

By: Shaheen

H.B. No. 612

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the establishment of an education savings account
3 program, an insurance premium tax credit for contributions made for
4 purposes of that program, and the award of attorney's fees in
5 actions challenging certain educational choice laws.

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

7 SECTION 1. The legislature finds that:

8 (1) parents should be empowered to direct their
9 children's education;

10 (2) there is not one best educational option for all
11 children in this state;

12 (3) children belong to their parents, not to the
13 government;

14 (4) the best education for children in this state is
15 one directed by their parents, with all educational options made
16 available and accessible through a program in which money follows
17 each child to the educational option that best meets the child's
18 unique educational needs; and

19 (5) in *Espinoza v. Montana Department of Revenue*, 591
20 U.S. 464 (2020), and *Carson v. Makin*, 596 U.S. 767 (2022), the
21 United States Supreme Court held that state prohibitions on the use
22 of generally available state tuition assistance programs for
23 children to attend religious schools violate the Free Exercise
24 Clause of the First Amendment to the United States Constitution.

1 SECTION 2. Chapter 30, Civil Practice and Remedies Code, is
2 amended by adding Section 30.024 to read as follows:

3 Sec. 30.024. AWARD OF ATTORNEY'S FEES IN ACTIONS
4 CHALLENGING CERTAIN EDUCATIONAL CHOICE LAWS. (a) Notwithstanding
5 any other law, any person, including an entity, attorney, or law
6 firm, who seeks declaratory or injunctive relief to prevent this
7 state or a political subdivision, governmental entity, public
8 official, or other person in this state from enforcing any statute,
9 ordinance, rule, regulation, or other type of law that empowers
10 parents to direct their children's education, including an
11 educational choice program in which money follows a child to an
12 educational option selected by the child's parent or an insurance
13 premium tax credit program used in whole or in part to pay for such
14 an educational choice program, in any state or federal court, or
15 that represents any litigant seeking such relief in any state or
16 federal court, is jointly and severally liable to pay the costs and
17 attorney's fees of the prevailing party.

18 (b) For purposes of this section, a party is considered a
19 prevailing party if a state or federal court:

20 (1) dismisses any claim or cause of action brought
21 against the party that seeks the declaratory or injunctive relief
22 described by Subsection (a), regardless of the reason for the
23 dismissal; or

24 (2) enters judgment in the party's favor on any such
25 claim or cause of action.

26 (c) Regardless of whether a prevailing party sought to
27 recover costs or attorney's fees in the underlying action, a

1 prevailing party under this section may bring a civil action to
2 recover costs and attorney's fees against a person, including an
3 entity, attorney, or law firm, that sought declaratory or
4 injunctive relief described by Subsection (a) not later than the
5 third anniversary of the date on which, as applicable:

6 (1) the dismissal or judgment described by Subsection
7 (b) becomes final on the conclusion of appellate review; or

8 (2) the time for seeking appellate review expires.

9 (d) It is not a defense to an action brought under
10 Subsection (c) that:

11 (1) a prevailing party under this section failed to
12 seek recovery of costs or attorney's fees in the underlying action;

13 (2) the court in the underlying action declined to
14 recognize or enforce the requirements of this section; or

15 (3) the court in the underlying action held that any
16 provisions of this section are invalid, unconstitutional, or
17 preempted by federal law, notwithstanding the doctrines of issue or
18 claim preclusion.

19 SECTION 3. Chapter 29, Education Code, is amended by adding
20 Subchapter J to read as follows:

21 SUBCHAPTER J. EDUCATION SAVINGS ACCOUNT PROGRAM

22 Sec. 29.351. DEFINITIONS. In this subchapter:

23 (1) "Account" means an education savings account
24 established under the program.

25 (2) "Certified educational assistance organization"
26 means the educational assistance organization certified under
27 Section 29.355 to administer the program.

1 (3) "Child with a disability" means a child who is
2 eligible to participate in a school district's special education
3 program under Section 29.003.

4 (4) "Fund" means the education savings account program
5 fund.

6 (5) "Institution of higher education" and "private or
7 independent institution of higher education" have the meanings
8 assigned by Section 61.003.

9 (6) "Parent" means a resident of this state who is a
10 natural or adoptive parent, managing or possessory conservator,
11 legal guardian, custodian, or other person with legal authority to
12 act on behalf of a child.

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

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

17 Sec. 29.352. PURPOSES. The purposes of the education
18 savings account program are to provide school-aged children with
19 additional educational options in order to achieve a general
20 diffusion of knowledge and to empower parents to direct their
21 children's education.

22 Sec. 29.353. ESTABLISHMENT OF PROGRAM. The comptroller
23 shall establish the education savings account program to provide
24 funding for approved education-related expenses of eligible
25 children admitted into the program.

