this subsection;

17

18 (xii) For students eligible for an ESA under
19 W.S. 21-2-904(a)(i), ensure ESA students participate in the
20 statewide assessments administered pursuant to W.S.
21 21-2-304(a) and compile the assessment results to analyze
22 student proficiency and academic progress among the

1 students participating in the ESA program, including an
2 analysis of graduation rates, proficiency and progress
3 based on grade level. The results of the analysis under
4 this paragraph shall be included in the annual report
5 required pursuant to W.S. 21-2-204(k).

6

7 (b) If an education service provider requires partial
8 payment of tuition or fees prior to the start of the school
9 year to reserve space for an ESA student admitted to the
10 education service provider, the state superintendent may
11 certify the partial payment prior to the start of the
12 school year in which the ESA is awarded and deduct that
13 amount from subsequent quarterly ESA deposits. If an ESA
14 student decides not to use the education service provider,
15 the partial payment made under this subsection shall be
16 returned to the state superintendent by the education
17 service provider and credited to the student's ESA.

18

19 (c) The state superintendent may adopt rules that are
20 not inconsistent with this act and that are necessary for
21 the administration of this act including rules:

22

1 (i) Establishing or contracting for the
2 establishment of an online anonymous fraud reporting
3 service;

4

5 (ii) Establishing an anonymous telephone hotline
6 for fraud reporting;

7

8 (iii) Requiring a surety bond for education
9 service providers receiving more than one hundred fifty
10 thousand dollars (\$150,000.00) in ESA funds; and

11

12 (iv) Establishing a procedure for refunding
13 payments from education service providers to ESAs.

14

15 **21-2-907. Education service providers.**

16

17 (a) Before receiving payment from an ESA, a
18 prospective education service provider shall:

19

20 (i) Be certified by the state superintendent of
21 public instruction pursuant to W.S. 21-2-906(a) to receive
22 payments from ESAs;

1

2 (ii) Agree not to refund, rebate or share ESA
3 funds with parents or ESA students in any manner, except
4 that funds may be remitted or refunded to an ESA in
5 accordance with procedures established by the state
6 superintendent.

7

8 (b) Nothing in this act shall be deemed to limit the
9 independence or autonomy of an education service provider
10 or to make the actions of an education service provider the
11 actions of state government or public school district.

12

13 (c) Education service providers shall be given
14 maximum freedom to provide instruction and services in
15 their usual and customary manner to meet the educational
16 needs of ESA students.

17

18 (d) An education service provider that accepts
19 payment from an ESA pursuant to this act is not an agent of
20 the state or federal government or a public school
21 district.

22

1 **21-2-908. Responsibilities of public schools and**
2 **school districts.**

3

4 A public school or school district that previously enrolled
5 an ESA student shall provide an education service provider
6 that has enrolled the ESA student with a complete copy of
7 the ESA student's school records as necessary, while
8 complying with 20 U.S.C. § 1232g, the Family Educational
9 Rights and Privacy Act of 1974.

10

11 **21-2-909. Legal liability.**

12

13 No liability shall arise on the part of the state
14 superintendent of public instruction or the state or any
15 public school or school district based on the award of or
16 use of an ESA pursuant to this act.

17

18 **Section 2.** W.S. 21-4-102 by creating a new subsection
19 (d), 21-4-301 and 21-13-310(a)(ix) are amended to read:

20

21 **21-4-102. When attendance required; exemptions;**
22 **withdrawal.**

1

2 (d) A child participating in the ESA program
3 specified by W.S. 21-2-901 and who provides notice of
4 participation in the ESA program to the child's school
5 district shall be deemed to be in compliance with the
6 compulsory attendance requirement under this section.

