

# HOUSE BILL 1113

F1, Q3

11r2676

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By: **Delegate Wivell**

Introduced and read first time: February 5, 2021

Assigned to: Appropriations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Primary and Secondary Education – Education Savings Account Program –**  
3 **Established**

4 FOR the purpose of establishing an Education Savings Account program in the State;  
5 requiring the State Department of Education to administer the program; stating the  
6 purpose of the program; establishing the requirements for participation in the  
7 program; requiring a certain deposit into the account of certain students;  
8 establishing a process for calculating and depositing a certain amount; authorizing  
9 a parent to make a certain deposit; limiting the use of certain funds to certain  
10 purposes; authorizing the Department to determine a parent ineligible under certain  
11 circumstances and to refer certain actions to the Attorney General; prohibiting  
12 certain entities from refunding, rebating, or sharing certain grants with certain  
13 individuals; requiring the Department to provide certain notice to parents, qualify  
14 certain entities, establish certain fees, and conduct or contract for certain audits;  
15 requiring schools to meet certain criteria to qualify for the program and to provide a  
16 certain receipt to parents; requiring a certain school district to provide certain  
17 entities with student school records; requiring the Department to adopt certain  
18 regulations; allowing a subtraction modification under the Maryland income tax for  
19 deposits into certain accounts; defining certain terms; providing for the application  
20 of this Act; and generally relating to the Education Savings Account program.

21 BY adding to

22 Article – Education

23 Section 9.11–101 through 9.11–106 to be under the new title “Title 9.11. Education  
24 Savings Accounts”

25 Annotated Code of Maryland

26 (2018 Replacement Volume and 2020 Supplement)

27 BY repealing and reenacting, without amendments,

28 Article – Tax – General

29 Section 10–208(a)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2016 Replacement Volume and 2020 Supplement)

3 BY adding to  
4 Article – Tax – General  
5 Section 10–208(y)  
6 Annotated Code of Maryland  
7 (2016 Replacement Volume and 2020 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
9 That the Laws of Maryland read as follows:

10 **Article – Education**

11 **TITLE 9.11. EDUCATION SAVINGS ACCOUNTS.**

12 **9.11–101.**

13 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
14 INDICATED.

15 (B) “ACCOUNT” MEANS AN EDUCATION SAVINGS ACCOUNT OPENED WITH A  
16 PRIVATE FINANCIAL MANAGEMENT FIRM OR SIMILAR ENTITY THAT IS QUALIFIED BY  
17 THE DEPARTMENT UNDER THIS TITLE.

18 (C) (1) “ELIGIBLE STUDENT” MEANS A STUDENT WHO:

19 (I) IS ELIGIBLE TO ENROLL IN A PUBLIC SCHOOL IN THE STATE;  
20 AND

21 (II) ATTENDED A PUBLIC SCHOOL, CHARTER SCHOOL, OR HOME  
22 SCHOOL PROGRAM IN THE STATE FOR NOT LESS THAN 100 DAYS DURING THE  
23 IMMEDIATELY PRECEDING FISCAL YEAR.

24 (2) “ELIGIBLE STUDENT” INCLUDES A STUDENT OF AN ACTIVE–DUTY  
25 MILITARY MEMBER STATIONED IN THE STATE, REGARDLESS OF THE ATTENDANCE  
26 REQUIREMENTS UNDER PARAGRAPH (1) OF THIS SUBSECTION.

27 (D) “PARENT” MEANS A LEGAL RESIDENT OF THE STATE WHO IS A PARENT,  
28 A GUARDIAN, A CUSTODIAN, OR ANY OTHER PERSON WITH AUTHORITY TO ACT ON  
29 BEHALF OF THE ELIGIBLE STUDENT.

30 (E) “PRIVATE TUTORING” MEANS TUTORING SERVICES PROVIDED BY A  
31 TUTOR WHO:

1           (1) IS A TEACHER LICENSED IN ANY STATE;

2           (2) IS A SUBJECT MATTER EXPERT; OR

3           (3) IS OTHERWISE APPROVED BY THE DEPARTMENT.