26 Sec. 29.354. EDUCATION SAVINGS ACCOUNT PROGRAM FUND. (a)
27 The education savings account program fund is an account in the

1 general revenue fund to be administered by the comptroller.

2 (b) The fund is composed of:

3 (1) general revenue transferred to the fund;

4 (2) money appropriated to the fund;

5 (3) gifts, grants, and donations received under
6 Section 29.371;

7 (4) contributions to the fund for which an entity
8 receives a credit against the entity's state premium tax liability
9 under Chapter 230, Insurance Code; and

10 (5) any other money available for purposes of the
11 program.

12 (c) Money in the fund may be appropriated only to the
13 comptroller for purposes of making payments to program participants
14 and administering the program under this subchapter.

15 Sec. 29.355. SELECTION OF CERTIFIED EDUCATIONAL ASSISTANCE
16 ORGANIZATIONS. (a) An organization may apply to the comptroller
17 for certification as a certified educational assistance
18 organization during an application period established by the
19 comptroller.

20 (b) To be eligible for certification, an organization must:

21 (1) have the ability to perform the duties and
22 functions required of a certified educational assistance
23 organization under this subchapter as provided by the
24 organization's charter;

25 (2) be exempt from federal taxation under Section
26 501(a) of the Internal Revenue Code of 1986 by being listed as an
27 exempt organization in Section 501(c)(3) of that code;

1 (3) be in good standing with the state; and

2 (4) be able to administer the program, including the
3 ability to:

4 (A) accept, process, and track applications for
5 the program; and

6 (B) verify that program funding is used only for
7 approved education-related expenses.

8 (c) The comptroller shall certify at least one but not more
9 than three educational assistance organizations to assist in
10 administering the program, including by verifying:

11 (1) a child's eligibility for the program; and

12 (2) the use of funds in a program participant's account
13 only for purposes approved under Section 29.360.

14 Sec. 29.356. ELIGIBLE CHILD. (a) A child is eligible to
15 participate in the program if the child is eligible to attend a
16 public school under Section 25.001 and:

17 (1) attended a public school during the entire
18 preceding school year;

19 (2) is entering kindergarten for the first time; or

20 (3) participated in the program during the preceding
21 school year.

22 (b) Notwithstanding Subsection (a), a child who is eligible
23 to attend a public school under Section 25.001 is eligible to
24 participate in the program if the comptroller determines that
25 sufficient funding is available for the first year of the child's
26 participation in the program from money in the fund.

27 (c) A child who establishes eligibility under this section

1 may participate in the program until the earliest of the following
2 dates:

3 (1) the date on which the child graduates from high
4 school or obtains a high school equivalency certificate;

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

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

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

11 Sec. 29.357. APPLICATION TO PROGRAM. (a) A parent of an
12 eligible child may apply to a certified educational assistance
13 organization to enroll the child in the program for the following
14 school year. The parent must provide any information requested by
15 the organization for purposes of verifying the child's eligibility
16 for the program.

17 (b) Each certified educational assistance organization
18 shall create an application form for the program and make the
19 application form readily available to interested parents through
20 various sources, including the organization's Internet website.
21 The organization shall ensure that the application form is capable
22 of being submitted to the organization electronically.

23 (c) Each certified educational assistance organization
24 shall post on the organization's Internet website and provide to
25 each parent who submits an application form to the organization a
26 publication that describes the operation of the program, including:

27 (1) expenses allowed under the program under Section

1 29.360;

2 (2) the organization's expense reporting
3 requirements; and

4 (3) a description of the responsibilities of program
5 participants and the duties of the organization under this
6 subchapter.

7 (d) Subject to the availability of funding, each certified
8 educational assistance organization shall admit into the program
9 each child for whom the organization received an application under
10 this section if the organization verifies that the child is
11 eligible to participate in the program. If available funding is
12 insufficient to admit each eligible child into the program, the
13 organization shall prioritize admitting children in the following
14 order:

15 (1) children who participated in the program during
16 the preceding school year;

17 (2) siblings of children who participated in the
18 program during the preceding school year; and

19 (3) children with a disability.

20 Sec. 29.358. PARTICIPATION IN PROGRAM. (a) To receive
21 funding under the program, a parent of an eligible child must agree
22 to:

23 (1) spend money received through the program only for
24 expenses allowed under Section 29.360; and

25 (2) notify the parent's certified educational
26 assistance organization not later than 30 days after the date on
27 which the child:

1 (A) enrolls in a public school, including an
2 open-enrollment charter school;

3 (B) graduates from high school or obtains a high
4 school equivalency certificate; or

5 (C) is no longer eligible to enroll in a public
6 school under Section 25.001.

