86R3377 BEF-F

By:  Campbell S.B. No. 1906

A BILL TO BE ENTITLED

AN ACT

relating to an 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.  Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 230 to read as follows:

CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO CERTAIN EDUCATIONAL ASSISTANCE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001.  DEFINITIONS. In this chapter:

(1)  "Educational assistance organization" means an organization that:

(A)  has the ability according to the organization's charter to award scholarships to or pay educational expenses for eligible students in:

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

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

(a)  that meet the requirements of Section 230.052;

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

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

(B)  uses part of its annual revenue to award scholarships to or pay educational expenses for primary and secondary school students.

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

(3)  "Student with a disability" means a child who:

(A)  has a diagnosis for a disability listed in Section 29.003(b), Education Code; or

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

Sec. 230.002.  RULES; PROCEDURES. (a) The comptroller shall adopt rules and procedures to implement, administer, and enforce this chapter.

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

SUBCHAPTER B. SCHOLARSHIP AND EDUCATIONAL EXPENSE ASSISTANCE PROGRAM

Sec. 230.051.  ELIGIBILITY REQUIREMENTS FOR CERTIFICATION OF EDUCATIONAL ASSISTANCE ORGANIZATION. (a) An organization may apply to the comptroller for certification as a certified educational assistance organization.

(b)  To be eligible for certification, the organization:

(1)  must:

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

(B)  be in good standing with the state;

(C)  be located in the state;

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

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

(F)  agree to give each donor a receipt for money contributed to the organization that includes the name of the organization, the name of the donor, the amount of the contribution, the information required by Section 230.054(c), and any other information required by the comptroller;

(G)  demonstrate experience and technical expertise in:

(i)  accepting, processing, and tracking applications for scholarships or educational expense assistance; and

(ii)  awarding scholarships to students in primary or secondary schools;

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

(I)  disburse within two academic years of receipt contributions received from and designated by entities for scholarships or educational expense assistance under this chapter; and

(2)  may not:

(A)  award all scholarships under this chapter to students who attend a particular school or pay educational expenses incurred only at a particular school;

(B)  provide to a student a scholarship in an annual amount that exceeds the amount provided under Section 230.055(a) unless the money used to provide the portion of the scholarship in excess of that amount was contributed by a person other than an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution; and

(C)  provide to a student educational expense assistance in excess of the amount provided under Section 230.055(b) per academic year, unless the money used to provide the portion of the assistance in excess of that amount was contributed by a person other than an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution, including assistance for:

(i)  facility fees;

(ii)  textbooks;

(iii)  school supplies;

(iv)  tutoring;

(v)  academic after-school programs;

(vi)  school or lab fees;

(vii)  before-school or after-school child care; and

(viii)  transportation expenses, including the cost to transfer from one public school to another.

(c)  The comptroller may certify not more than 25 certified educational assistance organizations. The comptroller may certify as a certified educational assistance organization an organization that applies under Subsection (a) if the organization meets the requirements of Subsection (b). The comptroller has broad discretion in determining whether to grant or deny an application for certification.

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

(e)  If the comptroller denies an organization's application under Subsection (a), the organization may request in writing a reconsideration of the application not later than the 10th day after the date of the notice under Subsection (d). If the organization does not request a reconsideration of the application on or before that date, the comptroller's decision is final. An organization may not request reconsideration of an application if the comptroller denied the application because 25 organizations were already certified as certified educational assistance organizations.

(f)  An organization that requests a reconsideration under Subsection (e) may submit to the comptroller not later than the 30th day after the date the request for reconsideration is submitted additional information and documents to support the organization's request for reconsideration.

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

(h)  This section does not create a cause of action to contest a decision of the comptroller to deny an application for certification as a certified educational assistance organization.

Sec. 230.0515.  ALLOCATION OF MONEY DESIGNATED FOR SCHOLARSHIPS OR EDUCATIONAL EXPENSE ASSISTANCE. Of the amount required to be allocated as provided by Section 230.051(b)(1)(D), a certified educational assistance organization shall use:

(1)  at least 80 percent to award scholarships as described by Sections 230.055(a); and

(2)  not more than 20 percent to award educational expense assistance as described by Section 230.055(b).

Sec. 230.052.  NONPUBLIC SCHOOL REQUIREMENTS. A certified educational assistance organization may not award scholarships to or pay educational expenses for eligible students enrolled in a nonpublic school unless the nonpublic school executes a notarized affidavit, with supporting documents, concerning the school's qualification for scholarships and educational expense assistance for eligible students who receive assistance from a certified educational assistance organization, including evidence of:

(1)  accreditation or of actively being in the process of accreditation by the Texas Education Agency or by an organization recognized by the Texas Private School Accreditation Commission;

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

(3)  valid certificate of occupancy; and

(4)  policy statements regarding:

(A)  admissions;

(B)  curriculum;

(C)  safety;

(D)  food service inspection; and

(E)  student to teacher ratios.

