

By: Toth

H.B. No. 2114

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of an empowerment scholarship account program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 29, Education Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. EMPOWERMENT SCHOLARSHIP ACCOUNT PROGRAM

Sec. 29.351. DEFINITIONS. In this subchapter:

(1) "Account" means an empowerment scholarship account established under the program.

(2) "Child with a disability" means a child who is:

(A) eligible to participate in a school district's special education program under Section 29.003; or

(B) covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).

(3) "Curriculum" means a complete course of study for a particular content area or grade level.

(4) "Financial institution" means a bank, credit union, savings bank, or savings and loan association organized under the laws of this state, the laws of another state, or federal law that has its main office or a branch office in this state. The term does not include any institution the deposits of which are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

1 (5) "Parent" means a resident of this state who is a
2 natural or adoptive parent, managing or possessory conservator,
3 legal guardian, custodian, or other person with legal authority to
4 act on behalf of a child.

5 (6) "Postsecondary educational institution" means:

6 (A) an institution of higher education or a
7 private or independent institution of higher education as defined
8 by Section 61.003; or

9 (B) a career school or college as defined by
10 Section 132.001.

11 (7) "Program" means the empowerment scholarship
12 account program established under this subchapter.

13 (8) "Program participant" means a child and a parent
14 of a child enrolled in the program.

15 Sec. 29.352. PURPOSES. The purposes of the empowerment
16 scholarship account program are to:

17 (1) improve public schools and overall academic
18 performance;

19 (2) promote efficiency;

20 (3) promote and preserve the liberties and rights of
21 the people; and

22 (4) increase parental options.

23 Sec. 29.353. ESTABLISHMENT OF PROGRAM. (a) The
24 comptroller shall establish and administer an empowerment
25 scholarship account program to provide funding for certain
26 education-related expenses of eligible children.

27 (b) The comptroller, with cooperation from the agency,

1 shall ensure that information about the program is readily
2 available to the public through various sources, including the
3 agency's Internet website. The comptroller shall make information
4 about the program available to parents of children eligible to
5 participate in the program through the comptroller's Internet
6 website.

7 Sec. 29.354. ELIGIBLE CHILD. (a) A child is eligible to
8 participate in the program if the child is eligible to attend a
9 public school under Section 25.001.

10 (b) A child may participate in the program until the
11 earliest of the following dates:

12 (1) the date on which the child graduates from high
13 school;

14 (2) the date on which the child is no longer eligible
15 to attend a public school under Section 25.001;

16 (3) the date on which the child enrolls in a public
17 school, including an open-enrollment charter school; or

18 (4) the date on which the child is declared ineligible
19 for the program by the comptroller under this subchapter.

20 (c) Notwithstanding Subsection (b), the comptroller shall
21 establish guidelines for, in the least disruptive manner possible:

22 (1) a child participating in the program to cease
23 participation and enroll in a public school, including an
24 open-enrollment charter school; and

25 (2) a child who previously participated in the program
26 and subsequently enrolled in a public school, including an
27 open-enrollment charter school, to resume participation in the

1 program.

2 Sec. 29.355. ENROLLMENT IN PROGRAM. (a) A parent of an
3 eligible child may enroll the child in the program for the following
4 school year.

5 (b) The comptroller shall by rule create an enrollment form
6 for the program and make the enrollment form readily available to
7 interested parents through various sources, including the
8 comptroller's Internet website.

9 (c) The comptroller shall provide to each parent who submits
10 an enrollment form a publication that describes the operation of
11 the program, including:

12 (1) expenses allowed under the program under Section
13 29.357;

14 (2) expense reporting requirements; and

15 (3) a description of the responsibilities of program
16 participants and the duties of the comptroller under this
17 subchapter.

18 Sec. 29.356. PARTICIPATION IN PROGRAM. (a) To receive
19 funding under the program, a parent of an eligible child must agree
20 to:

21 (1) spend funds received through the program only for
22 expenses allowed under Section 29.357;

23 (2) notify the comptroller if the child enrolls in a
24 public school, including an open-enrollment charter school, not
25 later than the 30th day after the date of enrollment; and

26 (3) inform the comptroller if the child graduates from
27 high school.