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

9 (c) Each certified educational assistance organization
10 shall provide annually to each program participant admitted by the
11 organization the publication provided under Section 29.357(c). The
12 publication may be provided electronically.

13 Sec. 29.359. APPROVED PROVIDERS; PARENTAL REVIEW
14 COMMITTEE. (a) The comptroller shall by rule establish a parental
15 review committee to review and approve applications for preapproval
16 of education service providers and vendors of educational products.
17 The comptroller shall post on the comptroller's Internet website
18 and provide to each certified educational assistance organization
19 the list of preapproved providers and vendors.

20 (b) The parental review committee consists of nine parents
21 of school-aged children, appointed as follows:

22 (1) three members appointed by the governor as
23 follows:

24 (A) one parent of a child enrolled in a public
25 school;

26 (B) one parent of a child enrolled in a private
27 school other than a home school; and

1 (C) one parent of a child being homeschooled;
2 (2) three members appointed by the lieutenant governor
3 as follows:

4 (A) one parent of a child enrolled in a public
5 school;

6 (B) one parent of a child enrolled in a private
7 school other than a home school; and

8 (C) one parent of a child being homeschooled; and

9 (3) three members appointed by the speaker of the
10 house of representatives as follows:

11 (A) one parent of a child enrolled in a public
12 school;

13 (B) one parent of a child enrolled in a private
14 school other than a home school; and

15 (C) one parent of a child being homeschooled.

16 (c) A person may not serve as a member of the parental review
17 committee if the person is:

18 (1) required to register as a lobbyist under Chapter
19 305, Government Code, for the purpose of lobbying a member of the
20 legislature; or

21 (2) employed by a nonprofit state association or
22 organization that primarily represents political subdivisions and
23 hires or contracts with a person required to register as a lobbyist
24 under Chapter 305, Government Code.

25 (d) The parental review committee shall create a process for
26 program participants to request the preapproval of education
27 service providers and vendors of educational products.

1 (e) The parental review committee shall approve an
2 education service provider or vendor of educational products for
3 participation in the program not later than the 30th day after the
4 date the committee receives the provider's or vendor's application
5 if the provider or vendor:

6 (1) for a private school, executes a notarized
7 affidavit, with supporting documents, concerning the school's
8 qualification to serve program participants, including evidence
9 of:

10 (A) the annual administration of a nationally
11 standardized norm-referenced assessment instrument;

12 (B) a valid certificate of occupancy;

13 (C) policy statements regarding:

14 (i) admissions;

15 (ii) curriculum;

16 (iii) safety;

17 (iv) student to teacher ratios; and

18 (v) assessments;

19 (D) the school's agreement that program
20 participants are eligible to apply for scholarships offered by the
21 school to the same extent as other children; and

22 (E) accreditation by an organization recognized
23 by the agency or the Texas Private School Accreditation Commission;

24 (2) for a private tutor, therapist, or teaching
25 service:

26 (A) executes a notarized affidavit, with
27 supporting documents, concerning the tutor's, therapist's, or

1 service's qualification to serve program participants, including
2 evidence that the tutor or therapist or each employee of the service
3 who intends to provide services to a program participant:

4 (i) is certified under Subchapter B,
5 Chapter 21;

6 (ii) holds a relevant license or
7 accreditation issued by a state, regional, or national licensing or
8 accreditation organization; or

9 (iii) is employed in a teaching or tutoring
10 capacity at an institution of higher education or private or
11 independent institution of higher education; and

12 (B) the tutor or therapist or each employee of
13 the teaching service who intends to provide educational services to
14 a program participant either:

15 (i) completes a national criminal history
16 record information review; or

17 (ii) provides to the comptroller
18 documentation indicating that the tutor, therapist, or employee, as
19 applicable, has completed a national criminal history record
20 information review within a period established by comptroller rule;

21 (3) for an online educational course or program
22 provider, executes a notarized affidavit, with supporting
23 documents, concerning the provider's qualification to serve
24 program participants; or

25 (4) for any provider or vendor not described by
26 Subdivision (1), (2), or (3), presents any necessary supporting
27 documents concerning the provider's or vendor's qualification to

1 serve program participants.

2 (f) The comptroller shall review the national criminal
3 history record information or documentation for each private tutor,
4 therapist, or teaching service who submits an application. The
5 tutor, therapist, or service must provide the comptroller with any
6 information requested by the comptroller to enable the comptroller
7 to complete the review. The comptroller shall report the
8 comptroller's findings from the review to the parental review
9 committee.

10 (g) Each certified educational assistance organization
11 shall post on the organization's Internet website the list of
12 preapproved education service providers and vendors of educational
13 products provided under Subsection (a).

