



MODEL POLICY | Education Freedom

529 EDUCATION FREEDOM FOR STATES ACT

TOPLINE POINTS

The 529 Education Freedom for States Act:

- ★ Aligns state law with Section 529 of the Internal Revenue Code through automatic conformity, ensuring that future federal expansions of qualified education expenses are recognized under state law without additional legislative action.
- ★ Eliminates state tax penalties on withdrawals treated as qualified under federal law.
- ★ Protects taxpayers by preventing state agencies from restricting eligible uses of 529 plans beyond those authorized by state and federal law.
- ★ Expands state tax incentives for contributions to 529 plans.
- ★ Permits equal tax treatment for contributions to in-state and out-of-state 529 plans.
- ★ Allows unused education savings account (ESA) funds to be rolled over into a 529 plan without state tax consequences.

Background

529 education savings plans are tax-advantaged accounts that help families save for education expenses. Established under Section 529 of the Internal Revenue Code, these plans were originally designed to support postsecondary education costs but have since been expanded by Congress to include K-12 tuition, apprenticeship programs, and other qualified educational expenses. As the permissible uses of 529 plans have broadened, they have become increasingly important vehicles for education freedom.



This 529 Education Freedom for States Act aligns state tax treatment of 529 plans with federal law by adopting automatic conformity to Section 529 of the Internal Revenue Code, as amended. The Act ensures that withdrawals treated as qualified under federal law are also treated as qualified for state tax purposes, preventing families from facing state tax penalties on federally authorized education expenses. The model policy strengthens taxpayer protections by limiting administrative interpretations that conflict with state statute, expands state tax incentives for 529 savings, permits equal tax treatment for contributions to out-of-state 529 plans, encourages employer matching contributions into 529 plans, and allows coordination between 529 plans and state education savings account (ESA) programs.

Section 1. Title

This Act shall be known and may be cited as the “529 Education Freedom for States Act.”

Section 2. Legislative Findings and Purpose

(a) The Legislature finds that:

1. Section 529 of the Internal Revenue Code provides tax-advantaged savings for a broad range of education expenses;
2. Congress has expanded the federal definition of qualified education expenses to include K-12 tuition and other educational expenses;
3. Where state law has not been updated to reflect federal changes, families face tax liability on withdrawals that Congress has determined to be legitimate education expenditures;
4. Aligning state law with federal law eliminates this disparity and advances education freedom.

(b) The purpose of this Act is to:

1. Conform state law to federal definitions of qualified education expenses;
2. Eliminate state tax penalties on federally qualified withdrawals;
3. Expand tax incentives for education savings; and
4. Coordinate 529 plans with state education savings accounts.

Section 3. Definitions

As used in this Act:

- (a) “Eligible education institution” has the same meaning as in Section 529 of the Internal Revenue Code of 1986, as amended.
- (b) “Internal Revenue Code” or “Code” means the Internal Revenue Code of 1986, as amended.



- (c) “Qualified education expenses” means any expense treated as a qualified education expense under Section 529 of the Internal Revenue Code, as amended.
- (d) “Qualified tuition program” or “qualified tuition plan” has the same meaning as a “qualified tuition program” as defined by Section 529 of the Internal Revenue Code, as amended.
- (e) “Qualified withdrawal” has the same meaning as in Section 529 of the Internal Revenue Code, as amended.
- (f) “Eligible postsecondary credential program” means any program at an eligible education institution as defined by Section 529 of the Internal Revenue Code and the Higher Education Act of 1965, as amended, including registered apprenticeship programs, vocational and technical programs, certificate programs, and other non-degree credential programs approved under federal law.

Section 4. Conformity to Federal Law

- (a) It is the intent of the Legislature that state law governing qualified tuition programs conform to Section 529 of the Internal Revenue Code. Any provision of this Act shall be interpreted, where possible, to preserve conformity with Section 529 of the Internal Revenue Code.
- (b) State law and agency rules shall be interpreted to conform with Section 529 of the Code, not to narrow it. In cases of ambiguity, state law shall be construed liberally in favor of conformity with federally permitted qualified expenses and withdrawals.
- (c) Any agency rule or guidance that restricts eligibility or uses beyond what the Code and this Act permit is unenforceable. A taxpayer assessed a tax, penalty, or recapture charge attributable to such agency action may bring a claim in [STATE] [COURT] to recover the amount assessed.
- (d) It is the intent of the Legislature that [STATE] law conform to Section 529 of the Internal Revenue Code on a continuing basis. Where Congress amends Section 529, the relevant provisions of this Act shall be construed, to the maximum extent permitted by [STATE] law, to incorporate these amendments. The Legislature shall act promptly to implement any federal amendment that cannot be incorporated by statutory interpretation alone.
- (e) [STATE AGENCY/PLAN ADMINISTRATOR] may adopt rules and guidance necessary to implement changes in federal law, provided such guidance does not narrow or restrict eligibility for, or permitted uses of, qualified tuition programs beyond what Section 529 of the Code and the [STATE] Legislature expressly authorize. Any such rules shall be adopted within 180 days of the effective date of the relevant federal amendment.