Sec. 230.053.  ELIGIBILITY OF STUDENTS; NOTICE TO CERTAIN PARENTS. (a) To be eligible to apply for assistance from a certified educational assistance organization under this chapter:

(1)  a student:

(A)  must:

(i)  be a student with a disability; or

(ii)  have a household income not greater than 100 percent of the income guidelines necessary to qualify for the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq.; and

(B)  must:

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

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

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

(iv)  if the person attends a nonpublic school, qualify as a student who is not counted toward a public school's average daily attendance during the year in which the student receives the scholarship or educational expense assistance to attend the school; or

(2)  the student must have previously qualified under Subdivision (1).

(b)  In addition to the students eligible under Subsection (a), a student is eligible to apply for assistance from a certified educational assistance organization under this chapter if:

(1)  the student is in kindergarten through grade 12 and eligible under Section 29.003, Education Code, to participate in a school district's special education program; and

(2)  an individualized education program has been developed for the student under Section 29.005, Education Code.

(c)  A school district shall provide written notice of the availability of assistance under this chapter to the parent of a student who is eligible to apply for assistance under Subsection (b). The notice under this subsection must inform the parent that a qualifying school is not subject to laws regarding the provision of education services in the same manner as a public school, and a student with disabilities attending a qualifying school may not receive the services a student with disabilities attending a public school is entitled to receive under federal and state law. The notice must provide information regarding rights to which a student with disabilities is entitled under federal and state law if the student attends a public school, including:

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

(A)  an individualized education program;

(B)  education services provided in the least restrictive environment;

(C)  instruction from certified teachers;

(D)  due process hearings to ensure proper and full implementation of an individualized education program;

(E)  transition and planning services; and

(F)  supplementary aids and services;

(2)  rights provided under Subchapter A, Chapter 29, Education Code; and

(3)  other rights provided under federal or state law.

(d)  A student who establishes eligibility under Subsection (b) may continue to receive assistance under this chapter until the earlier of the date the student graduates from high school or the student's 22nd birthday.

(e)  A certified educational assistance organization shall award scholarships and educational expense assistance to eligible students who apply in accordance with this chapter.

Sec. 230.054.  CREDIT FOR CONTRIBUTIONS. (a) An entity may apply for a credit under this chapter only for money contributed to a certified educational assistance organization and designated for scholarships or educational expense assistance for eligible students.

(b)  An entity may not apply for a credit under this chapter for a contribution made to a certified educational assistance organization if:

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

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

(c)  An entity shall notify a certified educational assistance organization in writing when the entity makes a contribution if the entity may apply for a tax credit under this chapter for the contribution. An entity may not apply for a credit for the contribution unless the entity provides the notification at the time the contribution is made. The certified educational assistance organization shall indicate on the receipt provided under Section 230.051(b)(1)(F) that the entity made the notification under this subsection.

Sec. 230.055.  LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL EXPENSE ASSISTANCE. (a) The maximum scholarship amount a certified educational assistance organization may award to a student under this chapter using money contributed by an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution may not exceed 75 percent of the amount of funding equal to the statewide average amount to which a school district would be entitled under the Foundation School Program under Chapter 42, Education Code, for a student in average daily attendance.

(b)  The maximum educational expense assistance a certified educational assistance organization may award to a student under this chapter using money contributed by an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution may not exceed $500 for the 2020 state fiscal year, increased by five percent each subsequent year.

Sec. 230.056.  REVOCATION. (a) The comptroller shall revoke a certification provided under Section 230.051 if the comptroller finds that a certified educational assistance organization:

(1)  is no longer eligible under Section 230.051; or

(2)  intentionally and substantially violates this chapter.

(b)  The comptroller has broad discretion in determining whether to revoke a certification under Subsection (a).

(c)  The comptroller shall notify a certified educational assistance organization in writing of the comptroller's decision to revoke the organization's certification. If the comptroller revokes an organization's certification, the comptroller shall include in the notice of revocation the reasons for the revocation.

(d)  If the comptroller revokes a certified educational assistance organization's certification under Subsection (a), the organization may request in writing a reconsideration of the revocation not later than the 10th day after the date of the notice under Subsection (c) or the revocation is final.

(e)  An organization that requests a reconsideration under Subsection (d) may submit to the comptroller not later than the 30th day after the date the request for reconsideration is submitted additional information and documents to support the organization's request for reconsideration.

(f)  The comptroller's reconsideration of a revocation under this section is not a contested case under Chapter 2001, Government Code. The comptroller's decision on a request for reconsideration of a revocation is final and is not appealable.

(g)  This section does not create a cause of action to contest a decision of the comptroller to revoke a certified educational assistance organization's certification under this chapter.

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

Sec. 230.057.  REPORT OF NET SAVINGS TO PUBLIC EDUCATION. (a) In this section, "net savings" means any positive difference in a state fiscal year between:

(1)  the amount by which state spending on public education for that year is reduced as a result of students receiving scholarships and educational expense assistance from certified educational assistance organizations under this chapter; and

(2)  the amount by which state revenue derived from Chapters 221 through 226 is reduced as a result of tax credits under this chapter.