14 Sec. 29.360. APPROVED EDUCATION-RELATED EXPENSES. (a)
15 Subject to Subsection (b), money received under the program may be
16 used only for the following expenses incurred by a program
17 participant at a preapproved education service provider or vendor:

18 (1) tuition and fees:

19 (A) at a private school;

20 (B) at an institution of higher education or a
21 private or independent institution of higher education;

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

23 or

24 (D) at another education service provider;

25 (2) the purchase of textbooks or other instructional
26 materials or uniforms required by a school, institution, course, or
27 program described by Subdivision (1) in which the child is

1 enrolled;

2 (3) payments for the purchase of a curriculum;

3 (4) fees for classes or other educational services or
4 extracurricular programs provided by a public school;

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

7 (6) fees for educational therapies or services
8 provided by a practitioner or provider, only for fees or portions of
9 fees that are not covered by any federal, state, or local government
10 benefits such as Medicaid or the Children's Health Insurance
11 Program (CHIP) or by any private insurance that the child is
12 enrolled in at the time of receiving the therapies or services;

13 (7) costs of computer hardware and other technological
14 devices that are primarily used for educational purposes, including
15 a calculator, personal computer, laptop, tablet, microscope,
16 telescope, or printer, not to exceed in any year 10 percent of the
17 total amount deposited in the program participant's account that
18 year;

19 (8) fees for a nationally standardized
20 norm-referenced achievement test, an advanced placement test or
21 similar examination, or any examination related to college or
22 university admission; and

23 (9) fees for transportation services provided by a
24 fee-for-service transportation provider for the child to travel to
25 and from an education service provider, not to exceed \$1,000 per
26 school year.

27 (b) Money received under the program may not be used to pay

1 any person who is:

2 (1) related to the program participant within the
3 third degree of consanguinity or affinity, as determined under
4 Chapter 573, Government Code; or

5 (2) a member of the program participant's household.

6 (c) A finding that a program participant used money
7 distributed under the program to pay for an expense not allowed
8 under Subsection (a) does not affect the validity of any payment
9 made by the participant for an expense that is allowed under that
10 subsection.

11 Sec. 29.361. AMOUNT OF PAYMENT; FINANCING. (a) A parent of
12 an eligible child shall receive each year that the child
13 participates in the program a payment from the state to the child's
14 account in an amount equal to the state average maintenance and
15 operations expenditures per student in average daily attendance for
16 the preceding state fiscal year.

17 (b) Any money remaining in a child's account at the end of a
18 fiscal year is carried forward to the next fiscal year unless
19 another provision of this subchapter mandates the closure of the
20 account.

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

24 (d) A payment under Subsection (a) may not be financed using
25 federal money.

26 (e) Not later than November 1 of each even-numbered year,
27 the comptroller shall submit to the legislature an estimate of the

1 total amount of funding required for the program for the following
2 state fiscal biennium.

3 Sec. 29.362. ADMINISTRATION OF ACCOUNTS. (a) The
4 comptroller shall establish and maintain an account for each child
5 participating in the program.

6 (b) The comptroller shall make payments to each program
7 participant's account on a schedule set by comptroller rule.

8 (c) The comptroller may use money available for the program
9 to cover the comptroller's cost of administering the program. The
10 comptroller may not reduce any payment to a program participant's
11 account for purposes of this subsection.

12 (d) The comptroller shall disburse to each certified
13 educational assistance organization an amount from the total amount
14 of money appropriated for purposes of this subchapter to cover the
15 organization's cost of administering the program. The total amount
16 disbursed under this subsection for a state fiscal year may not
17 exceed five percent of the amount appropriated for purposes of this
18 subchapter for that fiscal year.

19 (e) Before each payment is made under Subsection (b), each
20 certified educational assistance organization shall:

21 (1) compare the list of program participants admitted
22 by the organization with public school enrollment lists maintained
23 by the agency; and

24 (2) notify the comptroller if the organization
25 determines that a program participant is enrolled in a public
26 school, including an open-enrollment charter school.

27 (f) Except as provided by Section 29.363, on the date on

1 which a child who participated in the program is no longer eligible
2 to participate in the program under Section 29.356(c), the child's
3 account is closed and any remaining money is returned to the state
4 for deposit in the fund.

5 Sec. 29.363. ACCOUNT EXTENSION. (a) A program participant
6 may apply to the participant's certified educational assistance
7 organization for an extension to allow for:

8 (1) the child's account to remain open after the date
9 on which the child's account would otherwise be closed under
10 Section 29.362(f) for a reason described by Section 29.356(c)(1);
11 and

12 (2) the money remaining in the account to be used for
13 expenses described by Subsection (e).

