

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

1 federal Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.);  
2 and

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

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

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

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

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

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

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

22 SUBCHAPTER B. SCHOLARSHIP AND EDUCATIONAL EXPENSE ASSISTANCE

23 PROGRAM

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

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

2            (1) must:

3                    (A) be exempt from federal tax under Section  
4 501(a) of the Internal Revenue Code of 1986 by being listed as an  
5 exempt organization in Section 501(c)(3) of that code;

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

7                    (C) be located in the state;

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

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

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

23                    (G) demonstrate experience and technical  
24 expertise in:

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

27 and

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

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

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

9                    (2) may not:

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

13                   (B) provide to a student a scholarship in an  
14 annual amount that exceeds the amount provided under Section  
15 230.055(a) unless the money used to provide the portion of the  
16 scholarship in excess of that amount was contributed by a person  
17 other than an entity that notifies the organization under Section  
18 230.054(c) that the entity may apply for a tax credit for the  
19 contribution; and

20                   (C) provide to a student educational expense  
21 assistance in excess of the amount provided under Section  
22 230.055(b) per academic year, unless the money used to provide the  
23 portion of the assistance in excess of that amount was contributed  
24 by a person other than an entity that notifies the organization  
25 under Section 230.054(c) that the entity may apply for a tax credit  
26 for the contribution, including assistance for:

27                    (i) facility fees;

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

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

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

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

1 organization may not request reconsideration of an application if  
2 the comptroller denied the application because 25 organizations  
3 were already certified as certified educational assistance  
4 organizations.

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

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

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

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

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

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

25 Sec. 230.052. NONPUBLIC SCHOOL REQUIREMENTS. A certified  
26 educational assistance organization may not award scholarships to  
27 or pay educational expenses for eligible students enrolled in a

1 nonpublic school unless the nonpublic school executes a notarized  
2 affidavit, with supporting documents, concerning the school's  
3 qualification for scholarships and educational expense assistance  
4 for eligible students who receive assistance from a certified  
5 educational assistance organization, including evidence of:

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

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

14 (3) valid certificate of occupancy; and

15 (4) policy statements regarding:

16 (A) admissions;

17 (B) curriculum;

18 (C) safety;

19 (D) food service inspection; and

20 (E) student to teacher ratios.

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

24 (1) a student:

25 (A) must:

26 (i) be a student with a disability; or

27 (ii) have a household income not greater

1 than 100 percent of the income guidelines necessary to qualify for  
2 the national free or reduced-price lunch program established under  
3 42 U.S.C. Section 1751 et seq.; and

4 (B) must:

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

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

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

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

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

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

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

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

26 (c) A school district shall provide written notice of the  
27 availability of assistance under this chapter to the parent of a



1 student who is eligible to apply for assistance under Subsection  
2 (b). The notice under this subsection must inform the parent that a  
3 qualifying school is not subject to laws regarding the provision of  
4 education services in the same manner as a public school, and a  
5 student with disabilities attending a qualifying school may not  
6 receive the services a student with disabilities attending a public  
7 school is entitled to receive under federal and state law. The  
8 notice must provide information regarding rights to which a student  
9 with disabilities is entitled under federal and state law if the  
10 student attends a public school, including:

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

- 14 (A) an individualized education program;  
15 (B) education services provided in the least  
16 restrictive environment;  
17 (C) instruction from certified teachers;  
18 (D) due process hearings to ensure proper and  
19 full implementation of an individualized education program;  
20 (E) transition and planning services; and  
21 (F) supplementary aids and services;

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

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

25 (d) A student who establishes eligibility under Subsection  
26 (b) may continue to receive assistance under this chapter until the  
27 earlier of the date the student graduates from high school or the

1 student's 22nd birthday.