1 (b) The parent of a child participating in the program is
2 the trustee of the child's account.

3 (c) The comptroller shall provide annually to each program
4 participant the publication provided under Section 29.355(c).

5 Sec. 29.357. APPROVED EDUCATION-RELATED EXPENSES. (a)
6 Funds received under the program may be used only for the following
7 expenses incurred by a program participant:

8 (1) tuition and fees:

9 (A) at a private school accredited by an
10 organization that is recognized by the Texas Private School
11 Accreditation Commission;

12 (B) at a postsecondary educational institution;
13 or

14 (C) for an online educational course or program;

15 (2) the purchase of textbooks or other instructional
16 materials;

17 (3) the purchase of a curriculum;

18 (4) fees for classes or other educational services
19 provided by a public school, if the classes or services do not
20 qualify the child to be included in the school's average daily
21 attendance;

22 (5) fees for services provided by a private tutor or
23 teaching service;

24 (6) for a child with a disability, fees for
25 educational therapies or services provided by a practitioner or
26 provider;

27 (7) costs of computer hardware and software and other

1 technological devices, not to exceed in any year 10 percent of the
2 total amount paid to the program participant's account that year;

3 (8) fees for a nationally norm-referenced achievement
4 test or examination, an assessment instrument adopted by the agency
5 under Section 39.023, an advanced placement test or similar
6 examination, or any examination related to college or university
7 admission; and

8 (9) fees for the management of the participant's
9 account charged by a financial institution.

10 (b) Expenses allowed under Subsection (a) do not include
11 expenses for:

12 (1) consumable supplies, including paper, pens,
13 pencils, folders, and notebooks;

14 (2) food; or

15 (3) before-school or after-school child care or child
16 care during school holidays and vacations.

17 (c) An education service provider or vendor of educational
18 products must provide a program participant with a receipt for each
19 expense allowed under Subsection (a) charged by the provider or
20 vendor to the participant.

21 (d) The content or religious nature of a product or service
22 may not be considered in determining whether a payment for the
23 product or service is an expense allowed under Subsection (a).

24 (e) A finding that a program participant used funds
25 distributed under the program to pay for an expense not allowed
26 under Subsection (a) does not affect the validity of any payment
27 made by the participant for an expense that is allowed under that

1 subsection.

2 Sec. 29.358. AMOUNT OF PAYMENT; FINANCING. (a) A parent of
3 an eligible child shall receive each year that the child
4 participates in the program quarterly payments from the state to
5 the child's account equal to a total amount of \$10,000.

6 (b) In addition to any funding the district receives under
7 Chapter 48, for each child participating in the program, the school
8 district the child would otherwise attend is entitled to receive
9 for the first year in which the child participates in the program an
10 amount equal to 50 percent of the difference between:

11 (1) the state average maintenance and operations
12 expenditures per student in average daily attendance for the
13 preceding fiscal year; and

14 (2) the amount the child's parent receives under
15 Subsection (a) for the year.

16 (c) Any funds remaining in a child's account at the end of a
17 fiscal year are carried forward to the next fiscal year unless
18 another provision of this subchapter mandates the closure of the
19 account.

20 (d) The parent of a child participating in the program may
21 make payments for the expenses of educational programs, services,
22 and products not covered by funds in the child's account.

23 (e) A payment under Subsection (a) may not be financed using
24 federal funds or money appropriated from the available school fund.

25 Sec. 29.359. ADMINISTRATION OF ACCOUNTS. (a) The
26 comptroller may contract with one or more financial institutions to
27 establish and manage an account for each child participating in the

1 program. A program participant must be able to access the
2 participant's account by using a debit card or online or electronic
3 transfer payment service.

4 (b) The comptroller shall make quarterly payments to each
5 program participant's account in equal amounts on or before the
6 15th day of August, November, February, and May.

7 (c) The comptroller may deduct an amount from each quarterly
8 payment to a program participant's account to cover the
9 comptroller's cost of administering the program. The amount
10 deducted may not exceed five percent of the payment.

