

By: Huffines

S.B. No. 1178

A BILL TO BE ENTITLED

AN ACT

relating to establishing an education savings 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. 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 eligible to participate in a school district's special education program under Section 29.003.

(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 or another state or under 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.

(5) "Institution of higher education" means:

(A) an accredited public senior college, university, community college, state college, technical institute,

1 or junior college or the equivalent located in this state;

2 (B) a private or independent institution of
3 higher education as defined by Section 61.003; or

4 (C) a career school or college as defined by
5 Section 132.001.

6 (6) "Instructional material" has the meaning assigned
7 by Section 31.002.

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

12 (8) "Participating private school" means a private
13 school located in this state that has notified the agency of its
14 intention to participate in the program and comply with the
15 program's requirements.

16 (9) "Program" means the education savings account
17 program created under this subchapter.

18 (10) "Program participant" means a child accepted into
19 the program and the child's parent.

20 Sec. 29.352. ESTABLISHMENT OF PROGRAM. (a) The
21 commissioner shall establish and administer the education savings
22 account program to provide funding to pay approved
23 education-related expenses of eligible students. The parent of a
24 child participating in the program may choose an education method
25 that best serves the child's needs, whether by private school,
26 private tutor, homeschooling, or another approved option.

27 (b) The annual number of new participants in the program is

1 limited to one-half of one percent of the total number of students
2 in average daily attendance in grades 1 through 12 in the state
3 during the previous school year. In the event that applicants
4 exceed available spots in any given year, the agency shall give
5 preference to any applicant who is a child with a disability or who
6 is educationally disadvantaged.

7 (c) The agency shall make information about the program
8 readily available to the public through various sources, including
9 the agency's Internet website. The agency shall make special
10 efforts to ensure that parents of a child with a disability or a
11 child who is educationally disadvantaged are made aware of the
12 program.

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

15 (1) is eligible to attend school under Section 25.001;
16 and

17 (2) was enrolled in a public school district during
18 the preceding school year or is enrolling in first grade for the
19 first time.

20 (b) After a child establishes eligibility under Subsection
21 (a) and begins participating in the program, the child is eligible
22 to continue in the program, regardless of whether the child
23 continues to meet the requirements of Subsection (a), until the
24 earlier of the date on which the child graduates from high school or
25 the child's 21st birthday, unless the child:

26 (1) enrolls in a public school district or
27 open-enrollment charter school;

1 (2) changes residences and is no longer entitled under
2 Section 25.001 to attend school in the school district under which
3 the child's eligibility was established; or

4 (3) is declared ineligible for the program by order of
5 the commissioner.

6 Sec. 29.354. AGREEMENT REQUIRED. Before an eligible child
7 may receive funding under this subchapter, a parent of the child
8 must agree in writing:

9 (1) to provide an education for the child that
10 includes, at a minimum, the subjects of reading, grammar,
11 mathematics, social studies, and science;

12 (2) to spend program funding only on qualified
13 education expenses described by Section 29.356;

14 (3) to ensure that the child is annually administered
15 the appropriate assessment instruments under Section 29.358;

16 (4) to immediately notify the agency if the child
17 enrolls in a public school district or open-enrollment charter
18 school; and

19 (5) to inform the agency of the child's graduation from
20 high school.

21 Sec. 29.355. AMOUNT OF PAYMENT; FINANCING. (a) A child
22 participating in the program shall receive annual funding equal to
23 80 percent of the total average per student funding amount in the
24 school district the child would otherwise attend, based on that
25 district's funding during the preceding school year.

26 (b) Notwithstanding Subsection (a), a child participating
27 in the program who is a child with a disability or who is

1 educationally disadvantaged shall receive annual funding equal to
2 100 percent of the total average per student funding amount in the
3 school district the child would otherwise attend, based on that
4 district's funding during the preceding school year.

5 (c) The agency shall contract with an independent third
6 party for the purpose of determining if a child participating in the
7 program is a child with a disability or is educationally
8 disadvantaged.

9 (d) A child who participates in the program is included in
10 determining the average daily attendance under Section 42.005 of
11 the school district the child would otherwise attend. The amount of
12 program funding received by the child shall be subtracted from the
13 state funding payable to the school district.

