

AMENDED IN SENATE APRIL 2, 2018

SENATE BILL

No. 1344

Introduced by Senator Moorlach

February 16, 2018

An act to add Section 66202.1 to, and to add Article 19.1 (commencing with Section 69995) to Chapter 2 of Part 42 of Division 5 of Title 3 of, the Education Code, and to amend Section 23712 of, and to add Sections 17052.20 and 17132.2 to, the Revenue and Taxation Code, relating to education expenses, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1344, as amended, Moorlach. Education expenses: Education Savings Account Act of 2020.

(1) Existing law establishes a system of higher education in this state, consisting of 4 segments: the University of California, under the administration of the Regents of the University of California; the California State University, under the administration of the Trustees of the California State University; the California Community Colleges, under the administration of the Board of Governors of the California Community Colleges; and independent institutions of higher education.

This bill would prohibit a nonresident who applies to either the University of California or the California State University for admission at the freshman or sophomore level from being admitted unless and until the regents or the trustees, as appropriate, determine that there are no resident applicants from specified groups who meet the eligibility requirements for admission to that segment. This provision would become operative on January 1, 2019, only if Senate Constitutional

Amendment _____ 16 of the 2017–18 Regular Session is approved by the voters at the statewide general election on November 6, 2018.

(2) Existing law establishes a system of elementary and secondary education in this state. This system consists of the public and private schools that provide instruction in kindergarten and in grades 1 to 12, inclusive.

This bill would enact the Education Savings Account Act of 2020, which would be administered by an Education Savings Account Trust, to be known as the ESA Trust, that the bill would establish. The bill would entitle every child eligible to be enrolled in kindergarten, or in an elementary or secondary school, in any of grades 1 to 12, inclusive, to an Education Savings Account. The bill would specify that every child enrolled in an eligible school shall be entitled, pursuant to this act, to a credit to his or her account for K–12 and college tuition, as defined, and education-related expenses. The bill would require, commencing with the 2019–20 fiscal year, the Department of Finance to determine, on July 1 of each year, the annual Education Savings Account deposit amount for the upcoming school year. The bill would specify the procedure for calculating that deposit amount.

The bill would establish an Education Savings Account Trust Board, to be known as the ESA Trust Board, with specified membership, to administer the ESA Trust. The bill would establish 2 funds, known as the ESA Trust Program Fund and the ESA Trust Administrative Fund, and would continuously appropriate the moneys in the program fund to the ESA Trust Board for purposes of the bill.

The bill would establish a procedure for the parents and legal guardians of eligible pupils to apply for the establishment of an Education Savings Account under the bill. The bill would authorize the ESA Trust Board to distribute funds from the Education Savings Accounts of participating pupils to eligible schools as defined, to include a public school as defined, a full-time charter school operating as a nonprofit public benefit corporation as specified, a full-time private school as defined, a private college or university accredited as specified, or a vocational educational or training institution accredited as specified. The bill would specify procedures pursuant to which participating eligible schools would receive funds distributed by the ESA Trust pursuant to the act.

These provisions would become operative on January 1, 2019, only if Senate Constitutional Amendment _____ 16 of the 2017–18 Regular

Session is approved by the voters at the statewide general election on November 6, 2018.

(2) The Personal Income Tax Law imposes taxes upon taxable income and the Corporation Tax Law imposes taxes according to, measured by, or upon net income, as specified. Those laws generally define “gross income” as income from whatever source derived, except as specifically excluded, and provide various exclusions from gross income.

This bill would provide an exclusion from gross income under the Personal Income Tax Law for any distribution or earnings under an education savings account participation agreement or any contribution to an education savings account, as provided.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws. Existing law requires any bill authorizing a new tax credit to contain, among other things, specific goals, purposes, and objectives that the tax credit will achieve, detailed performance indicators, and data collection requirements. Existing state law generally conforms, except as specified, to federal law regarding Coverdell general savings accounts and exempts distribution from a Coverdell general savings account if the distribution is made for qualified education expenses, which includes expenses for postsecondary education or elementary and secondary education. Existing federal law defines “school” for these purposes to mean any school which provides elementary education or secondary education, as determined by state law.

