

By: Jetton

H.B. No. 2817

A BILL TO BE ENTITLED

AN ACT

relating to establishing a program allowing certain students who are educationally disadvantaged, have a disability, or failed certain assessment instruments to use state money or money the state receives for the purpose from gifts and non-federal grants to pursue certain educational alternatives to public schools.

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. EDUCATION SAVINGS ACCOUNT PROGRAM

Sec. 29.351. DEFINITIONS. In this subchapter:

(1) "Account" means an education savings 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) "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

1 National Credit Union Administration.

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

6 (5) "Program" means the education savings account  
7 program established under this subchapter.

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

10 Sec. 29.352. ESTABLISHMENT OF PROGRAM. The comptroller  
11 shall establish and administer an education savings account program  
12 to provide funding for certain education-related expenses of  
13 eligible children.

14 Sec. 29.353. ELIGIBLE CHILD. (a) A child is eligible to  
15 participate in the program if the child:

16 (1) is eligible to attend a public school under  
17 Section 25.001;

18 (2) either:

19 (A) attended a public school during the preceding  
20 school year; or

21 (B) is entering kindergarten or first grade; and

22 (3) meets one or more of the following criteria:

23 (A) failed to perform satisfactorily on an  
24 assessment instrument administered under Section 39.023(a) or an  
25 end-of-course assessment instrument administered under Section  
26 39.023(c) during the preceding school year;

27 (B) is a child with a disability; or

1                   (C) is educationally disadvantaged.

2           (b) A child who establishes eligibility under this section  
3 may participate in the program until the earliest of the following  
4 dates:

5                   (1) the date on which the child no longer meets the  
6 eligibility requirements under Subsection (a);

7                   (2) the date on which the child graduates from high  
8 school;

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

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

13           Sec. 29.354. APPLICATION FOR PROGRAM. (a) A parent of an  
14 eligible child may apply on behalf of the child for participation in  
15 the program for the following school year.

16                   (b) The comptroller shall by rule create an application form  
17 for the program and make the form readily available to interested  
18 parents through various sources, including the comptroller's  
19 Internet website.

20                   (c) The comptroller shall provide to each parent who submits  
21 an application form a publication that describes the operation of  
22 the program, including:

23                   (1) expenses allowed under the program under Section  
24 29.356;

25                   (2) expense reporting requirements; and

26                   (3) a description of the responsibilities of program  
27 participants and the duties of the comptroller and the agency under

1 this subchapter.

2 (d) The agency shall:

3 (1) review each application to ensure that the child  
4 is eligible to participate in the program; and

5 (2) approve or reject each application.

6 Sec. 29.355. PARTICIPATION IN PROGRAM. (a) To receive  
7 funding under the program, a parent of an eligible child must agree  
8 to:

9 (1) spend funds received through the program only for  
10 expenses allowed under Section 29.356;

11 (2) notify the comptroller if the child enrolls in a  
12 public school, not later than the 30th day after the date of  
13 enrollment; and

14 (3) inform the comptroller if the child graduates from  
15 high school.

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

18 (c) The comptroller shall provide annually to each program  
19 participant the publication provided under Section 29.354(c).

20 Sec. 29.356. ELIGIBLE EDUCATION-RELATED EXPENSES. (a)  
21 Funds received under the program may be used only for the following  
22 expenses incurred by a program participant:

23 (1) tuition and fees at a private school accredited by  
24 an organization that is recognized by the Texas Private School  
25 Accreditation Commission or the Texas Education Agency;

26 (2) the purchase of textbooks or other instructional  
27 materials or uniforms required by an educational course or program

1 in which the child is enrolled;

2 (3) costs related to academic assessments;

3 (4) costs related to activities that directly add  
4 value to classroom instruction and curriculum, including an  
5 academic field trip, performance, contest, demonstration, or  
6 display, but not including an athletic or other nonacademic  
7 activity;

8 (5) fees for transportation provided by a  
9 fee-for-service transportation provider for the child to travel to  
10 and from a provider of educational services or a vendor of  
11 educational products; and

12 (6) fees for educational therapies or services, but  
13 only for fees that are not covered by any federal, state, or local  
14 government benefits such as Medicaid or the Children's Health  
15 Insurance Program (CHIP) or by any private insurance that the child  
16 is enrolled in at the time of receiving the therapies or services.

17 (b) Money received under the program may not be used to pay  
18 any person who is a member of the program participant's household.

19 (c) A finding that a program participant used money  
20 distributed under the program to pay for an expense not allowed  
21 under Subsection (a) does not affect the validity of any payment  
22 made by the participant for an expense that is allowed under that  
23 subsection.