14 Sec. 29.356. QUALIFIED EDUCATION EXPENSES; AGENCY
15 APPROVAL. (a) Program funding may only be used to pay the
16 following qualified education expenses incurred by a program
17 participant:

18 (1) tuition and fees at a participating private
19 school;

20 (2) the purchase of textbooks required by a
21 participating private school;

22 (3) the purchase of a curriculum;

23 (4) the purchase of instructional material;

24 (5) tuition or fees for an online educational course
25 or program;

26 (6) professional fees of a private tutor or teaching
27 service;

1 (7) for a child with a disability, professional fees
2 of a practitioner or provider of educational therapies or services;

3 (8) fees for a nationally standardized
4 norm-referenced achievement test or examination, an advanced
5 placement examination or similar examination, or any examination
6 related to college or university admission;

7 (9) tuition and fees at an institution of higher
8 education;

9 (10) the purchase of textbooks required by an
10 institution of higher education;

11 (11) contributions to a qualified tuition program
12 established for the child that meets the requirements of Section
13 529, Internal Revenue Code of 1986; and

14 (12) professional fees of a financial institution that
15 manages the participant's account.

16 (b) Education-related expenses that do not qualify under
17 Subsection (a) and that may not be paid with program funding
18 include:

19 (1) computer hardware or other technological devices;

20 (2) transportation;

21 (3) consumable educational supplies including paper,
22 pens, pencils, folders, and notebooks;

23 (4) food; and

24 (5) before-school or after-school child care and child
25 care during school holidays and vacations.

26 (c) All expense payments made from an account established
27 under this subchapter must be approved by the agency and may be made

1 only to a participating private school, institution of higher
2 education, private tutor, vendor, or other provider of education
3 services that has been approved by the agency.

4 (d) A participating private school, institution of higher
5 education, private tutor, vendor, or other provider of education
6 services under this subchapter must provide program participants
7 with a receipt for each qualifying education expense charged by the
8 school, institution, tutor, vendor, or provider.

9 (e) Nothing in this subchapter shall be construed to
10 prohibit or limit the ability of a program participant to pay, with
11 nonprogram funding, the costs of educational courses, materials,
12 supplies, or services not covered by the program.

13 Sec. 29.357. APPLICATION FOR PROGRAM. (a) From May 1 to
14 July 1 of each year, a parent may apply for participation in the
15 program on behalf of the parent's child for the following school
16 year.

17 (b) The agency shall use a standardized application form to
18 determine a child's eligibility for the program. The agency shall
19 make the application form readily available to interested parents
20 through various sources, including the agency's Internet website.

21 (c) The agency shall provide to each applicant, and annually
22 to each program participant, a publication that describes the
23 operation of the program, including the type of expenses covered by
24 the program, expense reporting requirements, a list of private
25 schools participating in the program, and a description of the
26 responsibilities of program participants and the agency.

27 Sec. 29.358. ACHIEVEMENT TESTING. (a) Each child

1 participating in the program shall be annually administered the
2 appropriate grade-level state assessment instruments, or
3 nationally standardized norm-referenced achievement tests, in math
4 and language arts. However, a child with a disability for whom
5 standardized testing is not appropriate is not subject to this
6 subsection.

7 (b) The results of all assessment instruments or tests
8 administered under this section shall be reported to the agency in
9 the manner required by the agency. The agency shall ensure that
10 results may be efficiently reported in a manner that complies with
11 student privacy laws and that allows aggregation of data by grade
12 level, gender, race, family income level, and number of years of
13 participation in the program.

14 (c) The agency shall publish the achievement test results,
15 associated learning gains, and program graduation rates on the
16 agency's Internet website.

17 (d) A student's failure to demonstrate satisfactory
18 academic progress, as determined under commissioner rule, may
19 constitute grounds for the commissioner to declare the student
20 ineligible for the program.

21 Sec. 29.359. ACCREDITATION. (a) A participating private
22 school must be accredited by a private organization recognized by
23 the commissioner before it may accept students under the program.

24 (b) A private tutor or teaching service, or a practitioner
25 or provider of educational therapies or services for a child with a
26 disability, must be licensed or accredited by a regional or
27 national accrediting organization recognized by the commissioner

1 before it may accept students under the program.

2 Sec. 29.360. ADMINISTRATION OF ACCOUNTS. (a) The agency
3 shall contract with a financial institution to establish and manage
4 accounts under the program. The institution shall establish an
5 account for each child participating in the program. Program
6 participants may access their account by using a debit card or
7 online payment service.

8 (b) Funding under the program shall be transferred to each
9 participant's account in quarterly installments of equal amount to
10 be made on or before the 25th day of August, November, February, and
11 May.

12 (c) The agency may deduct from each installment of funds an
13 amount, not to exceed three percent, to cover the agency's cost of
14 overseeing accounts and administering the program.