This bill would allow a credit against the taxes imposed by the Personal Income Tax Law for an amount equal to the contribution made by a taxpayer into a Coverdell education savings account, as specified. The bill would also define “school,” for these purposes, to include any eligible school under the Education Savings Account Act of 2020. The bill also would include that additional information required for any bill authorizing a new income tax credit.

These provisions would become operative on January 1, 2019, only if Senate Constitutional Amendment— 16 of the 2017–18 Regular Session is approved by the voters at the statewide general election on November 6, 2018.

(3) This bill would declare that, if any of its provisions is for any reason held to be invalid or unconstitutional, the remaining provisions would not be affected, but would remain in full force and effect, and to this end the provisions of the bill would be severable. The bill would provide that, except as specified, the Attorney General would defend

against any action challenging, in whole or in part, the validity of the bill, and would have an unconditional right to intervene in any action to defend the validity of the bill.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Our future depends on the education of our children from
- 4 kindergarten through high school and, for those students who desire
- 5 it, the completion of college or vocational education.
- 6 (b) Yet many parents feel trapped by underperforming schools
- 7 and without any ability to save for college or vocational training.
- 8 (c) The State of California currently spends about \$15,000 per
- 9 pupil on K–12 public education, including federal, state, and local
- 10 funds and over \$90 billion to educate about 6,000,000 children in
- 11 public schools. The state provides most of the money for schools
- 12 pursuant to the minimum funding guarantee in the California
- 13 Constitution (Proposition 98), about \$11,000 per pupil per year.
- 14 (d) Some public schools are excellent and some are simply
- 15 terrible. Overall pupil performance, measured in any number of
- 16 ways, shows decline, not improvement. Yet per-pupil spending
- 17 by the state has increased by more than \$4,000 in the last decade.
- 18 This fact proves that just more money is not the answer to our
- 19 education problem.
- 20 (e) There are many nonprofit private schools and public charter
- 21 schools that provide quality education to our children, usually at
- 22 much lower cost per pupil than the state.
- 23 (f) Parents should have the right to choose the best educational
- 24 opportunity for their children and to set aside any savings derived
- 25 from that choice for their children’s college or vocational
- 26 education.
- 27 (g) Therefore, the Legislature hereby enacts the Education
- 28 Savings Account Act of 2020 to do all of the following:
- 29 (1) Create an Education Savings Account for each school age
- 30 child in every district across the state, upon the request of that
- 31 child’s parents.

1 (2) Fund the Education Savings Account with the amount the
2 state currently spends on public education for each pupil, about
3 \$11,000, at no additional cost to taxpayers.

4 (3) Empower parents to use the funds in the Education Savings
5 Account to enroll and pay tuition expenses for each child in any
6 eligible school of their choice.

7 (4) Allow any unused funds in the Education Savings Account
8 at the end of the school year to be rolled over for future school
9 years, and upon graduation from high school, allow any savings
10 in the child’s account to be used for college or vocational
11 education.

12 (5) Require California public universities, including the
13 California State University and the University of California, to
14 admit eligible California resident students first, so that the funds
15 in each Education Savings Account benefit California students,
16 California taxpayers, and California.

17 (6) Provide a tax credit for parents to save for school and college
18 expenses.

19 SEC. 2. Section 66202.1 is added to the Education Code, to
20 read:

21 66202.1. (a) For the purpose of enrollment planning and
22 admission priority practice at the undergraduate resident student
23 level for the California State University and the University of
24 California, no nonresident who applies to either of these segments
25 for admission at the freshman or sophomore level shall be admitted
26 unless and until the trustees or the regents, as appropriate,
27 determine that there are no resident applicants from the groups
28 specified in Section 66202 who meet the eligibility requirements
29 for admission to that segment.

30 (b) The Legislature finds and declares that, with respect to the
31 University of California, this section provides for priority in
32 admissions for California residents within the meaning of
33 subdivision (a) of Section 9 of Article IX of the California
34 Constitution.

35 (c) This section shall become operative on January 1, 2019,
36 only if Senate Constitutional Amendment ~~_____~~ 16 of the 2017–18
37 Regular Session is approved by the voters at the statewide general
38 election on November 6, 2018.

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

4

5 Article 19.1. Education Savings Account Program

6

7 69995. (a) This article shall be known, and may be cited, as
8 the Education Savings Account Act of 2020.