7

8 **21-4-301. Schools to be free and accessible to all**
9 **children; minimum school year.**

10

11 (a) Except as otherwise provided by law, the public
12 schools of each school district in the state shall at all
13 times be equally free and accessible to all children
14 resident therein of five (5) years of age as of August 1,
15 or September 15 if pursuant to an approved request under
16 W.S. 21-3-110(a)(xxxviii), of the year in which they may
17 register in kindergarten as provided in W.S. 21-4-302(b)
18 and under the age of twenty-one (21), subject to
19 regulations of the board of trustees. Each school district
20 shall operate its schools and its classes for a minimum of
21 one hundred seventy-five (175) days each school year unless
22 an alternative schedule has been approved by the state

1 board. Prior to submission of a proposed alternative
2 schedule to the state board, the board of trustees shall
3 hold at least two (2) advertised public meetings within the
4 district, at which the board shall present the proposed
5 alternative schedule and respond to public questions and
6 comments. Any school district operating under an
7 alternative schedule shall annually evaluate the
8 effectiveness of that schedule in meeting the educational
9 goals and purposes for which the schedule was adopted.

10

11 (b) A parent, guardian or other person having control
12 or charge of any child eligible to attend public school in
13 Wyoming under subsection (a) of this section shall have the
14 option to apply for the ESA program specified by W.S.
15 21-2-901 on behalf of the child.

16

17 **21-13-310. Annual computation of district revenues.**

18

19 (a) To ensure revenues available to each district are
20 uniformly sufficient to enable compliance with the uniform
21 standards for educational programs prescribed under W.S.
22 21-9-101 and 21-9-102 and to secure state board

1 accreditation of educational programs under W.S.
2 21-2-304(a)(ii), the revenues specified under this
3 subsection shall be deemed state revenues and shall be
4 considered in determining the amount to be distributed to
5 each district under W.S. 21-13-311. A district shall make
6 an annual computation of the following revenues:

7
8 (ix) The amount of tuition paid to the district
9 during the previous school year, including any amount
10 charged under W.S. 21-4-501 and any amount assessed in
11 excess of the costs incurred for adult education programs,
12 summer school programs, programs provided under an
13 agreement for cooperative educational programs under W.S.
14 21-20-101 through 21-20-111 and any amount assessed for
15 programs and services for children with disabilities, but
16 excluding any tuition assessed by a district for the
17 provision of virtual education programs to participating
18 students pursuant to W.S. 21-13-330, any tuition assessed
19 by a district for the provision of part-time educational
20 programs to participating students pursuant to W.S.
21 21-2-904(b)(i)(C) and 21-4-502(c), any revenues received by
22 a district from post secondary education option programs

1 provided under W.S. 21-20-201 or for the provision of
2 educational programs to a nonresident student placed in a
3 juvenile detention facility pursuant to an agreement with
4 the student's resident school district;

5

6 **Section 3.** There is appropriated forty million
7 dollars (\$40,000,000.00) from the general fund to the
8 education savings accounts expenditure account created by
9 W.S. 21-2-903(b) for purposes of the Wyoming education
10 savings accounts program. This appropriation shall be
11 subject to the terms of W.S. 21-2-903(b).

12

13 **Section 4.**

14

15 (a) The department of education is authorized two (2)
16 full-time employees for the purposes of this act. There is
17 appropriated four hundred eighty thousand dollars
18 (\$480,000.00) from the general fund for the salary and
19 benefits of the positions created by this section for the
20 period beginning July 1, 2024 and ending June 30, 2026.
21 These funds shall not be transferred or expended for any
22 other purpose and any unexpended, unobligated funds

1 remaining from this appropriation shall revert as provided
2 by law. It is the intent of the legislature that four
3 hundred eighty thousand dollars (\$480,000.00) and these
4 positions be included in the department of education's
5 standard budget for the immediately succeeding fiscal
6 biennium.

7

8 (b) There is appropriated to the department of
9 education four hundred thousand dollars (\$400,000.00) from
10 the general fund for contractual services (900 series)
11 necessary to implement this act for the period beginning
12 July 1, 2024 and ending June 30, 2026. These funds shall
13 not be transferred or expended for any other purpose and
14 any unexpended, unobligated funds remaining from this
15 appropriation shall revert as provided by law. It is the
16 intent of the legislature that four hundred thousand
17 dollars (\$400,000.00) for contractual services (900 series)
18 necessary to implement this act be included in the
19 department of education's standard budget for the
20 immediately succeeding fiscal biennium. As a condition of
21 this appropriation, the department of education shall
22 regularly report on the expenditures from the appropriation

