

## **SECTION 1. STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE**

A. California’s civic, economic and cultural future requires educational options that prepare every student for a worthwhile role in our vibrant state.

B. Students are struggling under an outdated, one-size-fits-all system that is not focused on cultivating their unique talents and interests and has a bias toward 4-year degrees as the only path to success. Parents watch their children struggle, with few who have any access or resources to help. Seasoned educators forced to “teach to the test” are unable to identify and cultivate their students’ potential.

C. Students, parents, and educators are increasingly demanding a more individualized approach to build a well-rounded, thoughtful and resilient citizen. They want a learning environment where each student is uniquely known and valued, with customized learning experiences focused on children’s interests and aptitudes, and trust and respect for the parents’ role in developing and educating their children.

D. Financial barriers have many parents feeling that they have no options but to send their children to neighborhood schools. Private schools, charter schools, and home schools are achieving better educational results at a much lower cost, but these options are unaffordable or unavailable for most students. Zip codes and lotteries determine the educational options available for most low and middle-income students.

E. Prior to COVID-19, around 10% of students in California were utilizing alternative education options, but the pandemic required families to try alternatives. Today more than 60% of families are interested in alternative learning options for their students beyond the traditional public school system.

F. California now spends around \$22,000 per year for each child in public school, including around \$14,000 from state funds. Spending more on the current and outdated system will not yield better results. Letting parents decide which school offers the best options and learning experiences for their student better utilizes education funds. The increasing demand for alternatives will create a range of exciting educational opportunities that all students can enjoy.

G. California is the 5th largest economy in the world, and needs to offer a world-class, individualized, and customized education to every K-12 student in our state in order to continue providing for a sustainable and vibrant economy. As such, the state needs to innovate its education system to encourage our children to discover their unique talents, turn those talents into skills, and use those skills to create value for themselves and for others.

H. Therefore, the people hereby enact the Education Savings Account of 2022. The Act includes the following provisions:

(1) \$13,000 will be available to each student every year, to be used toward tuition and education expenses at an accredited private school of their choice. An Education Savings Account will be established at the request of the student’s parent or legal guardian.

- (2) The Education Savings Account will be available to the lowest income families the first two years, middle income families the next two years, and all remaining families thereafter.
- (3) Any unused funds in the Education Savings Account, and the investment earnings of such funds, will be rolled over for future school years.
- (4) Upon completion of high school or GED, up to \$60,000 remaining in the student's Education Savings Account will be available for that child for college or vocational school.
- (5) All of this is achieved at no additional cost to taxpayers.

## **SECTION 2. ESTABLISHMENT OF THE EDUCATION SAVINGS ACCOUNT PROGRAM**

Article 19.1 (commencing with Section 69995) is added to Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code, to read:

### Article 19.1 Education Savings Account Program

**69995.** (a) This article shall be known, and may be cited, as the Education Savings Account Act of 2022.

(b) There is hereby established an instrumentality of the State of California to be known as the Education Savings Account Trust ("ESA Trust").

(c) Every child eligible to be enrolled in kindergarten, or in an elementary or secondary school, in any of grades 1 to 12, inclusive, and whose parent or guardian desires to enroll their child in an eligible school, shall be entitled to an Education Savings Account, pursuant to this article.

(d) Every child enrolled in an eligible school shall be entitled, pursuant to this article, to a credit to his or her account for tuition and K-12 eligible education expenses and undergraduate or graduate eligible education expenses.

(e) Commencing with the first fiscal year following the enactment of this Act, on July 1 of each year, the Department of Finance shall determine the annual Education Savings Account deposit amount for the upcoming school year. The Education Savings Account deposit amount for the 2023-24 school year shall be \$13,000. Thereafter, the Department of Finance shall adjust the annual Education Savings Account deposit amount by the same percentage increase or decrease in the total amount required to be expended for the support of K-12 education in the current fiscal year as required by Section 8 of Article XVI of the California Constitution (Proposition 98).