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

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

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

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

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

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

27 Sec. 230.055. LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL

1 EXPENSE ASSISTANCE. (a) The maximum scholarship amount a  
2 certified educational assistance organization may award to a  
3 student under this chapter using money contributed by an entity  
4 that notifies the organization under Section 230.054(c) that the  
5 entity may apply for a tax credit for the contribution may not  
6 exceed 75 percent of the amount of funding equal to the statewide  
7 average amount to which a school district would be entitled under  
8 the Foundation School Program under Chapter 42, Education Code, for  
9 a student in average daily attendance.

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

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

20 (1) is no longer eligible under Section 230.051; or  
21 (2) intentionally and substantially violates this  
22 chapter.

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

25 (c) The comptroller shall notify a certified educational  
26 assistance organization in writing of the comptroller's decision to  
27 revoke the organization's certification. If the comptroller

1 revokes an organization's certification, the comptroller shall  
2 include in the notice of revocation the reasons for the revocation.

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

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

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

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

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

24 Sec. 230.057. REPORT OF NET SAVINGS TO PUBLIC EDUCATION.

25 (a) In this section, "net savings" means any positive difference in  
26 a state fiscal year between:

27 (1) the amount by which state spending on public

1 education for that year is reduced as a result of students receiving  
2 scholarships and educational expense assistance from certified  
3 educational assistance organizations under this chapter; and

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

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

11 SUBCHAPTER C. CREDIT

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

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

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

27 (c) The comptroller by rule shall prescribe procedures by

1 which the comptroller may allocate credits under this chapter. The  
2 procedures must provide that credits are first allocated to  
3 entities that were granted preliminary approval for a credit under  
4 Section 230.1025 in the amount that was preliminarily approved. The  
5 procedures must provide that any remaining credits are allocated on  
6 a first-come, first-served basis, based on the date the  
7 contribution was initially made.

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

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

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

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

25 (d) The comptroller shall grant preliminary approval for a  
26 credit under this chapter if the total amount of credits  
27 preliminarily approved under this chapter does not exceed the

1 amount provided by Section 230.102(b).

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

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

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

13 (c) The comptroller may award a credit to an entity that  
14 applies for the credit under Subsection (a) if the entity is  
15 eligible for the credit and the credit is available under Section  
16 230.102(b). The comptroller has broad discretion in determining  
17 whether to grant or deny an application for a credit.

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

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

1 comptroller's decision is final.

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

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

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

14 Sec. 230.104. 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. 230.105. 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 2. (a) The constitutionality and other validity  
25 under the state or federal constitution of all or any part of  
26 Chapter 230, Insurance Code, as added by this Act, may be determined  
27 in an action for declaratory judgment in a district court in Travis



1 County under Chapter 37, Civil Practice and Remedies Code, except  
2 that this section does not authorize an award of attorney's fees  
3 against this state and Section 37.009, Civil Practice and Remedies  
4 Code, does not apply to an action filed under this section. This  
5 section does not authorize a taxpayer suit to contest the denial of  
6 a tax credit by the comptroller of public accounts.

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

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

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

23 (e) There is a direct appeal to the Texas Supreme Court from  
24 an order, however characterized, of a trial court granting or  
25 denying a temporary or otherwise interlocutory injunction or a  
26 permanent injunction on the grounds of the constitutionality or  
27 unconstitutionality, or other validity or invalidity, under the

1 state or federal constitution of all or any part of Chapter 230,  
2 Insurance Code, as added by this Act.

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

4 (g) This section exercises the authority granted by Section  
5 3-b, Article V, Texas Constitution.

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

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

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

17 (i) An appeal under this section, including an  
18 interlocutory, accelerated, or direct appeal, is governed, as  
19 applicable, by the Texas Rules of Appellate Procedure, including  
20 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),  
21 38.6(a) and (b), 40.1(b), and 49.4.

22 SECTION 3. An entity may apply for a credit under Chapter  
23 230, Insurance Code, as added by this Act, only for an expenditure  
24 made on or after the effective date of this Act.

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

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

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

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