24 Sec. 29.357. AUTONOMY OF PROGRAM PARTICIPANTS, PRIVATE  
25 SCHOOLS, AND VENDORS. (a) In this section, "education service  
26 provider" means a private school or other provider of  
27 education-related products or services described by Section

1 29.356(a) that receives money distributed under the program for  
2 providing the product or service.

3 (b) An education service provider is not a recipient of  
4 federal financial assistance because the provider received money  
5 distributed under the program for providing an education-related  
6 product or service.

7 (c) A rule adopted or action taken related to the program by  
8 an individual, governmental entity, court of law, or program  
9 administrator may not:

10 (1) limit the independence or autonomy of a program  
11 participant or education service provider;

12 (2) consider the actions of a program participant or  
13 education service provider to be the actions of an agent of state  
14 government;

15 (3) limit:

16 (A) the ability of an education service provider  
17 to determine the methods used to educate the provider's students or  
18 to exercise the provider's religious or institutional values; or

19 (B) a program participant's ability to determine  
20 the participant's educational content or to exercise the  
21 participant's religious values;

22 (4) obligate a program participant or education  
23 service provider to act contrary to the participant's or provider's  
24 religious or institutional values, as applicable;

25 (5) impose any regulation on a program participant or  
26 education service provider beyond those regulations necessary to  
27 enforce the requirements of the program; or

1           (6) require as a condition of receiving money  
2 distributed under the program that:

3                   (A) an education service provider modify the  
4 provider's creed, practices, admissions policies, curriculum,  
5 performance standards, employment policies, or assessments; or

6                   (B) a program participant modify the  
7 participant's creed, practices, curriculum, performance standards,  
8 or assessments.

9           (d) In a proceeding challenging a rule adopted by a state  
10 agency or officer under this subchapter, the agency or officer has  
11 the burden of proof to establish by clear and convincing evidence  
12 that the rule:

13                   (1) is necessary to implement or enforce the program  
14 as provided by this subchapter;

15                   (2) does not violate this section;

16                   (3) does not impose an undue burden on a program  
17 participant or education service provider; and

18                   (4) is the least restrictive means of accomplishing  
19 the purpose of the program while recognizing the independence of an  
20 education service provider to meet the educational needs of  
21 students in accordance with the provider's religious or  
22 institutional values.

23           Sec. 29.358. AMOUNT OF PAYMENT; FINANCING. (a) A parent of  
24 an eligible child shall receive each year that the child  
25 participates in the program a payment to the child's account out of  
26 the general revenue fund from undedicated state tax revenues and  
27 gifts and grants received under Section 29.360. The amount of each

1 year's payment is equal to 90 percent of the amount to which the  
2 school district in which the child resides would be entitled to  
3 receive for the child under Chapter 48 if the child were enrolled in  
4 the district.

5 (b) For each year a child participates in the program, the  
6 school district in which the child resides is entitled to receive an  
7 amount equal to 10 percent of the amount to which the district would  
8 be entitled to receive for the child under Chapter 48 if the child  
9 were enrolled in the district.

10 (c) Any funds remaining in a child's account at the end of a  
11 fiscal year are carried forward to the next fiscal year unless  
12 another provision of this subchapter mandates the closure of the  
13 account.

14 (d) A payment under the program may not be financed using  
15 federal funds or money appropriated from the available school fund.

16 Sec. 29.359. ADMINISTRATION OF ACCOUNTS. (a) The  
17 comptroller may contract with one or more financial institutions to  
18 establish and manage an account for each child participating in the  
19 program.

20 (b) The comptroller shall make quarterly payments to each  
21 program participant's account in equal amounts on or before the  
22 15th day of August, November, February, and May.

23 (c) The comptroller may deduct an amount from each quarterly  
24 payment to a program participant's account to cover the  
25 comptroller's cost of administering the program. The amount  
26 deducted may not exceed three percent of the payment.

27 (d) Within the first month following the end of each fiscal



1 year, the comptroller shall reconcile payments made to and from all  
2 accounts under the program.

3 (e) On the date on which a child ceases to participate in the  
4 program for any reason, the child's account is closed and any  
5 remaining funds are returned to the state for deposit in the general  
6 revenue fund.

7 Sec. 29.360. GIFTS AND GRANTS. The comptroller may accept  
8 gifts and grants, but not federal grants, for the purpose of making  
9 payments to program participants under the program and defraying  
10 the administrative costs of operating the program.

11 Sec. 29.361. RULES. The comptroller shall adopt rules as  
12 necessary to implement this subchapter.

13 SECTION 2. This Act applies beginning with the 2024-2025  
14 school year.

15 SECTION 3. As soon as practicable after the effective date  
16 of this Act, the comptroller of public accounts shall adopt rules  
17 necessary to implement the education savings account program under  
18 Subchapter J, Chapter 29, Education Code, as added by this Act.

19 SECTION 4. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2023.