11 (d) Not later than 30 days after the end of each fiscal year,
12 the comptroller shall reconcile payments made to and from all
13 accounts under the program.

14 (e) On the date on which a child who participated in the
15 program is no longer eligible to participate in the program under
16 Section 29.354(b), the child's account is closed and any remaining
17 funds are returned to the state for deposit in the foundation school
18 fund.

19 (f) The comptroller may contract with a private entity to
20 administer all or any part of the program.

21 Sec. 29.360. RANDOM AUDITING OF ACCOUNTS. (a) The
22 comptroller shall contract with a private entity to randomly audit
23 accounts as necessary to ensure compliance with applicable law and
24 the requirements of the program.

25 (b) In auditing an account, the comptroller or private
26 entity may require that a program participant provide further
27 information and documentation regarding any payment from the

1 participant's account.

2 (c) The private entity shall report to the comptroller any
3 violation of this subchapter or other relevant law found by the
4 entity during an audit conducted under this section.

5 Sec. 29.361. SUSPENSION OF ACCOUNT. (a) The comptroller
6 shall suspend the account of a program participant who fails to
7 comply with applicable law or a requirement of the program,
8 including a requirement under Section 29.356(a), or who
9 substantially misuses funds received under the program.

10 (b) On suspension of an account under Subsection (a), the
11 comptroller shall notify the program participant in writing that
12 the account has been suspended and that no further payments may be
13 made from the account. The notification must specify the grounds
14 for the suspension and state that the participant has 10 business
15 days to respond and take any corrective action required by the
16 comptroller.

17 (c) On the expiration of the 10-day period under Subsection
18 (b), the comptroller shall:

19 (1) order permanent closure of the suspended account
20 and declare the program participant ineligible for the program;

21 (2) order temporary reinstatement of the account,
22 conditioned on the performance of a specified action by the
23 participant; or

24 (3) order full reinstatement of the account.

25 (d) The comptroller may recover funds distributed under the
26 program that were used for expenses not allowed under Section
27 29.357(a) from the program participant or the entity that received

1 the funds if the participant's account is suspended or closed under
2 this section.

3 Sec. 29.362. TUITION AND FEES; REFUND PROHIBITED. (a) An
4 education service provider may not charge a child participating in
5 the program an amount greater than the standard amount charged for
6 that service by the provider.

7 (b) An education service provider or a vendor of educational
8 products receiving funds distributed under the program may not in
9 any manner rebate, refund, or credit to or share with a program
10 participant, or any person on behalf of a participant, any program
11 funds paid or owed by the participant to the provider or vendor.

12 Sec. 29.363. REFERRAL TO ATTORNEY GENERAL. (a) If the
13 comptroller obtains evidence of fraudulent use of an account, the
14 comptroller may refer the case to the attorney general for
15 investigation.

16 (b) With the consent of the appropriate local county or
17 district attorney, the attorney general has concurrent
18 jurisdiction with the consenting local prosecutor to prosecute an
19 offense referred to the attorney general under Subsection (a).

20 Sec. 29.364. PROVIDER ACCOUNTABILITY. (a) A private
21 school must be accredited by an organization that is recognized by
22 the Texas Private School Accreditation Commission to receive funds
23 distributed under the program.

24 (b) A private tutor or teaching service and a practitioner
25 or provider who provides educational therapies or services for a
26 child with a disability must be licensed or accredited by a regional
27 or national accrediting organization to receive funds distributed

1 under the program.

2 Sec. 29.365. PROGRAM PARTICIPANT, PROVIDER, AND VENDOR
3 AUTONOMY. (a) An education service provider or vendor of
4 educational products that receives funds distributed under the
5 program is not an agent of the state or federal government.

6 (b) Except as provided by this subchapter, the comptroller,
7 the agency, the State Board of Education, any other state agency, or
8 any school district may not:

9 (1) regulate the educational program of an education
10 service provider or vendor of educational products that receives
11 funds distributed under the program; or

12 (2) exercise control or supervision over a program
13 participant or an education service provider or vendor of
14 educational products that receives funds distributed under the
15 program.