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

11 (c) Every child eligible to be enrolled in kindergarten, or in an
12 elementary or secondary school, in any of grades 1 to 12, inclusive,
13 shall be entitled, pursuant to this article, to an Education Savings
14 Account.

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

18 (e) Commencing with the 2019–20 fiscal year, on July 1 of each
19 year, the Department of Finance shall determine the annual
20 Education Savings Account deposit amount for the upcoming
21 school year. The Education Savings Account deposit amount shall
22 be calculated as follows: the total amount budgeted for K–12 and
23 community college education in the current fiscal year as required
24 by Section 8 of Article XVI of the California Constitution
25 (Proposition 98) shall be divided by the number of pupils enrolled
26 in kindergarten or in any of grades 1 to 12, inclusive, in this state.

27 (f) For each school year, the Controller shall transfer an amount
28 from the General Fund to the ESA Trust equal to the Education
29 Savings Account deposit amount multiplied by the number of
30 accounts established pursuant to subdivision (c). The Controller
31 shall make at least three transfers to the ESA Trust in each fiscal
32 year, commencing on August 1 and ending on or before June 15,
33 and shall adjust these transfer amounts to ensure that the total
34 amount transferred each school year equates exactly to the amount
35 that should be transferred pursuant to this article. The Controller
36 shall report to the Department of Finance the total transfer amount
37 on or before June 15 of each school year.

38 (g) Within the ESA Trust, there shall be two funds, which shall
39 be identified as the ESA Trust Program Fund and the ESA Trust
40 Administrative Fund. Notwithstanding Section 13340 of the

1 Government Code, the ESA Trust Program Fund is hereby
2 continuously appropriated, without regard to fiscal years, to the
3 Education Savings Account Trust Board for the purposes of this
4 article. Moneys in the ESA Trust Administrative Fund shall be
5 available for expenditure, upon appropriation, for the purposes
6 specified in this article.

7 69995.1. (a) The purposes, powers, and duties of the ESA
8 Trust are vested in, and shall be exercised by, the Education
9 Savings Account Trust Board, which is hereby established.

10 (b) The ESA Trust Board shall consist of members of the
11 Scholarshare Investment Board as provided in subparagraph (B)
12 of paragraph (2) of subdivision (a) of Section 69984 and the
13 Superintendent.

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

18 (1) The investment of moneys in the ESA Trust for the benefit
19 of the program and the public reporting of investments and
20 investment performance.

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

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

30 (4) Rebating unclaimed funds to the state for the benefit of
31 K–12, higher education, or vocational education, upon
32 appropriation by the Legislature.

33 (5) Adopting regulations to implement this article.

34 (d) Moneys transferred by the Controller pursuant to subdivision
35 (f) of Section 69995 shall be segregated by the ESA Trust Board
36 into the program fund and administrative fund. All costs of
37 administration of the ESA Trust shall be paid out of the
38 administrative fund, which shall not exceed, on an annual basis,
39 1 percent of the total amount of the program fund.

1 69995.2. (a) The Superintendent shall create an online
2 application for a parent or legal guardian to request an Education
3 Savings Account and a participation agreement, pursuant to this
4 article. The application and agreement shall also be accepted by
5 the Superintendent by mail.

6 (b) The deadline for submission of an application and execution
7 of a participation agreement for the next succeeding school year
8 shall be June 1. The Superintendent shall establish at least one
9 additional deadline for submission of an application and execution
10 of a participation agreement during the school year.

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

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

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

25 (f) The Superintendent shall create an online process for a parent
26 or legal guardian, public school district, eligible school, or any
27 other person, to report that a child is no longer eligible or no longer
28 enrolled in an eligible school. Upon receipt of a report, the
29 Superintendent shall confirm the eligibility status of the child.
30 Such a determination may be appealed by the parent or legal
31 guardian on behalf of the child, pursuant to the Administrative
32 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
33 Part 1 of Division 3 of Title 2 of the Government Code).

34 69995.3. (a) The Superintendent shall create an online
35 application for a school to become eligible to receive funds from
36 an account pursuant to this article and publish, and periodically
37 update, a list of eligible schools by name and address; provide
38 contact information for each eligible school; and post the tuition
39 charged for each grade level.