14 (b) Each certified educational assistance organization
15 shall create an application form for the extension of a child's
16 account under Subsection (a) and make the application form readily
17 available to program participants through various sources,
18 including the organization's Internet website.

19 (c) A certified educational assistance organization shall
20 approve an application for the extension of a child's account
21 submitted under this section if the program participant:

22 (1) submits the application form not later than the
23 30th day before the date on which the child is anticipated to
24 graduate from high school or obtain a high school equivalency
25 certificate; and

26 (2) includes with the application form documentation
27 regarding the intended use of the money remaining in the account for

1 expenses described by Subsection (e).

2 (d) Not later than the 30th day after receipt of an
3 application under this section, a certified educational assistance
4 organization shall:

5 (1) approve or deny the application; and

6 (2) notify in writing:

7 (A) the program participant regarding the
8 organization's decision on the application and, if the application
9 is denied, the grounds for denial; and

10 (B) the comptroller regarding the approval of an
11 application.

12 (e) Money remaining in a child's account extended under this
13 section on the date on which the account would otherwise be closed
14 under Section 29.362(f) may be used only for the following expenses
15 incurred by the child:

16 (1) tuition and fees:

17 (A) for courses that lead to occupational
18 licensing or certification; or

19 (B) at an institution of higher education, a
20 private or independent institution of higher education, or a career
21 school or college, as that term is defined by Section 132.001;

22 (2) the purchase of textbooks or other instructional
23 materials or uniforms required by a course or institution described
24 by Subdivision (1) in which the child is enrolled; and

25 (3) fees to obtain an occupational license or
26 certification, including fees for an examination necessary to
27 obtain the license or certification.

1 (f) Section 29.361(a) does not apply to a program
2 participant whose account is extended under this section.

3 Sec. 29.364. RANDOM AUDITING. (a) The comptroller may
4 contract with a private entity to randomly audit accounts and
5 certified educational assistance organizations as necessary to
6 ensure compliance with applicable law and the requirements of the
7 program.

8 (b) In conducting an audit, the comptroller or private
9 entity may require that a program participant or certified
10 educational assistance organization provide additional information
11 and documentation regarding any payment made under the program.

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

15 Sec. 29.365. SUSPENSION OF ACCOUNT. (a) The comptroller
16 shall suspend the account of a program participant who fails to
17 comply with applicable law or a requirement of the program.

18 (b) On suspension of an account under Subsection (a), the
19 comptroller shall notify the program participant in writing that
20 the account has been suspended and that no additional payments may
21 be made from the account. The notification must specify the grounds
22 for the suspension and state that the participant has 10 business
23 days to respond and take any corrective action required by the
24 comptroller.

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

27 (1) order permanent closure of the suspended account

1 and declare the program participant ineligible for the program;

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

5 (3) order full reinstatement of the account.

6 (d) The comptroller may recover money distributed under the
7 program that was used for expenses not allowed under Section 29.360
8 from the program participant or the entity that received the money
9 if the participant's account is suspended or closed under this
10 section.

11 Sec. 29.366. TUITION AND FEES; REFUND PROHIBITED. (a) An
12 education service provider may not charge a child participating in
13 the program an amount greater than the standard amount charged for
14 that service by the provider.

15 (b) An education service provider or a vendor of educational
16 products receiving money distributed under the program may not in
17 any manner rebate, refund, or credit to or share with a program
18 participant, or any person on behalf of a participant, any program
19 money paid or owed by the participant to the provider or vendor.

20 Sec. 29.367. REFERRAL TO ATTORNEY GENERAL. (a) If the
21 comptroller or a certified educational assistance organization
22 obtains evidence of fraudulent use of an account, the comptroller
23 or organization may refer the case to the attorney general for
24 investigation.

25 (b) With the consent of the appropriate local county or
26 district attorney, the attorney general has concurrent
27 jurisdiction with the consenting local prosecutor to prosecute an

1 offense referred to the attorney general under Subsection (a).

2 Sec. 29.368. SPECIAL EDUCATION NOTICE. (a) Each certified
3 educational assistance organization shall post on the
4 organization's Internet website and provide to each parent who
5 submits to the organization an application for the program on
6 behalf of a child with a disability a notice that:

7 (1) states that a private school is not subject to laws
8 regarding the provision of educational services in the same manner
9 as a public school, and a child with a disability attending a
10 private school may not receive the services a child with a
11 disability attending a public school is entitled to receive under
12 federal and state law; and

13 (2) provides information regarding rights to which a
14 child with a disability is entitled under federal and state law if
15 the child attends a public school, including:

16 (A) rights provided under the Individuals with
17 Disabilities Education Act (20 U.S.C. Section 1400 et seq.),
18 including:

19 (i) an individualized education program;
20 (ii) educational services provided in the
21 least restrictive environment;

22 (iii) instruction from certified teachers;
23 (iv) due process hearings to ensure proper
24 and full implementation of an individualized education program;

25 (v) transition and planning services; and
26 (vi) supplementary aids and services;

27 (B) rights provided under Subchapter A; and

1 (C) other rights provided under federal or state
2 law.