(b)  Not later than December 31 of each even-numbered year, the comptroller shall determine the amount of net savings for the previous state fiscal biennium and make available to the public a report of that amount of savings.

SUBCHAPTER C. CREDIT

Sec. 230.101.  CREDIT. An entity may apply for a credit against the entity's state premium tax liability in the amount and under the conditions and limitations provided by this chapter. The comptroller shall award credits as provided by Section 230.103.

Sec. 230.102.  AMOUNTS; LIMITATION ON TOTAL CREDITS. (a) Subject to Subsections (b) and (c), the amount of an entity's credit is equal to the lesser of the amount of the qualifying contributions made to a certified educational assistance organization or 50 percent of the entity's state premium tax liability.

(b)  For the 2020 state fiscal year, the total amount of tax credits that may be awarded under this chapter may not exceed $100 million. For each subsequent state fiscal year, the total amount of tax credits that may be awarded is an amount equal to 110 percent of the total amount of tax credits that may be applied for in the previous state fiscal year.

(c)  The comptroller by rule shall prescribe procedures by which the comptroller may allocate credits under this chapter. The procedures must provide that credits are first allocated to entities that were granted preliminary approval for a credit under Section 230.1025 in the amount that was preliminarily approved. The procedures must provide that any remaining credits are allocated on a first-come, first-served basis, based on the date the contribution was initially made.

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

Sec. 230.1025.  PRELIMINARY APPROVAL FOR CREDIT. (a) Before making a contribution to a certified educational assistance organization, an entity may apply to the comptroller for preliminary approval of a credit under this chapter for the contribution.

(b)  An entity must apply for preliminary approval of a credit on a form provided by the comptroller that includes the amount the entity expects to contribute and any other information required by the comptroller.

(c)  The comptroller shall grant preliminary approval for credits under this chapter on a first-come, first-served basis, based on the date the application for preliminary approval is received by the comptroller.

(d)  The comptroller shall grant preliminary approval for a credit under this chapter if the total amount of credits preliminarily approved under this chapter does not exceed the amount provided by Section 230.102(b).

(e)  A credit for which the comptroller grants preliminary approval remains subject to the limitation under Section 230.102(a) and any other limitations prescribed by this chapter.

Sec. 230.103.  APPLICATION FOR CREDIT. (a) An entity must apply for a credit under this chapter on or with the tax return for the taxable year and submit with the application each receipt issued under Section 230.051(b)(1)(F) that includes the information required by Section 230.054(c).

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

(c)  The comptroller may award a credit to an entity that applies for the credit under Subsection (a) if the entity is eligible for the credit and the credit is available under Section 230.102(b). The comptroller has broad discretion in determining whether to grant or deny an application for a credit.

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

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

(f)  An entity that requests a reconsideration under Subsection (e) may submit to the comptroller not later than the 30th day after the date the request for reconsideration is submitted additional information and documents to support the entity's request for reconsideration.

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

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

Sec. 230.104.  ASSIGNMENT PROHIBITED; EXCEPTION. An entity may not convey, assign, or transfer the credit allowed under this chapter to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

Sec. 230.105.  NOTICE OF AVAILABILITY OF CREDIT. The comptroller shall provide notice of the availability of the credit under this chapter on the comptroller's Internet website, in the instructions for insurance premium tax report forms, and in any notice sent to an entity concerning the requirement to file an insurance premium tax report.

SECTION 2.  (a)  The constitutionality and other validity under the state or federal constitution of all or any part of Chapter 230, Insurance Code, as added by this Act, may be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37, Civil Practice and Remedies Code, except that this section does not authorize an award of attorney's fees against this state and Section 37.009, Civil Practice and Remedies Code, does not apply to an action filed under this section. This section does not authorize a taxpayer suit to contest the denial of a tax credit by the comptroller of public accounts.

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

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

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

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

(f)  The direct appeal is an accelerated appeal.

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

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

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

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

(i)  An appeal under this section, including an interlocutory, accelerated, or direct appeal, is governed, as applicable, by the Texas Rules of Appellate Procedure, including Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

SECTION 3.  An entity may apply for a credit under Chapter 230, Insurance Code, as added by this Act, only for an expenditure made on or after the effective date of this Act.

SECTION 4.  Not later than February 15, 2020, the comptroller of public accounts shall adopt rules as provided by Section 230.002(a), Insurance Code, as added by this Act.

SECTION 5.  The comptroller of public accounts shall make the initial determination of net savings and report regarding that savings as required by Section 230.057, Insurance Code, as added by this Act, not later than December 31, 2022, based on the state fiscal biennium ending August 31, 2021.

SECTION 6.  This Act applies only to a report originally due on or after the effective date of this Act.

SECTION 7.  This Act takes effect January 1, 2020.