(f) For each school year, the State Controller shall transfer an amount from the General Fund to the ESA Trust equal to the Education Savings Account deposit amount multiplied by the number of accounts established pursuant to subdivision (c). The deposit amount may be less than the full amount to adjust for an account created during a school year and for a partial school year pursuant to an application under the second sentence of section 69995.2(b). The State Controller shall make at least three transfers to the ESA Trust in each fiscal year, commencing on August 1 and ending on or before June 15, and shall adjust such transfer amounts to ensure that the total amount transferred each school year equates exactly to the amount that should be transferred pursuant to

this article. The State Controller shall report to the Department of Finance and the Legislature the total transfer amount on or before June 15 of each year. Nothing in this article prohibits the Legislature from appropriating additional funds to the ESA Trust.

(g) Within the ESA Trust, there shall be two funds, which shall be identified as the ESA Trust Program Fund and the ESA Trust Administrative Fund. Notwithstanding Section 13340 of the Government Code, the ESA Trust Program Fund is hereby continuously appropriated, without regard to fiscal years, to the Education Savings Account Trust Board for the purposes of this article. Moneys in the ESA Trust Administrative Fund shall be available for expenditure, upon appropriation, for the purposes specified in this article. Moneys in the ESA Trust may be used only for the purposes of this Act and may not be taken, used, borrowed, or collateralized for any other purpose.

**6995.1.** (a) The purposes, powers, and duties of the ESA Trust are vested in, and shall be exercised by, the Education Savings Account Trust Board (“ESA Trust Board”), which is hereby established.

(b) The ESA Trust Board shall consist of the members of the Scholarshare Investment Board as provided in subparagraph (B) of paragraph (2) of subdivision (a) of Section 69984, the State Superintendent of Public Instruction and one member representing private schools and one member representing parochial/religious schools, each appointed by the Governor.

(c) The ESA Trust Board shall have all the necessary powers and duties provided to the Scholarshare Investment Board under Article 19 (commencing with Section 69980), including, but not limited to, all of the following:

(1) The investment of moneys in the ESA Trust for the benefit of the program, the beneficiaries of accounts within the ESA Trust, and the public reporting of investments and investment performance;

(2) The distribution of funds from accounts and the audit of accounts to ensure that all funds disbursed to eligible schools are used by and for the beneficiary of the account and in furtherance of the program;

(3) Accepting any grants, gifts, appropriations, and other moneys from any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund, the program fund, or the account of any beneficiary;

(4) Rebating unclaimed funds to the state for the benefit of K-12, higher education, or vocational education, upon appropriation by the Legislature;

(5) Adopting regulations to implement this article.

(d) Moneys transferred by the State Controller pursuant to subdivision (f) of Section 69995 shall be segregated by the ESA Trust Board into the program fund and administrative fund. All moneys paid into the program fund shall be promptly invested and accounted for separately for each Education Savings Account. All costs of administration, including investment management fees,

of the ESA Trust shall be paid out of the administrative fund, which shall not exceed, on an annual basis, one percent (1%) of the total amount of the program fund.

**69995.2.** (a) The State Superintendent of Public Instruction shall create an online application for a parent or legal guardian to request an Education Savings Account and a participation agreement, pursuant to this article. The application and agreement shall also be accepted by the Superintendent by mail.

(b) The deadline for submission of an application and execution of a participation agreement for the next succeeding school year shall be April 1. The Superintendent shall establish at least one additional opportunity and deadline for submission of an application and execution of a participation agreement during the school year, where the ESA deposit amount for a partial school year shall be less than the full amount, pursuant to section 69995(f).

(c) The parent or legal guardian of an eligible child shall identify the eligible child as the beneficiary of the account and execute the participation agreement.

(d) Once an application and participation agreement have been completed, the Superintendent shall confirm that the child is enrolled in the eligible school and the participation agreement shall be transmitted to the eligible school.

(e) So long as the beneficiary remains eligible to receive the Education Savings Account deposit amount and to direct the expenditure of funds pursuant to this article, no additional application or agreement shall be required. However, an application and agreement shall be amended by the parent or guardian if the beneficiary enrolls in a different eligible school.