3 (b) A private school in which a child with a disability who
4 is participating in the program enrolls shall provide to the
5 child's parent a copy of the notice required under Subsection (a).

6 Sec. 29.369. PROGRAM PARTICIPANT, PROVIDER, AND VENDOR
7 AUTONOMY. (a) A rule adopted or action taken related to the
8 program by an individual, governmental entity, court of law, or
9 program administrator may not:

10 (1) consider the actions of an education service
11 provider, vendor of educational products, or program participant to
12 be the actions of an agent of state government;

13 (2) limit:

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

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

20 (3) obligate an education service provider or program
21 participant to act contrary to the provider's or participant's
22 religious or institutional values, as applicable;

23 (4) impose any regulation on an education service
24 provider, vendor of educational products, or program participant
25 beyond those regulations necessary to enforce the requirements of
26 the program; or

27 (5) require as a condition of receiving money

1 distributed under the program:

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

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

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

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

14 (2) does not impose an undue burden on a program
15 participant or an education service provider or vendor of
16 educational products that receives or seeks to receive money
17 distributed under the program.

18 Sec. 29.370. STUDENT RECORDS AND INFORMATION. (a) On
19 request by the parent of a child participating or seeking to
20 participate in the program, the school district or open-enrollment
21 charter school that the child would otherwise attend shall provide
22 a copy of the child's school records possessed by the district or
23 school, if any, to the child's parent or, if applicable, the private
24 school the child attends.

25 (b) The agency shall provide to each certified educational
26 assistance organization any information available to the agency
27 requested by the organization regarding a child who participates or

1 seeks to participate in the program. The organization may not
2 retain information provided under this subsection beyond the period
3 necessary to determine a child's eligibility to participate in the
4 program.

5 Sec. 29.371. GIFTS, GRANTS, AND DONATIONS. The comptroller
6 may solicit and accept gifts, grants, and donations from any public
7 or private source for any expenses related to the administration of
8 the program, including the initial implementation of the program.

9 Sec. 29.372. RULES; PROCEDURES. (a) The comptroller shall
10 adopt rules and procedures only as necessary to implement,
11 administer, and enforce this subchapter.

12 (b) A rule adopted under Subsection (a) is binding on an
13 organization that applies for certification as an educational
14 assistance organization and a state or local governmental entity,
15 including a political subdivision, as necessary to implement,
16 administer, and enforce this subchapter.

17 Sec. 29.373. RIGHT TO INTERVENE IN CIVIL ACTION. (a) A
18 program participant may intervene in any civil action challenging
19 the constitutionality of the program or the insurance premium tax
20 credit under Chapter 230, Insurance Code.

21 (b) A court in which a civil action described by Subsection
22 (a) is filed may require that all program participants wishing to
23 intervene in the action file a joint brief. A program participant
24 may not be required to join a brief filed on behalf of the state or a
25 state agency.

26 SECTION 4. Section 411.109, Government Code, is amended by
27 adding Subsection (b-1) and amending Subsection (c) to read as

1 follows:

2 (b-1) The comptroller is entitled to obtain criminal
3 history record information as provided by Subsection (c) about a
4 person who is a private tutor, a therapist, or an employee of a
5 teaching service or school who intends to provide educational
6 services to a child participating in the program established under
7 Subchapter J, Chapter 29, Education Code, and is seeking approval
8 to receive money distributed under that program.

9 (c) Subject to Section 411.087 and consistent with the
10 public policy of this state, the comptroller is entitled to:

11 (1) obtain through the Federal Bureau of Investigation
12 criminal history record information maintained or indexed by that
13 bureau that pertains to a person described by Subsection (a), ~~[or]~~
14 (b), or (b-1); and

15 (2) obtain from the department or any other criminal
16 justice agency in this state criminal history record information
17 maintained by the department or that criminal justice agency that
18 relates to a person described by Subsection (a), ~~[or]~~ (b), or (b-1).

19 SECTION 5. Subtitle B, Title 3, Insurance Code, is amended
20 by adding Chapter 230 to read as follows:

21 CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO

22 EDUCATION SAVINGS ACCOUNT PROGRAM

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 230.001. DEFINITIONS. In this chapter:

25 (1) "Fund" means the education savings account program
26 fund under Section 29.354, Education Code.