4           (F) "PROGRAM" MEANS THE EDUCATION SAVINGS ACCOUNT PROGRAM  
5 ESTABLISHED UNDER THIS TITLE.

6           (G) (1) "QUALIFYING SCHOOL" MEANS ANY NONPUBLIC SCHOOL THAT  
7 PROVIDES INSTRUCTION TO PRIMARY OR SECONDARY STUDENTS AND HAS NOTIFIED  
8 THE DEPARTMENT OF ITS INTENTION TO PARTICIPATE IN THE PROGRAM AND  
9 COMPLY WITH THE PROGRAM'S REQUIREMENTS.

10           (2) "QUALIFYING SCHOOL" INCLUDES A HOME SCHOOL PROGRAM.

11           (H) "RESIDENT SCHOOL DISTRICT" MEANS THE SCHOOL SYSTEM IN THE  
12 COUNTY IN WHICH THE STUDENT RESIDES.

13 **9.11-102.**

14           (A) (1) THERE IS AN EDUCATION SAVINGS ACCOUNT PROGRAM IN THE  
15 STATE.

16           (2) THE DEPARTMENT SHALL ADMINISTER THE PROGRAM.

17           (B) THE PURPOSE OF THE PROGRAM IS TO PROVIDE STATE GRANTS TO THE  
18 ACCOUNT OF THE PARENT OF AN ELIGIBLE STUDENT TO PROVIDE FOR THE  
19 EDUCATION OF THE ELIGIBLE STUDENT.

20           (C) A PARENT OF AN ELIGIBLE STUDENT SHALL BE QUALIFIED FOR A STATE  
21 GRANT UNDER THE PROGRAM IF THE PARENT SIGNS AN AGREEMENT WITH THE  
22 DEPARTMENT AGREEING:

23           (1) TO PROVIDE AN EDUCATION FOR THE ELIGIBLE STUDENT IN, AT A  
24 MINIMUM, READING, GRAMMAR, SOCIAL STUDIES, AND SCIENCE THAT CONFORMS  
25 TO EDUCATIONAL REQUIREMENTS FOR THE ELIGIBLE STUDENT'S GRADE LEVEL AS  
26 ESTABLISHED BY THE DEPARTMENT;

27           (2) TO ENROLL THE ELIGIBLE STUDENT IN A PROGRAM THAT MEETS  
28 REGULAR SCHOOL ATTENDANCE REQUIREMENTS;

1           **(3) TO ENSURE THAT THE ELIGIBLE STUDENT WILL TAKE ALL**  
2 **ASSESSMENTS REQUIRED UNDER STATE LAW;**

3           **(4) TO RELEASE THE RESIDENT SCHOOL DISTRICT FROM ALL**  
4 **OBLIGATIONS TO EDUCATE THE ELIGIBLE STUDENT;**

5           **(5) TO NOT ENROLL THE ELIGIBLE STUDENT IN A PUBLIC SCHOOL OR**  
6 **PUBLIC CHARTER SCHOOL EXCEPT FOR CONTRACTED SERVICES UNDER**  
7 **SUBSECTION (E) OF THIS SECTION;**

8           **(6) TO USE ALL FUNDS RECEIVED UNDER THIS TITLE EXCLUSIVELY**  
9 **FOR THE ELIGIBLE STUDENT'S EDUCATION EXPENSES UNDER SUBSECTION (E) OF**  
10 **THIS SECTION IN KINDERGARTEN THROUGH GRADE 12;**

11           **(7) TO NOT TRANSFER ANY FUNDS RECEIVED UNDER THIS TITLE TO A**  
12 **BENEFICIARY THAT IS NOT THE ELIGIBLE STUDENT OR THE PARENT OF THE**  
13 **ELIGIBLE STUDENT, OR TO OTHERWISE TAKE POSSESSION OF FUNDS TO WHICH THE**  
14 **ELIGIBLE STUDENT OR PARENT OF THE ELIGIBLE STUDENT IS NOT ENTITLED;**