16 (c) The program does not expand the regulatory authority of
17 the state or any school district to impose any additional
18 regulation on an education service provider or vendor of
19 educational products except those reasonably necessary to enforce
20 the program as provided by this subchapter.

21 (d) A private school may not be required to modify the
22 school's creed, practices, admissions policies, curriculum,
23 performance standards, or assessments to receive funds distributed
24 under the program.

25 (e) A private school voluntarily selected by a parent for
26 the parent's child to attend or a parent who homeschools the
27 parent's child, with or without governmental assistance, may not be

1 required to comply with any state law or rule governing the
2 applicable educational program that was not in effect on January 1,
3 2023.

4 (f) In any proceeding challenging a rule adopted by a state
5 agency or officer under this subchapter, the agency or officer has
6 the burden of proof to establish that the rule:

7 (1) is necessary to implement or enforce the program
8 as provided by this subchapter; and

9 (2) does not impose an undue burden on a program
10 participant or an education service provider or vendor of
11 educational products that receives or seeks to receive funds
12 distributed under the program.

13 Sec. 29.366. STUDENT RECORDS AND INFORMATION. (a) On
14 request by the parent of a child participating in the program, the
15 school district or open-enrollment charter school that the child
16 would otherwise attend shall provide a copy of the child's school
17 records possessed by the district or school, if any, to the child's
18 parent or, if applicable, the private school the child attends.

19 (b) The agency shall provide to the comptroller any
20 information available to the agency requested by the comptroller
21 regarding a child who participates or seeks to participate in the
22 program.

23 Sec. 29.367. REPORTING NUMBER OF PARTICIPANTS. (a) Not
24 later than October 1 of each year, the comptroller shall notify the
25 commissioner and the Legislative Budget Board of the number of
26 eligible children likely to participate in the program,
27 disaggregated by the school district or open-enrollment charter

1 school the eligible children would otherwise attend.

2 (b) Not later than March 1 of each year, the comptroller
3 shall provide final information to the commissioner and the
4 Legislative Budget Board regarding the number of children
5 participating in the program, disaggregated in the same manner as
6 the initial information under Subsection (a).

7 Sec. 29.368. ANNUAL SURVEY. The comptroller may conduct an
8 annual parental satisfaction survey that asks each parent of a
9 child participating in the program to express:

10 (1) the parent's overall level of satisfaction with
11 the program; and

12 (2) the parent's opinion on specified topics and
13 issues relevant to the effectiveness of the program.

14 Sec. 29.369. RULES. The comptroller shall:

15 (1) adopt rules as necessary to implement this
16 subchapter, including:

17 (A) rules regarding expense reporting
18 requirements for program participants; and

19 (B) rules for implementing this subchapter in a
20 manner that ensures compliance with federal law regarding
21 confidentiality of student educational information, including the
22 Family Educational Rights and Privacy Act of 1974 (20 U.S.C.
23 Section 1232g); and

24 (2) coordinate as necessary to:

25 (A) calculate annually the savings to the state
26 from the implementation of the program; and

27 (B) prevent fraud in financial transactions

1 under the program, including by adopting measures to permit
2 anonymous fraud reporting by telephone hotline or online
3 communication.

4 Sec. 29.370. GIFTS, GRANTS, AND DONATIONS. The comptroller
5 may solicit and accept gifts, grants, and donations from any public
6 or private source for any expenses related to the administration of
7 the program, including the initial implementation of the program.

8 SECTION 2. Section 48.266, Education Code, is amended by
9 adding Subsection (b-1) to read as follows:

10 (b-1) Notwithstanding Subsection (b), the commissioner
11 shall adjust enrollment estimates and entitlement for each school
12 district for each school year based on information provided by the
13 comptroller under Section 29.367. This subsection expires
14 September 1, 2026.

15 SECTION 3. Notwithstanding Section 29.359(b), Education
16 Code, as added by this Act, not later than September 15, 2024, the
17 comptroller shall make the initial payment to each program
18 participant's education savings account as provided by Subchapter
19 J, Chapter 29, Education Code, as added by this Act.

20 SECTION 4. This Act applies beginning with the 2024-2025
21 school year.

22 SECTION 5. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2023.