Section 5. Qualified Educational Uses



- (a) For the avoidance of doubt, qualified education expenses include those connected with enrollment at an eligible education institution, including elementary and secondary education, apprenticeship programs, eligible postsecondary credential programs as defined in Section 3(f) of this Act, and all other educational expenses permitted under Section 529 of the Internal Revenue Code.
- (b) Any withdrawal from a qualified tuition program that is treated as a qualified withdrawal under Section 529 of the Internal Revenue Code shall be treated as a qualified withdrawal for [STATE] income tax purposes.

Section 6. State Tax Treatment of Withdrawals—*Only applicable in states with a state income tax*

- (a) The maximum annual amount that may be withdrawn tax-free for K-12 expenses for [STATE] income tax purposes shall equal the federal limit under Section 529 of the Internal Revenue Code, as amended. Any change to the federal limit applies automatically for [STATE] income tax purposes.
- (b) Interest, dividends, and capital gains earned on funds invested in the [STATE QUALIFIED TUITION PROGRAM] or a qualified tuition program established by another state under Section 529 of the Internal Revenue Code shall not be subject to [STATE] income tax when distributed as part of a qualified withdrawal.
- (c) No additional state income tax, penalty, or recapture provision shall apply to a qualified withdrawal under Section 529 of the Internal Revenue Code.
- (d) A taxpayer who relies in good faith on federal guidance during a period in which state law has not yet been updated to reflect a federal amendment shall not be subject to additional state tax, penalty, or recapture on a withdrawal attributable to that federal change.

Section 7. State Tax Incentives for Contributions—*Only applicable in states with a state income tax*

- (a) A taxpayer who contributes to a qualified tuition program established under Section 529 of the Internal Revenue Code may claim one of the following tax benefits, as determined by the Legislature:
 - 1. **Unlimited Deduction Option.** Contributions made by a resident of this State, or by a nonresident required to file a [STATE] income tax return, shall be fully deductible from [STATE] taxable income in the year in which the contribution is made.



2. Capped Deduction Option. Contributions made by a resident of this State, or by a nonresident required to file a [STATE] income tax return, shall be deducted from [STATE] taxable income in the taxable year in which the contribution is made, not to exceed:
 - i. [AMOUNT] for an individual taxpayer; and
 - ii. [AMOUNT] for married taxpayers filing jointly.
3. Nonrefundable Credit Option. A taxpayer who contributes to a qualified tuition program established under Section 529 of the Internal Revenue Code may claim nonrefundable credit against the taxpayer's [STATE] income tax liability equal to [PERCENTAGE] percent of contributions made during the taxable year, not to exceed [AMOUNT] per taxpayer per year.
 - (b) Funds rolled over or transferred from another qualified tuition program qualify for the deduction or credit to the extent those transferred funds were not previously the basis of a deduction or credit under [STATE] law. Funds transferred from a [STATE ESA PROGRAM] account pursuant to Section 9 of this Act are not eligible for the deduction or credit under this section.
 - (c) The deduction or credit under this section applies without regard to whether the qualified tuition program is administered within this state or by another state.
 - (d) This Legislature may establish additional contribution incentives by subsequent enactment.

Section 8. State Tax Incentives for Employer Contributions—*Only applicable in states with a state income tax*

- (a) A taxpayer's employer may make a matching contribution to the account of a taxpayer employee with a qualified tuition program established under Section 529 of the Internal Revenue Code that does not exceed [AMOUNT] per contributing employee per year.
- (b) Employers may receive a business income tax deduction of [AMOUNT] per employee for matching contributions to an account of a taxpayer employee.

Section 9. Coordination with Education Savings Accounts—*Only applicable in states with an education savings account (ESA) program*

- (a) Unused funds from a [STATE ESA PROGRAM] account at the conclusion of the beneficiary's secondary education may be transferred into a qualified tuition program established under Section 529 of the Internal Revenue Code. For the purposes of this section, "conclusion of secondary education" means the date the beneficiary



graduates from high school, completes an equivalent secondary education program, or reaches age 19, whichever occurs first.

- (b) Funds transferred under subsection (a) shall not be treated as taxable income under [STATE] law and shall not be treated as a new contribution for purposes of the deduction under Section 7 of this Act.
- (c) Nothing in this section shall be construed to alter federal tax treatment applicable under the Internal Revenue Code.

Section 10. Effective Dates

- (a) This Act takes effect on [EFFECTIVE DATE].
- (b) The conformity provisions of Sections 4 and 5 shall apply to withdrawals made on or after [RETROACTIVE DATE], including withdrawals made during any tax year in which a federal amendment to Section 529 of the Internal Revenue Code took effect but for which [STATE] law had not yet been updated.
- (c) The deduction provisions of Section 7 shall apply to contributions made on or after [EFFECTIVE DATE].
- (d) The employer incentive provisions of Section 8 shall apply to contributions made on or after [EFFECTIVE DATE].

Section 11. Severability

If any provision of this Act, or its application to any person or circumstance, is held invalid, the remainder of this Act and the application of its provisions to other persons shall not be affected.