15 (d) The agency shall establish, based on market rates,
16 reasonable fees that may be charged by a financial institution that
17 manages accounts under the program.

18 Sec. 29.361. EXPENSE REPORTING. (a) On or before
19 quarterly deadlines established by the agency, program
20 participants must submit an expense report to the agency detailing
21 all transactions made on the participant's account during the
22 reporting quarter. Only expenses incurred during the reporting
23 quarter may be approved by the agency.

24 (b) An expense report must include:

25 (1) receipts and invoices documenting all
26 transactions made on the account; and

27 (2) a quarterly statement of account provided to the

1 participant by the financial institution that manages the account.

2 (c) The agency shall disallow any expense that is not a
3 qualified education expense under Section 29.356 or for which
4 documentation is incomplete. For each disallowed transaction, the
5 agency shall request repayment in full from the program
6 participant. Pending repayment, no additional program funding may
7 be transferred to the participant's account. If repayment is not
8 made on or before the 30th day after the request for repayment is
9 made, the commissioner shall close the account.

10 (d) A program participant may request agency approval of an
11 expense that was not preapproved by the agency. An approval request
12 under this subsection is only effective if:

13 (1) made in writing using the proper form provided by
14 the agency; and

15 (2) submitted to the agency before or concurrently
16 with the submission of the relevant expense report.

17 (e) Repeated violations of expense reporting requirements
18 by a program participant, whether intentional or unintentional, may
19 constitute grounds for the commissioner to declare the participant
20 ineligible for the program.

21 Sec. 29.362. AUDITING OF ACCOUNT. The agency shall audit
22 accounts as needed to ensure compliance with applicable law and the
23 requirements of the program. At a minimum, the agency shall conduct
24 one random audit of each account annually. In auditing an account,
25 the agency may require that a program participant provide further
26 information and documentation regarding any transaction on the
27 participant's account.

1 Sec. 29.363. SUSPENSION OF ACCOUNT. The commissioner shall
2 suspend the account of any program participant who fails to comply
3 with applicable law or a requirement of the program, including the
4 terms of an agreement under Section 29.354, or who commits a
5 substantial misuse of program funds. The commissioner shall notify
6 the participant in writing that the account has been suspended and
7 that no further transactions will be allowed on or disbursements
8 made from the account. The notification must specify the grounds
9 for the suspension and state that the participant has 10 business
10 days to respond and take any corrective action ordered by the
11 commissioner. Following the expiration of the 10-day period, the
12 commissioner shall:

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

15 (2) order temporary reinstatement of the account,
16 conditioned on the performance of specified action by the
17 participant; or

18 (3) order full reinstatement of the account.

19 Sec. 29.364. TUITION AND FEES; REFUND PROHIBITED. (a) A
20 participating private school may not:

21 (1) charge a child participating in the program that
22 attends the school a tuition amount greater than the standard
23 tuition rate at the school; or

24 (2) assess any additional charge, other than a fee
25 that the board of trustees of a school district is authorized to
26 charge under Section 11.158, for providing an educational program
27 or service to the child.

1 (b) A participating private school, institution of higher
2 education, private tutor, vendor, or other provider of education
3 services under this subchapter may not in any manner refund to,
4 credit to, share with, or rebate to a program participant, or any
5 person on behalf of a participant, any program funds paid or owed by
6 the participant to the school, institution, tutor, vendor, or
7 provider.

8 Sec. 29.365. REFERRAL TO THE ATTORNEY GENERAL. If the
9 agency obtains evidence of fraudulent use of an account, the
10 commissioner may refer the case to the attorney general for
11 investigation and prosecution.

12 Sec. 29.366. SCHOOL ADMISSIONS. (a) A participating
13 private school may not refuse to enroll a child participating in the
14 program on the basis of the child's residence, race, national
15 origin, ethnic background, religion, disability, or academic
16 achievement.

17 (b) A participating private school may refuse to enroll a
18 child participating in the program if the child:

19 (1) has been expelled from a public or private school
20 at any time; or

21 (2) has a criminal record.

22 (c) A participating private school may not consider the
23 athletic ability of a child participating in the program in any
24 admissions process relating to the child.

25 (d) A participating private school may give admissions
26 preference to a currently enrolled child participating in the
27 program to achieve continuity and to siblings of a currently

1 enrolled child or children residing in the same household as a
2 currently enrolled child for the convenience of the parents of
3 those children.