(f) The Superintendent shall create an online process for a parent or legal guardian, public school district, eligible school, or any other person, to report that a child is no longer eligible or no longer enrolled in an eligible school. Upon receipt of a report, the Superintendent shall inquire and confirm the eligibility status of the child by providing adequate notice to the parent or legal guardian of the child and the school, and an opportunity for both to be heard. If the Superintendent determines that a child is no longer eligible, such a determination may be appealed by the parent or legal guardian on behalf of the child, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

**69995.3.** The State Superintendent of Public Instruction shall create an online application for a school to become eligible to receive funds from an account pursuant to this article; publish, and periodically update, a list of eligible schools by name and address; provide contact information for each eligible school; and post the tuition and other eligible education expenses charged for each grade level.

**69995.4.** (a) The ESA Trust Board shall provide for the creation of accounts within the program fund for each eligible child who has requested an account from the Superintendent, shall enter into participation agreements pursuant to this article, shall credit each account with the appropriate Education Savings Account deposit amount for that eligible child, and shall credit investment earnings of the program fund to each account, as appropriate.

(b) The ESA Trust Board shall provide parents and legal guardians with secure online review of account activity, including account deposits or credits, investment earnings, and disbursements to an eligible school on behalf of the beneficiary. The Board shall protect the privacy of parents, legal guardians, and the beneficiary of an account.

(c) The ESA Trust Board shall, pursuant to the terms of the participation agreement, distribute funds on behalf of the beneficiary to an eligible school on a monthly basis. However, the Board may, by agreement with an eligible school, provide for a different distribution schedule.

(d) The ESA Trust Board shall provide for the random audit of funds distributed from accounts to ensure student eligibility, student enrollment, student attendance, and school eligibility.

(e) The ESA Trust Board shall withhold any ineligible payment made to the school from any future payments.

(f) The ESA Trust Board shall provide a uniform participation agreement for use by the Superintendent of Public Instruction, the Board, and parents, and legal guardians. An eligible school identified in a participation agreement shall be a third-party beneficiary of the agreement.

(g) The ESA Trust Board shall adopt regulations to implement this article.

**69995.5.** (a) The ESA Trust Board shall only distribute funds from an account to an eligible school.

(b) The state shall not limit the number of eligible schools, the number of students enrolled in an eligible school, nor impose any condition on the eligibility of any private school, college, or university to receive funds other than the following:

(1) Periodic certification that an eligible child is enrolled and attending the eligible school.

(2) Periodic certification that the amount paid is only used for tuition and eligible education expenses.

(3) Accreditation required to obtain status as an eligible school pursuant to section 69995.9(f)(2).

(4) Public disclosure of the receipt and expenditure of ESA funds as required by the ESA Trust Board.

(5) The general health and safety standards applicable to the facilities of all private schools operating in California.

(c) Upon an eligible child's graduation from high school, or obtaining a high school equivalency certificate pursuant to section 51425, the maximum balance in any education savings account and available for an eligible child's use for tuition, undergraduate or graduate eligible education expenses, or expenses associated with vocational education, shall be \$60,000 in total. Any amount in such an account in excess of this limit shall be treated as unclaimed funds pursuant to section 69995.1(c)(4). The Department of Finance shall adjust this limit annually for inflation using the California Consumer Price Index.

**69995.6.** (a) The California Community Colleges, the California State University, and the University of California, and each campus, branch, and function thereof, shall accept funds from

an account for the tuition and eligible educational expenses of the beneficiary of that account admitted to the school.

(b) A full-time private school, including a private college or university, may choose to become an eligible school upon application filed with the Superintendent, and may accept funds from an account for the tuition and eligible educational expenses of the beneficiary of that account and admitted to the school.

(c) A vocational education or training school may choose to become an eligible school upon application filed with the Superintendent, and may accept funds from an account for the tuition and eligible educational expenses of the beneficiary of that account and admitted to the school.

**69995.7.** Notwithstanding Sections 69995, the child of a parent who chooses to educate the child at home pursuant to an affidavit filed pursuant to section 33190 and in lieu of enrollment in a school eligible to receive funds from an account under this article, shall not be entitled to an Education Savings Account. Nothing in this Act shall prohibit the state from offering financial aid for education-related expenses to the parents of homeschool children ineligible for an Education Savings Account. A child enrolled in an eligible school to facilitate homeschooling shall be eligible for an Education Savings Account pursuant to this article.