1 (b) The Superintendent shall create an online process for a parent
2 or legal guardian, public school district, eligible school, or any
3 other person, to report that a school is no longer eligible to receive
4 funds pursuant to this article. Upon receipt of such a report, the
5 Superintendent shall confirm the eligibility status of the school.
6 Such determination may be appealed by the school pursuant to the
7 Administrative Procedure Act (Chapter 3.5 (commencing with
8 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
9 Code).

10 69995.4. (a) The ESA Trust Board shall provide for the
11 creation of accounts within the program fund for each eligible
12 child who has requested an account from the Superintendent, shall
13 enter into participation agreements pursuant to this article, shall
14 credit each account with the appropriate Education Savings
15 Account deposit amount for that eligible child, and shall credit
16 investment earnings of the program fund to each account, as
17 appropriate.

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

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

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

32 (e) The ESA Trust Board shall obtain the refund of any ineligible
33 payment made.

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

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

1 69995.5. (a) The ESA Trust Board shall only distribute funds
2 from an account to an eligible school.

3 (b) The following are schools eligible to receive funds from an
4 account under this article:

5 (1) A public school, as defined in Section 6 of Article IX of the
6 California Constitution, including, but not necessarily limited to,
7 campuses of the California Community Colleges, the California
8 State University, and the University of California.

9 (2) A full-time charter school operating as a nonprofit public
10 benefit corporation pursuant to Section 47604.

11 (3) A full-time private school, as described in Section 48222,
12 accredited by a regional accrediting agency recognized by the state
13 or the United States Department of Education, and operating as a
14 nonprofit public benefit corporation.

15 (4) A private college or university accredited by a regional
16 accrediting agency recognized by the state or the United States
17 Department of Education and operating as a nonprofit public
18 benefit corporation.

19 (5) A vocational education or training institution accredited by
20 a regional accrediting agency recognized by the state or the United
21 States Department of Education.

22 (c) The state shall not impose any condition on the eligibility
23 of any private school, college, or university to receive funds other
24 than the following:

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

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

29 (3) Current accreditation.

30 (4) The general health and safety standards applicable to all
31 private schools operating in California.

32 69995.6. (a) The California Community Colleges, the
33 California State University, and the University of California, and
34 each campus, branch, and function thereof, shall accept funds from
35 an account for the tuition and eligible educational expenses of the
36 beneficiary of that account admitted to the school.

37 (b) A school district may choose, by majority vote of the
38 governing board of that school district, to allow for open school
39 enrollment of any school in the district and provide for the
40 distribution of money based on the enrollment of an eligible child

1 in a school. Public school districts may choose, by majority vote
2 of the governing board of that school district, to provide a rebate
3 of up to one thousand dollars (\$1,000) per school year, to all
4 eligible pupils who enroll in one or more district schools. This
5 rebate shall be credited to the eligible account for future college
6 or vocational education tuition and education-related expenses.

7 (c) A full-time charter school, operating as a nonprofit public
8 benefit corporation pursuant to Section 47604, may choose to
9 become an eligible school upon application filed with the
10 Superintendent and may accept funds from an account for the
11 tuition and eligible educational expenses of the beneficiary of that
12 account admitted to the school. A charter school may choose to
13 provide a rebate each school year to all eligible pupils who enroll
14 in the charter school. This rebate shall be credited to the eligible
15 account for future college or vocational education tuition and
16 undergraduate education-related expenses. The limit on the number
17 of charter schools in Section 47602 shall not apply to charter
18 schools eligible to accept funds pursuant to this article.

19 (d) A full-time private school, including a private college or
20 university, operating as a nonprofit public benefit corporation may
21 choose to become an eligible school upon application filed with
22 the ~~Superintendent~~ *Superintendent*, and may accept funds from an
23 account for the tuition and eligible educational expenses of the
24 beneficiary of that account and admitted to the school.

25 (e) A vocational education or training school may choose to
26 become an eligible school upon application filed with the
27 ~~Superintendent~~ *Superintendent*, and may accept funds from an
28 account for the tuition and eligible educational expenses of the
29 beneficiary of that account and admitted to the school.