27 (2) "State premium tax liability" means any liability

1 incurred by an entity under Chapters 221 through 226.

2 SUBCHAPTER B. CREDIT

3 Sec. 230.051. CREDIT. An entity may apply for a credit
4 against the entity's state premium tax liability in the amount and
5 under the conditions provided by this chapter. The comptroller
6 shall award credits as provided by Section 230.054.

7 Sec. 230.052. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a)
8 Subject to Subsections (b) and (c), the amount of an entity's credit
9 is equal to the lesser of the amount contributed to the fund during
10 the period covered by the tax report or the amount of the entity's
11 state premium tax liability for the report.

12 (b) For the 2026 state fiscal year, the total amount of
13 credits that may be awarded under this chapter may not exceed \$200
14 million. For each subsequent state fiscal year, the total amount of
15 credits that may be awarded is:

16 (1) the same total amount of credits available under
17 this subsection for the previous state fiscal year, if Subdivision
18 (2) does not apply; or

19 (2) 125 percent of the total amount of credits
20 available under this subsection for the previous state fiscal year,
21 if the total amount of credits awarded in the previous state fiscal
22 year was at least 90 percent of the total amount of credits
23 available under this subsection for that fiscal year.

24 (c) The comptroller by rule shall prescribe procedures by
25 which the comptroller may allocate credits under this chapter. The
26 procedures must provide that credits are allocated first to
27 entities that received preliminary approval for a credit under

1 Section 230.053 and that apply under Section 230.054. The
2 procedures must provide that any remaining credits are allocated to
3 entities that apply under Section 230.054 on a first-come,
4 first-served basis, based on the date the contribution was
5 initially made.

6 (d) The comptroller may require an entity to notify the
7 comptroller of the amount the entity intends or expects to apply for
8 under this chapter before the beginning of a state fiscal year or at
9 any other time required by the comptroller.

10 Sec. 230.053. PRELIMINARY APPROVAL FOR CREDIT. (a) Before
11 making a contribution to the fund, an entity may apply to the
12 comptroller for preliminary approval of a credit under this chapter
13 for the contribution.

14 (b) An entity must apply for preliminary approval on a form
15 provided by the comptroller that includes the amount the entity
16 expects to contribute and any other information the comptroller
17 requires.

18 (c) The comptroller shall grant preliminary approval for
19 credits under this chapter on a first-come, first-served basis,
20 based on the date the comptroller receives the application for
21 preliminary approval.

22 (d) The comptroller shall grant preliminary approval for a
23 credit under this chapter for a state fiscal year if the sum of the
24 amount of the credit and the total amount of all other credits
25 preliminarily approved under this chapter does not exceed the
26 amount provided by Section 230.052(b).

27 (e) Final award of a credit preliminarily approved under

1 this section remains subject to the limitations under Section
2 230.052(a) and all other requirements of this chapter.

3 Sec. 230.054. APPLICATION FOR CREDIT. (a) An entity must
4 apply for a credit under this chapter on or with the tax report
5 covering the period in which the contribution was made.

6 (b) The comptroller shall adopt a form for the application
7 for the credit. An entity must use this form in applying for the
8 credit.

9 (c) Subject to Section 230.052(c), the comptroller may
10 award a credit to an entity that applies for the credit under
11 Subsection (a) if the entity is eligible for the credit and the
12 credit is available under Section 230.052(b). The comptroller has
13 broad discretion in determining whether to grant or deny an
14 application for a credit.

15 (d) The comptroller shall notify an entity in writing of the
16 comptroller's decision to grant or deny the application under
17 Subsection (a). If the comptroller denies an entity's application,
18 the comptroller shall include in the notice of denial the reasons
19 for the comptroller's decision.

20 (e) If the comptroller denies an entity's application under
21 Subsection (a), the entity may request in writing a reconsideration
22 of the application not later than the 10th day after the date the
23 notice under Subsection (d) is received. If the entity does not
24 request a reconsideration of the application on or before that
25 date, the comptroller's decision is final.

26 (f) An entity that requests a reconsideration under
27 Subsection (e) may submit to the comptroller, not later than the

1 30th day after the date the request for reconsideration is
2 submitted, additional information and documents to support the
3 entity's request for reconsideration.

4 (g) The comptroller's reconsideration of an application
5 under this section is not a contested case under Chapter 2001,
6 Government Code. The comptroller's decision on a request for
7 reconsideration of an application is final and is not appealable.

8 (h) This section does not create a cause of action to
9 contest a decision of the comptroller to deny an application for a
10 credit under this chapter.

11 Sec. 230.055. RULES; PROCEDURES. The comptroller shall
12 adopt rules and procedures to implement, administer, and enforce
13 this chapter.