**69995.8.** (a) An eligible school shall not share, refund, or rebate any funds received from an account with or to the parent, legal guardian, or eligible pupil in any manner.

(b) The ESA Trust Board may terminate and suspend an account and participation agreement if the parent, legal guardian, or eligible pupil fails to comply with the terms of the participation agreement with the intent to defraud or misuse the funds distributed on behalf of a beneficiary upon notice to the parent or legal guardian and an opportunity to be heard. If the Board terminates or suspends an account, that determination may be appealed by the parent, legal guardian, or eligible pupil pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

**69995.9.** For purposes of this article, the following terms are defined as follows:

(a) “Administrative fund” means the fund within the Education Savings Account Trust from which the costs of administration of the ESA Trust shall be paid.

(b) “Beneficiary of the account” means the eligible child for whom an account was created by the ESA Trust Board.

(c) “Costs of administration” means the actual costs of the ESA Trust Board to administer Education Savings Accounts, subject to the statutory limit.

(d) “Education Savings Account deposit amount” means the amount calculated pursuant to subdivision (e) of Section 69995.

(e) “Eligible child” means every child eligible to enroll in a K-12 public school and enrolled in a K-12 eligible school, except as follows:

(1) During the first two school years following enactment of this Act, an eligible child is a child whose parent or guardian's taxable income is less than \$50,000 per year for a single filer and \$100,000 per year for a dual filer;

(2) During the next two school years following subdivision (1), an eligible child is a child whose parent or guardian's taxable income is less than \$100,000 per year for a single filer and \$200,000 per year for dual filer:

(3) Thereafter, there shall be no income limitation on eligibility.

(f) "Eligible school" means any of the following:

(1) the California Community College, the California State University, and the University of California.

(2) A full-time private school, as described in section 48222, operating in the state and accredited by a regional accrediting agency recognized by the state or the United States Department of Education, or a school that has applied for accreditation, but such application is pending, and the school has not been denied accreditation in the prior two years by the same accrediting agency.

(3) A private college or university accredited by a regional accrediting agency recognized by the state or the United States Department of Education.

(4) A public college or university accredited by a regional accrediting agency recognized by the state that operates it or the United States Department of Education.

(5) A vocational education or training institution accredited by a regional accrediting agency recognized by the state or the United States Department of Education and operating in California.

(g) "ESA Trust" means the Education Savings Account Trust established by subdivision (b) of Section 69995.

(h) "ESA Trust Board" means the Education Savings Account Trust Board established by subdivision (a) of Section 69995.1.

(i) "K-12 eligible education expenses" mean the expenses typically associated with the education of a K-12 pupil in an eligible school, other than tuition, including, but not limited to, books, school supplies and equipment, academic tutoring, academic testing fees, special needs services of a special needs beneficiary, and transportation to and from school, and school functions. Expenses incurred by a K-12 student to attend a California Community College prior to high school graduation, including tuition, shall be eligible K-12 education expenses.

(j) "Participation agreement" means the uniform contract created by the ESA Trust Board that must be executed by the ESA Trust and the parent or legal guardian of an eligible child that directs the ESA Trust to disburse funds to an eligible school on behalf of the beneficiary of the account.

(k) "Program fund" means the fund created in the Education Savings Account Trust from which moneys transferred from the General Fund and investment earnings, and other grants, gifts, or appropriations are maintained and segregated into accounts for eligible children.

(l) “Tuition” means the amount charged by an eligible school to enroll a pupil or student at the school for a particular grade level and registration fees associated with application and enrollment.

(m) “Undergraduate or graduate eligible education expenses” mean the expenses typically associated with the education of an undergraduate or graduate student in an eligible school, other than tuition, including, but not limited to, books, school supplies and equipment, academic tutoring, special needs services of a special needs beneficiary, any additional school fees, and room and board.

(n) “Unclaimed funds” means funds remaining in an account that are not disbursed to an eligible school after the eligible child attains the age of 30.

**69995.10(a)** The Legislature shall provide for the allocation of costs associated with this Act as follows:

(1) For the cost of providing ESA deposits for an eligible child not enrolled in a K-12 public school prior to the enactment of this Act, the Legislature shall rebase, as necessary, the minimum funding guarantee for K-12 schools as provided in section 8 of article XVI of the California Constitution, including the inclusion of such eligible children in the definition of “average daily attendance” as amended by this Act.