30 ~~69995.7. Notwithstanding Sections 69995.4, 69995.5, and~~
31 ~~69995.6, the ESA Trust Board shall create an account within the~~
32 ~~program fund for an eligible child who is homeschooled full time~~
33 ~~in lieu of enrollment in a full-time public or private school. Moneys~~
34 ~~deposited into the eligible child's account shall only be used for~~
35 ~~future college or vocational education tuition and undergraduate~~
36 ~~education-related expenses, and the total amount deposited by the~~
37 ~~state shall not exceed fifty thousand dollars (\$50,000). The ESA~~
38 ~~Trust Board shall adjust this amount every two years based on the~~
39 ~~increase in the California Consumer Price Index.~~

1 69995.8. (a) An eligible school shall not share, refund, or
2 rebate any funds received from an account with or to the parent,
3 legal guardian, or eligible pupil in any manner.

4 (b) The ESA Trust Board may terminate and suspend an account
5 and participation agreement if the parent, legal guardian, or eligible
6 pupil fails to comply with the terms of the participation agreement
7 with the intent to defraud or misuse the funds distributed on behalf
8 of a beneficiary. The determination may be appealed by the parent,
9 legal guardian, or eligible pupil pursuant to the Administrative
10 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
11 Part 1 of Division 3 of Title 2 of the Government Code).

12 69995.9. For purposes of this article, the following terms are
13 defined as follows:

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

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

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

22 (d) “Education Savings Account deposit amount” means the
23 amount calculated per grade level pursuant to subdivision (e) of
24 Section 69995.

25 (e) “Eligible child” means every child eligible to enroll in a
26 public school, including, but not limited to, a campus of the
27 California Community Colleges, the California State University,
28 or the University of California, and enrolled in and attending an
29 eligible school.

30 (f) “Eligible school” means any of the following:

31 (1) A public school, as defined in Section 6 of Article IX of the
32 California Constitution.

33 (2) A full-time charter school operating as a nonprofit public
34 benefit corporation pursuant to Section 47604.

35 (3) A full-time private school, accredited by a regional
36 accrediting agency recognized by the state or the United States
37 Department of Education, and operating as a nonprofit public
38 benefit corporation.

39 (4) A private college or university accredited by a regional
40 accrediting agency recognized by the state or the United States

1 Department of Education and operating as a nonprofit public
2 benefit corporation.

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

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

9 (g) “ESA Trust” means the Education Savings Account
10 established by subdivision (b) of Section 69995.

11 (h) “ESA Trust Board” means the Education Savings Account
12 Trust Board established by subdivision (a) of Section 69995.1.

13 (i) “K–12 eligible education expenses” means the expenses
14 associated with the education of a K–12 pupil in an eligible school,
15 other than tuition, including books, school supplies and equipment,
16 academic tutoring, academic testing fees, special needs services
17 of a special needs beneficiary, transportation to and from school,
18 and school functions.

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

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

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

32 (m) “Undergraduate eligible education expenses” means the
33 expenses associated with the education of an undergraduate student
34 in an eligible school, other than tuition, including books, school
35 supplies and equipment, academic tutoring, special needs services
36 of a special needs beneficiary, any additional school fees, and room
37 and board.

38 (n) “Unclaimed funds” means funds remaining in an account
39 that are not disbursed to an eligible school after the eligible child

1 becomes either ineligible or attains the age of 25, whichever comes
2 first.

3 69995.10. This article shall become operative on January 1,
4 2019, only if Senate Constitutional Amendment— 16 of the
5 2017–18 Regular Session is approved by the voters at the statewide
6 general election on November 6, 2018.

7 SEC. 4. Section 17052.20 is added to the Revenue and Taxation
8 Code, to read:

9 17052.20. (a) For each taxable year beginning on or after
10 January 1, 2021, there shall be allowed as a credit against the “net
11 tax,” as defined in Section 17039, an amount equal to the
12 contribution made by a taxpayer into a Coverdell education savings
13 account subject to the maximum contribution limit per designated
14 beneficiary under Section 530 of the Internal Revenue Code,
15 relating to Coverdell education savings accounts.