15           **(8) TO NOT RECEIVE ANY OTHER PUBLIC SUBSIDY FOR THE**  
16 **EDUCATION OF THE ELIGIBLE STUDENT, UNLESS ANY FUNDS RECEIVED UNDER THE**  
17 **PROGRAM ARE REDUCED BY THE AMOUNT OF THE SUBSIDY;**

18           **(9) TO NOT BILL AN INSURANCE COMPANY, MEDICAID, OR ANY**  
19 **OTHER AGENCY FOR THE SAME SERVICES FOR WHICH FUNDS RECEIVED UNDER THIS**  
20 **TITLE ARE USED; AND**

21           **(10) TO RETURN ANY UNUSED FUNDS TO THE STATE:**

22                   **(I) WHEN THE STUDENT ACHIEVES A HIGH SCHOOL DIPLOMA**  
23 **OR ITS EQUIVALENCY; OR**

24                   **(II) ON THE STUDENT'S REMOVAL FROM A QUALIFYING SCHOOL**  
25 **IN THE STATE.**

26           **(D) (1) SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, ON A**  
27 **QUARTERLY BASIS THE STATE SHALL DEPOSIT INTO AN ACCOUNT OF AN ELIGIBLE**  
28 **STUDENT AN AMOUNT EQUIVALENT TO:**

29                   **(I) FOR STUDENTS FROM FAMILIES WHOSE INCOME IS LESS**  
30 **THAN OR EQUAL TO 500% OF THE FEDERAL POVERTY LEVEL FOR THE IMMEDIATELY**  
31 **PRECEDING CALENDAR YEAR, 25% OF THE PER PUPIL AMOUNT OF STATE AND**  
32 **LOCAL FUNDS FOR EACH EDUCATION PROGRAM IN THE RESIDENT SCHOOL DISTRICT**

1 FOR WHICH THE ELIGIBLE STUDENT WOULD BE INCLUDED IN THE ENROLLMENT  
2 COUNT FOR THE CALCULATIONS UNDER TITLE 5, SUBTITLE 2 OF THIS ARTICLE; AND

3 (II) FOR STUDENTS FROM FAMILIES WHOSE INCOME IS  
4 GREATER THAN 500% OF THE FEDERAL POVERTY LEVEL FOR THE IMMEDIATELY  
5 PRECEDING CALENDAR YEAR, 18.75% OF THE PER PUPIL AMOUNT OF STATE AND  
6 LOCAL FUNDS FOR EACH EDUCATION PROGRAM IN THE RESIDENT SCHOOL DISTRICT  
7 FOR WHICH THE ELIGIBLE STUDENT WOULD BE INCLUDED IN THE ENROLLMENT  
8 COUNT FOR THE CALCULATIONS UNDER TITLE 5, SUBTITLE 2 OF THIS ARTICLE.

9 (2) (I) THE ELIGIBLE STUDENT SHALL BE COUNTED IN THE  
10 ENROLLMENT COUNT USED FOR PURPOSES OF CALCULATING THE STATE AND  
11 LOCAL FUNDING FOR THE EDUCATION PROGRAMS UNDER TITLE 5, SUBTITLE 2 OF  
12 THIS ARTICLE.

13 (II) THE COUNTY SHALL REIMBURSE THE STATE FOR THE  
14 LOCAL FUNDING REQUIRED UNDER TITLE 5, SUBTITLE 2 OF THIS ARTICLE THAT IS  
15 PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

16 (3) THE AMOUNT DEPOSITED UNDER PARAGRAPH (1) OF THIS  
17 SUBSECTION SHALL BE DEDUCTED FROM THE AMOUNT OF STATE AND LOCAL FUNDS  
18 PROVIDED TO THE RESIDENT SCHOOL DISTRICT UNDER TITLE 5, SUBTITLE 2 OF  
19 THIS ARTICLE.