(2) For the costs of providing ESA deposits for an eligible child, the program cost for that deposit shall be apportioned between the General Fund and the public school district in which the child resides, on the same ratio of General Fund and local property tax revenue that would have been used to educate that child in his or her public school district. The Legislature shall provide for the transfer of funds from a school district to the State as necessary to carry out this provision.

### **SECTION 3. INCOME TAX EXCLUSION**

Section 17132.2 is added to the Revenue and Taxation Code to read:

17132.2. (a) For purposes of this section, the following terms have the following meanings:

(1) “Beneficiary of the account” has the same meaning as set forth in subdivision (b) of Section 69995.9 of the Education Code.

(2) “Education savings account” means an education savings account established under the Education Savings Account Act of 2022 (Article 19.1 (commencing with Section 69995) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code).

(3) “Participation agreement” has the same meaning as set forth in subdivision (j) of Section 69995.9 of the Education Code.

(b) For taxable years beginning on or after the enactment of the Education Savings Account Act of 2022, gross income of a beneficiary of the account or the parent or legal guardian of a beneficiary of the account shall not include any of the following:

(1) Any distribution or earnings under an Education Savings Account participation agreement, as provided in Article 19.1 (commencing with Section 69995) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code.

(2) Any contribution to an education savings account.

#### **SECTION 4. AMENDMENT OF CONSTITUTION**

Section 8.5 of Article IX is added to the California Constitution to read:

**8.5.** Notwithstanding any other provision of this Constitution, including Section 8 of this article and Section 5 of Article XVI, the State, and every agency or political subdivision of the State, may disburse funds pursuant to an agreement between the State and a parent or legal guardian of an eligible child for tuition and education related expenses, as provided by statute, and to provide tax or other public benefits to educational institutions, irrespective of religious affiliation, to further the purposes of Section 1 of this article.

Section 8.1 of Article XVI is added to the California Constitution to read:

**8.1** For purposes of section 8 of this article and section 8 of article XIII B, the term “average daily attendance” shall include all children enrolled in a K-12 public school and all children who are otherwise eligible to enroll in a K-12 public school but have chosen to fund K-12 education with an Education Savings Account funded pursuant to Article 19.1 (commencing with Section 69995) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code. Notwithstanding any other provision of this Constitution, including section 25.5 of article XIII, the Legislature may, by statute, require the allocation of ad valorem property tax revenue pursuant to section 69995.10 of the Education Code.

#### **SECTION 5. GENERAL PROVISIONS**

(a) If any provision of this act, or any part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

(b) This act is intended to be comprehensive. It is the intent of the people that in the event this act or acts relating to the same subject shall appear on the same statewide election ballot, the provisions of the other act or acts shall be deemed to be in conflict with this act. In the event that this act receives a greater number of affirmative votes, the provisions of this act shall prevail in their entirety, and all provisions of the other act or acts shall be null and void.

(c) Sections 2 and 3 of this Act may be amended by a statute passed by each house of the Legislature by roll call vote entered into the journal, seven-eighths of the membership concurring, provided that the statute is consistent with and furthers the purposes of this Act.

(d) (1) Except as provided in paragraph (2), the Attorney General shall defend against any action challenging, in whole or in part, the validity of this act, and shall have an unconditional right to intervene in any action to defend the validity of this act.

(2) If the Attorney General declines to defend the validity of the act in any action, the Attorney General shall nonetheless file an appeal from, or seek review of, any judgment of any court that determines that the act is invalid, in whole or in part, if necessary or appropriate to preserve the state's standing to defend the law in conformity with the Attorney General's constitutional duty to see that the laws of the state are adequately enforced.

(3) The official proponent(s) of the act have an unconditional right to participate, either as interveners or real parties in interest, in any action affecting the validity or interpretation of the act. Where the Governor and Attorney General have declined to defend the validity of the act, the official proponents are also authorized to act on the state's behalf in asserting the state's interest in the validity of the act in any such action and to appeal from any judgment invalidating the act.

(4) Nothing in this section precludes other public officials from asserting the state's interest in the validity of the act.