16 (b) On or before _____, and each _____ thereafter, the Franchise
17 Tax Board, in consultation with the Department of Finance, shall
18 determine the gross reduction in state revenue resulting from the
19 tax credit established in this section for the purpose of calculating
20 the effect of the tax credit on the minimum funding guarantee for
21 schools required by Section 8 of Article XVI of the California
22 Constitution and provide that determination to the Legislature.
23 The Legislature shall annually appropriate an amount necessary
24 to offset any reduction in the minimum funding guarantee for
25 schools caused by the tax credit.

26 (c) The credit under this section may be claimed only on a timely
27 filed original return.

28 (d) (1) The Franchise Tax Board may adopt regulations as
29 necessary or appropriate to carry out the purposes of this section.

30 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
31 Division 3 of Title 2 of the Government Code does not apply to
32 any standard, criterion, procedure, determination, rule, notice, or
33 guideline established or issued by the Franchise Tax Board
34 pursuant to this section.

35 (e) This section shall become operative on January 1, 2019,
36 only if Senate Constitutional Amendment— 16 of the 2017–18
37 Regular Session is approved by the voters at the statewide general
38 election on November 6, 2018.

39 SEC. 5. Section 17132.2 is added to the Revenue and Taxation
40 Code, immediately following Section 17132, to read:

1 17132.2. (a) For purposes of this section, the following terms
2 have the following meanings:

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

5 (1) “Education savings account” means an education savings
6 account established under the Education Savings Account Act of
7 2020 (Article 19.1 (commencing with Section 69995) of Chapter
8 2 of Part 42 of Division 5 of Title 3 of the Education Code).

9 (2) “Participation agreement” has the same meaning as set forth
10 in subdivision (h) of Section 69995.9 of the Education Code.

11 (c) For taxable years beginning on or after January 1, 2019,
12 gross income of a beneficiary of the account or the parent or legal
13 guardian of a beneficiary of the account shall not include any of
14 the following :

15 (1) Any distribution or earnings under an Education Savings
16 Account participation agreement, as provided in Article 19. 1
17 (commencing with Section 69995) of Chapter 2 of Part 42 of
18 Division 5 of Title 3 of the Education Code.

19 (2) Any contribution to an education savings account.

20 (3) This section shall become operative on January 1, 2019,
21 only if Senate Constitutional Amendment_____ 16 of the 2017–18
22 Regular Session is approved by the voters at the statewide general
23 election on November 6, 2018.

24 SEC. 6. Section 23712 of the Revenue and Taxation Code is
25 amended to read:

26 23712. Section 530 of the Internal Revenue Code, relating to
27 Coverdell education savings accounts, shall apply, except as
28 otherwise provided.

29 (a) Section 530(a) of the Internal Revenue Code is modified as
30 follows:

31 (1) By substituting the phrase “under Part 10 (commencing with
32 Section 17001) and this part” for the phrase “under this subtitle.”

33 (2) By substituting “Article 2 (commencing with Section
34 23731)” for “section 511.”

35 (b) For taxable years beginning before January 1, 2002, Section
36 530(b)(1) of the Internal Revenue Code, relating to Coverdell
37 education savings account, is modified to additionally require that
38 upon the date that the designated beneficiary becomes 30 years of
39 age, any balance to the credit of the beneficiary shall be distributed

1 within 30 days after the date the beneficiary becomes 30 years of
2 age to that beneficiary.

3 (c) Section 530(d) of the Internal Revenue Code is modified as
4 follows:

5 (1) By substituting the phrase “under Part 10 (commencing with
6 Section 17001) in the manner as provided in Section 72(b) of the
7 Internal Revenue Code, as modified by Part 10” for the phrase “in
8 the manner as provided in Section 72(b)” in Section 530(d)(1) of
9 the Internal Revenue Code.

10 (2) (A) By substituting the phrase “tax imposed by Part 10
11 (commencing with Section 17001)” for the phrase “tax imposed
12 by this chapter” in Section 530(d)(4)(A) of the Internal Revenue
13 Code.

14 (B) By substituting the phrase “increased by 2½ percent” for
15 the phrase “increased by 10 percent” in Section 530(d)(4)(A) of
16 the Internal Revenue Code.

17 (C) By substituting the phrase “shall be included in the
18 contributor’s gross income under Part 10 (commencing with
19 Section 17001) or this part” for the phrase “shall be included in
20 gross income” in Section 530(d)(4)(C) of the Internal Revenue
21 Code.

