

By: Madden

H.B. No. 2353

A BILL TO BE ENTITLED

AN ACT

relating to a franchise or insurance premium tax credit for contributions made to certain educational assistance organizations.

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

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. TAX CREDIT FOR CONTRIBUTIONS TO CERTAIN EDUCATIONAL ASSISTANCE ORGANIZATIONS

Sec. 171.601. DEFINITION. In this subchapter, "educational assistance organization" means an organization that:

(1) according to the organization's charter, has the primary purpose of awarding scholarships to or paying educational expenses for eligible students in:

(A) public elementary or secondary schools located in this state; or

(B) nonpublic elementary or secondary schools located in this state:

(i) that meet the requirements of Section 171.603;

(ii) at which a student may fulfill this state's compulsory attendance requirements; and

(iii) that are not in violation of the federal Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.);

1 and

2 (2) uses its annual revenue for the purpose provided
3 by Subdivision (1).

4 Sec. 171.602. ELIGIBILITY REQUIREMENTS FOR CERTIFICATION
5 OF EDUCATIONAL ASSISTANCE ORGANIZATION. An organization may apply
6 to the comptroller for certification as a certified educational
7 assistance organization. To qualify for certification, the
8 organization:

9 (1) must:

10 (A) be exempt from federal tax under Section
11 501(a) of the Internal Revenue Code by being listed as an exempt
12 organization in Section 501(c)(3) of that code;

13 (B) be in good standing with the state;

14 (C) be located in the state;

15 (D) allocate at least 90 percent of its annual
16 revenue from contributions that are designated for scholarships or
17 educational expense assistance for eligible students under this
18 subchapter for student scholarships and assistance for educational
19 expenses, including tuition, transportation, textbooks, and other
20 supplies, and for other related educational expense assistance as
21 described by this section;

22 (E) award scholarships and assistance for
23 qualifying educational expenses to eligible students who
24 demonstrate the greatest financial and academic need;

25 (F) give the taxable entity a receipt for money
26 contributed to the organization that includes the name of the
27 organization, the name of the taxable entity, the amount of the

1 contribution, and any other information required by the
2 comptroller;

3 (G) demonstrate, within the previous five-year
4 period, the experience and expertise of awarding scholarships to
5 students in primary and secondary schools;

6 (H) agree to be independently audited on an
7 annual basis and file the audit with the comptroller; and

8 (I) disburse contributions received within two
9 academic years of receipt; and

10 (2) may not:

11 (A) allocate each academic year more than 25
12 percent of its scholarship or educational expense assistance funds
13 to students who are not counted toward a public school's average
14 daily attendance during the year in which the student receives the
15 scholarship or educational expense assistance;

16 (B) award all scholarships under this subchapter
17 to students who attend a particular school or pay educational
18 expenses incurred only at a particular school;

19 (C) provide to a student a scholarship in an
20 annual amount that exceeds the amounts provided under Section
21 171.607(a); and

22 (D) provide to a student educational expense
23 assistance in excess of the amount provided under Section
24 171.607(b) per academic year, including assistance for:

25 (i) facility fees;

26 (ii) textbooks;

27 (iii) school supplies;

- 1 (iv) tutoring;
- 2 (v) academic after-school programs;
- 3 (vi) school or lab fees;
- 4 (vii) before-school or after-school child
- 5 care; and
- 6 (viii) transportation expenses, including
- 7 the cost to transfer from one public school to another.

8 Sec. 171.603. NONPUBLIC SCHOOL REQUIREMENTS. A certified
9 educational assistance organization may not award scholarships to
10 or pay educational expenses for eligible students enrolled in
11 nonpublic schools unless the nonpublic school executes a notarized
12 affidavit, with supporting documentation, concerning the school's
13 qualification for scholarships and educational expense assistance
14 for eligible students who receive assistance from a certified
15 educational assistance organization, including evidence of:

16 (1) accreditation or of actively being in the process
17 of accreditation by the Texas Education Agency or by a recognized
18 accrediting agency;

19 (2) annual administration of a nationally
20 norm-referenced assessment instrument or the appropriate
21 assessment instrument required under Section 39.023, Education
22 Code;

23 (3) valid certificate of occupancy; and

24 (4) policy statements regarding:

25 (A) admissions;

26 (B) curriculum;

27 (C) safety;

1 (D) food service inspection; and

2 (E) student to teacher ratios.

3 Sec. 171.604. ELIGIBILITY. A taxable entity is eligible
4 for a credit against the tax imposed under this chapter in the
5 amount and under the conditions and limitations provided by this
6 subchapter.