14 Sec. 230.056. ASSIGNMENT PROHIBITED; EXCEPTION. An entity
15 may not convey, assign, or transfer the credit allowed under this
16 chapter to another entity unless all of the assets of the entity are
17 conveyed, assigned, or transferred in the same transaction.

18 Sec. 230.057. NOTICE OF AVAILABILITY OF CREDIT. The
19 comptroller shall provide notice of the availability of the credit
20 under this chapter on the comptroller's Internet website, in the
21 instructions for insurance premium tax report forms, and in any
22 notice sent to an entity concerning the requirement to file an
23 insurance premium tax report.

24 SECTION 6. Subchapter J, Chapter 29, Education Code, as
25 added by this Act, applies beginning with the 2026-2027 school
26 year.

27 SECTION 7. An entity may apply for a credit under Chapter

1 230, Insurance Code, as added by this Act, only for a contribution
2 made on or after the effective date of this Act.

3 SECTION 8. Not later than February 15, 2026, the
4 comptroller of public accounts shall adopt rules as provided by
5 Section 230.055, Insurance Code, as added by this Act.

6 SECTION 9. Chapter 230, Insurance Code, as added by this
7 Act, applies only to a tax report originally due on or after the
8 effective date of this Act.

9 SECTION 10. (a) The constitutionality and other validity
10 under the state or federal constitution of all or any part of
11 Subchapter J, Chapter 29, Education Code, as added by this Act, or
12 Chapter 230, Insurance Code, as added by this Act, may be determined
13 in an action for declaratory judgment in a district court in Travis
14 County under Chapter 37, Civil Practice and Remedies Code, except
15 that this section does not authorize an award of attorney's fees
16 against this state and Section 37.009, Civil Practice and Remedies
17 Code, does not apply to an action filed under this section. This
18 section does not authorize a taxpayer suit to contest the denial of
19 a tax credit by the comptroller of public accounts.

20 (b) An appeal of a declaratory judgment or order, however
21 characterized, of a district court, including an appeal of the
22 judgment of an appellate court, holding or otherwise determining
23 that all or any part of Subchapter J, Chapter 29, Education Code, as
24 added by this Act, or Chapter 230, Insurance Code, as added by this
25 Act, is constitutional or unconstitutional, or otherwise valid or
26 invalid, under the state or federal constitution is an accelerated
27 appeal.

1 (c) If the judgment or order is interlocutory, an
2 interlocutory appeal may be taken from the judgment or order and is
3 an accelerated appeal.

4 (d) A district court in Travis County may grant or deny a
5 temporary or otherwise interlocutory injunction or a permanent
6 injunction on the grounds of the constitutionality or
7 unconstitutionality, or other validity or invalidity, under the
8 state or federal constitution of all or any part of Subchapter J,
9 Chapter 29, Education Code, as added by this Act, or Chapter 230,
10 Insurance Code, as added by this Act.

11 (e) There is a direct appeal to the Texas Supreme Court from
12 an order, however characterized, of a trial court granting or
13 denying a temporary or otherwise interlocutory injunction or a
14 permanent injunction on the grounds of the constitutionality or
15 unconstitutionality, or other validity or invalidity, under the
16 state or federal constitution of all or any part of Subchapter J,
17 Chapter 29, Education Code, as added by this Act, or Chapter 230,
18 Insurance Code, as added by this Act.

19 (f) The direct appeal is an accelerated appeal.

20 (g) This section exercises the authority granted by Section
21 3-b, Article V, Texas Constitution.

22 (h) The filing of a direct appeal under this section will
23 automatically stay any temporary or otherwise interlocutory
24 injunction or permanent injunction granted in accordance with this
25 section pending final determination by the Texas Supreme Court,
26 unless the supreme court makes specific findings that the applicant
27 seeking such injunctive relief has pleaded and proved that:

1 (1) the applicant has a probable right to the relief it
2 seeks on final hearing; and

3 (2) the applicant will suffer a probable injury that
4 is imminent and irreparable, and that the applicant has no other
5 adequate legal remedy.

6 (i) An appeal under this section, including an
7 interlocutory, accelerated, or direct appeal, is governed, as
8 applicable, by the Texas Rules of Appellate Procedure, including
9 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 37.3(a)(1), 38.6(a) and (b),
10 40.1(b), and 49.4.

11 SECTION 11. If any provision of this Act or its application
12 to any person or circumstance is held invalid, the invalidity does
13 not affect other provisions or applications of this Act that can be
14 given effect without the invalid provision or application, and to
15 this end the provisions of this Act are declared severable.

16 SECTION 12. This Act takes effect January 1, 2026.