20 (4) A PARENT OF AN ELIGIBLE STUDENT MAY DEPOSIT ADDITIONAL  
21 FUNDS TO AN ACCOUNT ON A PRE-TAX BASIS AS PROVIDED UNDER § 10-208(Y) OF  
22 THE TAX - GENERAL ARTICLE.

23 (5) THE FUNDS IN AN ACCOUNT MAY BE USED ONLY FOR EDUCATION  
24 EXPENSES UNDER SUBSECTION (E) OF THIS SECTION AND AS APPROVED BY THE  
25 DEPARTMENT.

26 (E) PARENTS OF AN ELIGIBLE STUDENT MAY USE THE FUNDS IN THE  
27 ACCOUNT ONLY FOR THE FOLLOWING EXPENSES:

28 (1) TUITION AND FEES AT A QUALIFYING SCHOOL;

29 (2) TEXTBOOKS OR UNIFORMS REQUIRED BY A QUALIFYING SCHOOL;

30 (3) PAYMENT FOR PRIVATE TUTORING;

31 (4) PAYMENT FOR PURCHASE OF CURRICULAR MATERIALS, ANY  
32 SUPPLEMENTAL MATERIALS REQUIRED FOR THE CURRICULUM, AND

1 INSTRUCTIONAL MATERIALS;

2 (5) TUITION OR FEES FOR A NONPUBLIC ONLINE LEARNING  
3 PROGRAM;

4 (6) FEES FOR NATIONAL NORM-REFERENCED EXAMINATIONS,  
5 ADVANCED PLACEMENT EXAMINATIONS OR SIMILAR COURSES, ANY EXAMINATIONS  
6 RELATED TO POSTSECONDARY ADMISSION, AND TECHNICAL EDUCATION COURSES;

7 (7) EDUCATION SERVICES FROM A LICENSED OR ACCREDITED  
8 PROVIDER FOR ELIGIBLE STUDENTS WITH DISABILITIES OR WITH SPECIAL NEEDS;

9 (8) CONTRACTED EDUCATION SERVICES PROVIDED AT A PUBLIC  
10 SCHOOL OR WITHIN A LOCAL SCHOOL SYSTEM;

11 (9) IF APPLICABLE:

12 (I) INTERNET SERVICE PROVIDER FEES; OR

13 (II) ONLINE LEARNING FEES; AND

14 (10) ANY OTHER EDUCATION EXPENSES APPROVED BY THE  
15 DEPARTMENT.

16 (F) A QUALIFYING SCHOOL, PRIVATE TUTORING PROVIDER, OR OTHER  
17 EDUCATION PROVIDER MAY NOT REFUND, REBATE, OR SHARE THE GRANT  
18 PROVIDED UNDER THIS TITLE WITH A PARENT OR AN ELIGIBLE STUDENT.

19 (G) THE DEPARTMENT SHALL PROVIDE WRITTEN NOTICE TO PARENTS ON:

20 (1) THE ELIGIBLE USES OF ACCOUNT FUNDS;

21 (2) THE RESPONSIBILITIES OF THE PARENT; AND

22 (3) THE DUTIES OF THE DEPARTMENT.

23 9.11-103.

24 (A) (1) THE DEPARTMENT SHALL QUALIFY PRIVATE FINANCIAL  
25 MANAGEMENT FIRMS OR SIMILAR ENTITIES TO MANAGE ACCOUNTS.

26 (2) THE DEPARTMENT SHALL ESTABLISH REASONABLE FEES BASED  
27 ON MARKET RATES.

1           **(B) (1) (I) THE DEPARTMENT MAY CONDUCT OR CONTRACT FOR THE**  
2 **AUDITING OF ACCOUNTS.**

3                           **(II) AT A MINIMUM, A RANDOM SAMPLING OF ACCOUNTS SHALL**  
4 **BE AUDITED ANNUALLY.**

5           **(2) THE DEPARTMENT MAY DETERMINE A PARENT INELIGIBLE FOR**  
6 **THE PROGRAM IF SUBSTANTIAL MISUSE OF ACCOUNT FUNDS OCCURS.**