7 Sec. 171.605. ELIGIBILITY OF STUDENTS. To qualify for
8 assistance from a certified educational assistance organization
9 under this subchapter:

10 (1) a student:

11 (A) must:

12 (i) be in foster care;

13 (ii) be in institutional care; or

14 (iii) reside in a county with a population
15 of 750,000 or more and have a household income not greater than 200
16 percent of the income guidelines necessary to qualify for the
17 national free or reduced-price lunch program established under 42
18 U.S.C. Section 1751 et seq.; and

19 (B) must:

20 (i) have been enrolled in a public school
21 during the preceding school year;

22 (ii) be starting school in the state for the
23 first time;

24 (iii) be the sibling of a student who is
25 eligible; or

26 (iv) qualify as a student who is not counted
27 toward a public school's average daily attendance during the year

1 in which the student receives the scholarship or educational
2 expense assistance; or

3 (2) a student must have previously qualified under
4 Subdivision (1).

5 Sec. 171.606. CREDIT FOR CONTRIBUTIONS. (a) A taxable
6 entity may claim a credit under this subchapter only for money
7 contributed to a certified educational assistance organization and
8 designated for scholarships or educational expense assistance for
9 eligible students.

10 (b) A taxable entity may not claim a credit under this
11 subchapter for a contribution made to a certified educational
12 assistance organization if:

13 (1) the taxable entity requires that the contribution
14 benefit a particular person or school; or

15 (2) the contribution is designated to provide a
16 scholarship or educational expense assistance for a taxable entity
17 employee or for a spouse or dependent of a taxable entity employee.

18 Sec. 171.607. LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL
19 EXPENSE ASSISTANCE. (a) The maximum scholarship amount a
20 certified educational assistance organization may award under this
21 subchapter may not exceed:

22 (1) \$5,500 for a student in kindergarten through grade
23 8 for the 2012 state fiscal year, increased by 3.5 percent each
24 subsequent year; and

25 (2) \$7,500 for a student in grades 9 through 12 for the
26 2012 state fiscal year, increased by 3.5 percent each subsequent
27 year.

1 (b) The maximum educational expense assistance a certified
2 educational assistance organization may award under this
3 subchapter may not exceed \$500 for a student for the 2012 state
4 fiscal year, increased by five percent each subsequent year.

5 Sec. 171.608. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a)
6 Subject to Subsections (b) and (c), the amount of a taxable entity's
7 annual credit is equal to the lesser of the amount of the qualifying
8 contributions made by the taxable entity or 50 percent of the
9 taxable entity's tax liability under this chapter.

10 (b) For the 2012 state fiscal year, the total amount of tax
11 credits that may be claimed by all taxable entities under this
12 subchapter and Chapter 230, Insurance Code, may not exceed \$65
13 million. For each subsequent state fiscal year, the total amount of
14 tax credits that may be claimed is an amount equal to 105 percent of
15 the total amount of tax credits that may be claimed in the previous
16 state fiscal year.

17 (c) The comptroller by rule shall prescribe procedures by
18 which the comptroller may allocate credits under this subchapter.
19 The procedures must provide that credits are allocated on a
20 "first-come, first-served" basis, based on the date the
21 contribution was initially made.

22 (d) The comptroller may require an entity to notify the
23 comptroller of the amount the entity intends or expects to claim
24 under this subchapter before the beginning of a state fiscal year or
25 at any other time required by the comptroller.

26 Sec. 171.609. APPLICATION FOR CREDIT. (a) A taxable entity
27 must apply for a credit under this subchapter on or with the tax

1 report for the period for which the credit is claimed.

2 (b) The comptroller shall adopt a form for the application
3 for the credit. A taxable entity must use this form in applying for
4 the credit.

5 Sec. 171.610. RULES; PROCEDURES. (a) The comptroller
6 shall adopt rules and procedures to implement, administer, and
7 enforce this subchapter.

8 (b) A rule adopted under Subsection (a) is binding on any
9 state or local governmental entity, including a political
10 subdivision, as necessary to implement, administer, and enforce
11 this subchapter.

12 Sec. 171.611. ASSIGNMENT PROHIBITED; EXCEPTION. A taxable
13 entity may not convey, assign, or transfer the credit allowed under
14 this subchapter to another taxable entity unless all assets of the
15 taxable entity are conveyed, assigned, or transferred in the same
16 transaction.

17 Sec. 171.612. REVOCATION. (a) The comptroller shall
18 revoke a certification provided under Section 171.602 if the
19 comptroller finds that a certified educational assistance
20 organization:

21 (1) is no longer eligible under Section 171.602; or
22 (2) intentionally and substantially violates this
23 subchapter.

24 (b) Revocation of a certification under this section does
25 not affect the validity of a tax credit relating to a contribution
26 made before the date of revocation.

27 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended

1 by adding Chapter 230 to read as follows:

2 CHAPTER 230. CREDIT AGAINST PREMIUM TAXES

3 FOR CERTAIN CONTRIBUTIONS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 230.001. DEFINITIONS. In this chapter:

6 (1) "Educational assistance organization" has the
7 meaning assigned by Section 171.601, Tax Code.

8 (2) "State premium tax liability" means any liability
9 incurred by an entity under Chapters 221 through 226.

10 [Sections 230.002-230.050 reserved for expansion]

11 SUBCHAPTER B. CREDIT

12 Sec. 230.051. CREDIT. (a) An entity is eligible for a
13 credit against the entity's state premium tax liability in the
14 amount and under the conditions and limitations provided by this
15 chapter.