22 (D) For taxable years beginning before January 1, 2005:

23 (i) By additionally providing that Section 530(d)(4)(A) of the
24 Internal Revenue Code shall not apply if the payment or
25 distribution is made on account of the attendance of the designated
26 beneficiary at the United States Military Academy, the United
27 States Naval Academy, the United States Air Force Academy, the
28 United States Coast Guard Academy, or the United States Merchant
29 Marine Academy, to the extent that the amount of the payment or
30 distribution does not exceed the costs of advanced education (as
31 defined by Section 2005(e)(3) of Title 10 of the United States
32 Code, as in effect on November 11, 2003) attributable to that
33 attendance.

34 (ii) The amendments made to this section by Section 12 of
35 Chapter 552 of the Statutes of 2004 shall apply to taxable years
36 beginning after December 31, 2002.

37 (d) For purposes of Part 10 (commencing with Section 17001)
38 and this part, in the case of a custodial account treated as a trust
39 by reason of Section 530(g) of the Internal Revenue Code, the
40 custodian of that account shall be treated as the trustee thereof.

1 (e) A copy of the report, which is required to be filed with the
2 Secretary of the Treasury under Section 530(h) of the Internal
3 Revenue Code, shall be filed with the Franchise Tax Board at the
4 same time and in the same manner as specified in that section.

5 (f) Section 109(d)(2) of Public Law 110-245, relating to
6 application of amendments to deaths from injuries occurring on
7 or after October 7, 2001, and before enactment, shall apply, except
8 as otherwise provided.

9 (g) (1) “For taxable years beginning on and after January 1,
10 2021, Section 530(b)(3)(B) of the Internal Revenue Code, relating
11 to school, is modified by adding the sentence “The term “school”
12 also includes an eligible school under the Education Savings
13 Account Act of 2020 (Article 19.1 (commencing with Section
14 69995) of Chapter 2 of Part 42 of Division 5 of Title 3 of the
15 Education Code).”

16 (2) This subdivision shall become operative on January 1, 2019,
17 only if Senate Constitutional Amendment _____ 16 of the 2017–18
18 Regular Session is approved by the voters at the statewide general
19 election on November 6, 2018.

20 SEC. 7. (a) For purposes of complying with Section 41 of the
21 Revenue and Taxation Code, the Legislature finds and declares
22 that the following applies to Section 17052.20 of the Revenue and
23 Taxation Code:

24 ~~(a)~~

25 (1) Low- and middle-income families are disadvantaged by
26 underperforming public schools. Public charter schools or private
27 schools are out of reach for many of these families because of the
28 additional expenses associated with attending these schools. The
29 specific goals, purposes, and objectives of the tax credit are to
30 incentivize savings to pay for expenses associated with attending
31 these schools.

32 ~~(b)~~

33 (2) The performance indicators for the tax credit are the cost of
34 the tax credit to the state, the amount of permissible school
35 expenditures made by parents, and the number of students assisted
36 by the tax credit.

37 ~~(c)~~

38 (3) The specific data to be used to determine whether the tax
39 credit is meeting the goals described in subdivision (a) are the
40 number of families using the credit and the number of children

1 whose educational opportunities were expanded by the creation
2 of the credit. The Legislative Analyst's Office shall, on or before
3 _____, and each _____ thereafter, collect and remit the data to the
4 Legislature. The Superintendent of Public Instruction shall assist
5 the Legislative Analyst's Office in determining the number of
6 students assisted by the credit and the public and private schools
7 attended by those students.

8 *(b) This section shall become operative on January 1, 2019,*
9 *only if Senate Constitutional Amendment 16 of the 2017–18*
10 *Regular Session is approved by the voters at the statewide general*
11 *election on November 6, 2018.*

12 SEC. 8. (a) If any provision of this act, or any part thereof, is
13 for any reason held to be invalid or unconstitutional, the remaining
14 provisions shall not be affected, but shall remain in full force and
15 effect, and to this end the provisions of this act are severable.

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

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

27 (3) Nothing in this section precludes public officials other than
28 the Attorney General from asserting the state's interest in the
29 validity of the act.