7           **(3) THE DEPARTMENT MAY REFER ANY SUBSTANTIAL MISUSE OF**  
8 **ACCOUNT FUNDS TO THE ATTORNEY GENERAL FOR FURTHER INVESTIGATION.**

9 **9.11-104.**

10           **(A) A QUALIFYING SCHOOL SHALL:**

11                           **(1) COMPLY WITH APPLICABLE HEALTH AND SAFETY LAWS OR**  
12 **CODES;**

13                           **(2) HOLD A VALID OCCUPANCY PERMIT IF REQUIRED;**

14                           **(3) CERTIFY COMPLIANCE WITH NONDISCRIMINATION POLICIES**  
15 **UNDER TITLE 42 OF THE UNITED STATES CODE;**

16                           **(4) CONDUCT CRIMINAL BACKGROUND CHECKS ON EMPLOYEES;**

17                           **(5) REFUSE TO EMPLOY INDIVIDUALS WHO:**

18                                   **(I) ARE INELIGIBLE FOR EMPLOYMENT UNDER STATE LAW; OR**

19                                   **(II) POSE A THREAT TO THE SAFETY OF STUDENTS;**

20                           **(6) OFFER ALL APPROPRIATE STANDARDIZED ASSESSMENTS;**

21                           **(7) HAVE NO RECORD OF FRAUD OR ABUSE;**

22                           **(8) ON REQUEST, PROVIDE PARENTS OF PROSPECTIVE STUDENTS**  
23 **DETAILS ABOUT THE SCHOOL'S PROGRAMS, QUALIFICATIONS, EXPERIENCE, AND**  
24 **CAPACITY TO SERVE STUDENTS; AND**

25                           **(9) BE EITHER:**

1 (I) AN APPROVED NONPUBLIC SCHOOL;

2 (II) A NONPUBLIC SCHOOL WITH PROVISIONAL APPROVAL; OR

3 (III) AN APPROVED HOME SCHOOL PROGRAM.

4 (B) TO ENSURE APPROPRIATE EXPENDITURE OF FUNDS, A QUALIFYING  
5 SCHOOL SHALL PROVIDE PARENTS WITH A RECEIPT FOR ALL QUALIFYING  
6 EXPENDITURES.

7 **9.11–105.**

8 THE RESIDENT SCHOOL DISTRICT SHALL PROVIDE A QUALIFIED SCHOOL OR  
9 PROVIDER THAT HAS ADMITTED AN ELIGIBLE STUDENT WITH A COMPLETE COPY OF  
10 THE STUDENT’S SCHOOL RECORD IN COMPLIANCE WITH THE FEDERAL FAMILY  
11 EDUCATIONAL RIGHTS AND PRIVACY ACT.

12 **9.11–106.**

13 THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY TO CARRY OUT  
14 THIS TITLE.

15 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
16 as follows:

17 **Article – Tax – General**

18 10–208.

19 (a) In addition to the modification under § 10–207 of this subtitle, the amounts  
20 under this section are subtracted from the federal adjusted gross income of a resident to  
21 determine Maryland adjusted gross income.

22 (Y) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE  
23 MEANINGS INDICATED.

24 (II) “ACCOUNT” HAS THE MEANING STATED IN § 9.11–101 OF  
25 THE EDUCATION ARTICLE.

26 (III) “PARENT” HAS THE MEANING STATED IN § 9.11–101 OF THE  
27 EDUCATION ARTICLE.

28 (IV) “PROGRAM” HAS THE MEANING STATED IN § 9.11–101 OF  
29 THE EDUCATION ARTICLE.

1                   **(2) THE SUBTRACTION UNDER SUBSECTION (A) OF THIS SECTION**  
2 **INCLUDES THE AMOUNT DEPOSITED INTO AN ACCOUNT ESTABLISHED UNDER THE**  
3 **PROGRAM BY A PARENT DURING THE TAXABLE YEAR.**

4                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
5 1, 2021, and Section 2 of this Act shall be applicable to all taxable years beginning after  
6 December 31, 2020.