16 (b) The amount of the credit is equal to the lesser of the
17 amount of contributions made to a certified educational assistance
18 organization or 50 percent of the entity's state premium tax
19 liability if the contributions and the organizations that received
20 the contributions meet the requirements prescribed by Subchapter K,
21 Chapter 171, Tax Code.

22 Sec. 230.052. LIMITATION. (a) Subject to Subsection (c),
23 the total credit claimed under this chapter for a taxable year may
24 not exceed the lesser of the amount determined under Subsection (b)
25 or 50 percent of the amount of the entity's state premium tax
26 liability for the taxable year after any other applicable credits.

27 (b) For the 2012 state fiscal year, the total amount of tax

1 credits that may be claimed under this chapter and Subchapter K,
2 Chapter 171, Tax Code, may not exceed \$65 million. For each
3 subsequent state fiscal year, the total amount of tax credits that
4 may be claimed is an amount equal to 105 percent of the total amount
5 of tax credits that may be claimed in the previous state fiscal
6 year.

7 (c) The comptroller by rule shall prescribe procedures by
8 which the comptroller may allocate credits under this chapter. The
9 procedures must provide that credits are allocated on a
10 "first-come, first-served" basis, based on the date the
11 contribution was initially made.

12 (d) The comptroller may require an entity to notify the
13 comptroller of the amount the entity intends or expects to claim
14 under this chapter before the beginning of a state fiscal year or at
15 any other time required by the comptroller.

16 Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must
17 apply for a credit under this chapter on or with the tax return for
18 the taxable year for which the credit is claimed.

19 (b) The comptroller shall adopt a form for the application
20 for the credit. An entity must use this form in applying for the
21 credit.

22 Sec. 230.054. RULES; PROCEDURES. (a) The comptroller
23 shall adopt rules and procedures to implement, administer, and
24 enforce this chapter.

25 (b) A rule adopted under Subsection (a) is binding on any
26 state or local governmental entity, including a political
27 subdivision, as necessary to implement, administer, and enforce

1 this chapter.

2 Sec. 230.055. ASSIGNMENT PROHIBITED; EXCEPTION. An entity
3 may not convey, assign, or transfer the credit allowed under this
4 chapter to another entity unless all of the assets of the entity are
5 conveyed, assigned, or transferred in the same transaction.

6 SECTION 3. (a) The constitutionality and other validity
7 under the state or federal constitution of all or any part of
8 Subchapter K, Chapter 171, Tax Code, or Chapter 230, Insurance
9 Code, as added by this Act, may be determined in an action for
10 declaratory judgment in a district court in Travis County under
11 Chapter 37, Civil Practice and Remedies Code.

12 (b) An appeal of a declaratory judgment or order, however
13 characterized, of a district court, including an appeal of the
14 judgment of an appellate court, holding or otherwise determining
15 that all or any part of Subchapter K, Chapter 171, Tax Code, or
16 Chapter 230, Insurance Code, as added by this Act, is
17 constitutional or unconstitutional, or otherwise valid or invalid,
18 under the state or federal constitution is an accelerated appeal.

19 (c) If the judgment or order is interlocutory, an
20 interlocutory appeal may be taken from the judgment or order and is
21 an accelerated appeal.

22 (d) A district court in Travis County may grant or deny a
23 temporary or otherwise interlocutory injunction or a permanent
24 injunction on the grounds of the constitutionality or
25 unconstitutionality, or other validity or invalidity, under the
26 state or federal constitution of all or any part of Subchapter K,
27 Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by

1 this Act.

2 (e) There is a direct appeal to the supreme court from an
3 order, however characterized, of a trial court granting or denying
4 a temporary or otherwise interlocutory injunction or a permanent
5 injunction on the grounds of the constitutionality or
6 unconstitutionality, or other validity or invalidity, under the
7 state or federal constitution of all or any part of Subchapter K,
8 Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by
9 this Act.

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

11 (g) This section exercises the authority granted by Section
12 3-b, Article V, Texas Constitution.

13 (h) The filing of a direct appeal under this section will
14 automatically stay any temporary or otherwise interlocutory
15 injunction or permanent injunction granted in accordance with this
16 section pending final determination by the supreme court, unless
17 the supreme court makes specific findings that the applicant
18 seeking such injunctive relief has pleaded and proved that:

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

21 (2) the applicant will suffer a probable injury that
22 is imminent and irreparable, and that the applicant has no other
23 adequate legal remedy.

24 (i) An appeal under this section, including an
25 interlocutory, accelerated, or direct appeal, is governed, as
26 applicable, by the Texas Rules of Appellate Procedure, including
27 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),

1 38.6(a) and (b), 40.1(b), and 49.4.

2 SECTION 4. A credit may be claimed under Subchapter K,
3 Chapter 171, Tax Code, or Chapter 230, Insurance Code, as added by
4 this Act, only for an expenditure made on or after the effective
5 date of this Act.

6 SECTION 5. This Act takes effect January 1, 2012.