4 Sec. 29.367. PROVIDER ACCOUNTABILITY. (a) A
5 participating private school must:

6 (1) comply with all applicable state or federal health
7 and safety laws;

8 (2) hold a valid occupancy permit, if required by the
9 political subdivision in which the school is located; and

10 (3) certify to the agency that the school has complied
11 with the conditions imposed by Section 29.366 and this section.

12 (b) A participating private school must conduct a criminal
13 background check on each school employee or prospective employee.
14 The school shall terminate or exclude from employment any person:

15 (1) ineligible under state law to work at the school;
16 and

17 (2) who, in the judgment of the school's management,
18 may pose a threat to the safety of students at the school.

19 (c) The agency may declare a participating private school,
20 institution of higher education, private tutor, vendor, or other
21 provider of education services ineligible for the program if, after
22 notice and hearing, the agency finds that the school, institution,
23 tutor, vendor, or provider has:

24 (1) failed to comply with applicable law or the
25 requirements of the program; or

26 (2) failed to provide a child participating in the
27 program with promised educational services.

1 (d) If the agency makes a declaration of ineligibility under
2 Subsection (c), it shall:

3 (1) immediately notify program participants of the
4 declaration of ineligibility; and

5 (2) disapprove any account expenditure made to the
6 school, institution, tutor, vendor, or provider after the date of
7 the declaration of ineligibility.

8 (e) Establishment of the program does not expand the
9 regulatory authority of the agency or any school district to impose
10 additional regulation on a private school, private tutor, or other
11 provider of private education services under the program beyond
12 what is necessary to enforce the requirements of the program.
13 Neither the agency nor any school district may in any way regulate
14 the educational program of a private school, private tutor, or
15 other provider of private education services under the program.

16 Sec. 29.368. BOND REQUIRED. (a) Except as provided by
17 Subsection (c), prior to the start of each school year, a
18 participating private school that anticipates receiving \$50,000 or
19 more in tuition and fees from students participating in the program
20 during the school year must file a corporate surety bond with the
21 commissioner in an amount equal to the total amount of the
22 anticipated tuition and fees.

23 (b) A bond issued under Subsection (a) must be:

- 24 (1) issued in a form approved by the commissioner;
25 (2) issued by a company authorized to do business in
26 this state;
27 (3) payable to the state to be used only for repayment

1 of any funds received by the school under the program;

2 (4) conditioned on the compliance of the school and
3 its officers, agents, and employees with this subchapter and rules
4 adopted under this subchapter; and

5 (5) issued for a period corresponding to the school
6 year.

7 (c) The commissioner may waive the bond filing requirement
8 under Subsection (a) for any participating private school that
9 provides to the agency financial information demonstrating, to the
10 commissioner's satisfaction, that the school has the ability to
11 repay the total amount of tuition and fees the school anticipates
12 receiving from students participating in the program during the
13 school year.

14 Sec. 29.369. STUDENT RECORDS. The school district that a
15 child participating in the program would otherwise attend shall
16 provide to the child's parent or, if applicable, to a participating
17 private school the child attends, a complete copy of the child's
18 school records. This subsection does not require or authorize the
19 release of information except in conformity with the Family
20 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section
21 1232g).

22 Sec. 29.370. ANNUAL SURVEY. The agency shall annually
23 request that a parent of each child participating in the program
24 complete a written survey that solicits the parent's:

25 (1) overall level of satisfaction with the program;
26 and

27 (2) opinion on specified topics and issues relevant to

1 the effectiveness of the program.

2 SECTION 2. This Act applies beginning with the 2015-2016
3 school year.

4 SECTION 3. Not later than 45 days after the effective date
5 of this Act, the commissioner of education, the State Board of
6 Education, the commissioner of higher education, and the
7 comptroller of public accounts shall adopt rules, procedures, and
8 forms necessary to implement the education savings account program
9 under Subchapter J, Chapter 29, Education Code, as added by this
10 Act, and to:

11 (1) calculate annually the savings to the state from
12 the implementation of the program; and

13 (2) prevent fraud in financial transactions under the
14 program, including measures to permit anonymous fraud reporting by
15 telephone hotline or online communication.

16 SECTION 4. (a) Except as provided by Subsection (b) of
17 this section:

18 (1) this Act takes effect immediately if it receives a
19 vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution; and

21 (2) if this Act does not receive the vote necessary for
22 immediate effect, this Act takes effect September 1, 2015.

23 (b) Section 29.358(c), Education Code, as added by this Act,
24 takes effect September 1, 2018.