By: Middleton H.B. No. 158

A BILL TO BE ENTITLED

AN ACT
relating to the establishment of the Family Educational Relief Program and an insurance premium tax credit for contributions made for purposes of that 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. FAMILY EDUCATIONAL RELIEF PROGRAM

Sec. 29.351. DEFINITIONS. In this subchapter:

(1) "Account" means a family educational relief account established under the program.

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

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

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

(5) "Parent" means a resident of this state who is a natural or adoptive parent, managing or possessory conservator, legal guardian, custodian, or other person with legal authority to act on behalf of a child.
(6) "Program" means the Family Educational Relief Program established under this subchapter.

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

Sec. 29.352. PURPOSE. The purpose of the Family Educational Relief Program is to provide children from low-income households with additional educational options in order to achieve a general diffusion of knowledge.

Sec. 29.353. ESTABLISHMENT OF PROGRAM. The comptroller shall establish the Family Educational Relief Program to provide funding for approved education-related expenses of eligible children admitted into the program.

Sec. 29.354. FAMILY EDUCATIONAL RELIEF PROGRAM FUND. (a) The Family Educational Relief Program fund is an account in the general revenue fund to be administered by the comptroller.

(b) The fund is composed of:

(1) general revenue transferred to the fund;

(2) money appropriated to the fund;

(3) gifts, grants, and donations received under Section 29.370;

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

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

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

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

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

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

(2) 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;

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

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

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

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

(c) The comptroller shall certify at least one but no more than three educational assistance organizations to assist in administering the program, including by verifying:

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

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

Sec. 29.356. ELIGIBLE CHILD. (a) A child is eligible to participate in the program if the child is:

(1) eligible to attend a public school under Section 25.001; and

(2) a member of a household with a total annual income that is at or below 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.

(b) A sibling of a child who is eligible to participate in the program under Subsection (a) is eligible to participate in the program if the sibling is eligible to attend a public school under Section 25.001.

(c) A child who establishes eligibility under this section may participate in the program until the earliest of the following dates:

(1) the date on which the child graduates from high school;

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

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

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

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

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

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

(1) expenses allowed under the program under Section
29.360;

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

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

(d) Subject to the availability of funding, a certified
educational assistance organization shall admit into the program
each child for whom the organization received an application under
this section if the organization verifies that the child is
eligible to participate in the program. If available funding is
insufficient to admit each eligible child into the program, the
organization shall prioritize admitting children in the following
(1) children who participated in the program in the preceding school year;

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

(3) children who demonstrate the greatest financial need.

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

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

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

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

(B) graduates from high school; or

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

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

(c) Each certified educational assistance organization shall provide annually to each program participant for whom the organization is responsible the publication provided under Section 29.357(c). The publication may be provided electronically.

Sec. 29.359. APPROVED PROVIDERS. (a) The comptroller...
shall by rule establish a process for the preapproval of education service providers and vendors of educational products for participation in the program. The comptroller shall post on the comptroller’s Internet website and provide to each certified educational assistance organization the list of preapproved providers and vendors.

(b) The comptroller shall approve an education service provider or vendor of educational products for participation in the program if the provider or vendor:

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

(A) accreditation by an organization recognized by the Texas Private School Accreditation Commission;

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

(C) valid certificate of occupancy;

(D) policy statements regarding:

(i) admissions;

(ii) curriculum;

(iii) safety;

(iv) food service inspection;

(v) student to teacher ratios; and

(vi) assessments; and

(E) the school’s agreement that program
participants are eligible to apply for scholarships offered by the school to the same extent as other children;

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

(A) executes a notarized affidavit, with supporting documents, concerning the tutor's, therapist's, or service's qualification to serve program participants, including evidence that the tutor or therapist or each employee of the service who intends to provide services to a program participant:

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

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

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

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

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

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

(3) for an online educational course or program
provider, executes a notarized affidavit, with supporting
documents, concerning the provider's qualification to serve
program participants, including evidence of accreditation by an
organization recognized by the Texas Private School Accreditation
Commission; or
(4) for any provider or vendor not described by
Subdivision (1), (2), or (3), presents any necessary supporting
documents concerning the provider's or vendor's qualification to
serve program participants.
(c) The comptroller shall review the national criminal
history record information or documentation for each private tutor,
therapist, or teaching service who submits an application. The
tutor, therapist, or service must provide the comptroller with any
information requested by the comptroller to enable the comptroller
to complete the review.
(d) Each certified educational assistance organization
shall post on the organization's Internet website the list of
preapproved education service providers and vendors of educational
products provided under Subsection (a).
Sec. 29.360. APPROVED EDUCATION-RELATED EXPENSES. (a)
Subject to Subsection (b), money received under the program may be
used only for the following expenses incurred by a program
participant at a preapproved education service provider or vendor:
(1) tuition and fees:
(A) at a private school;
(B) at an institution of higher education or a
private or independent institution of higher education; or
(C) for an online educational course or program;

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

(3) fees for services provided by a private tutor or teaching service; and

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

(b) Money received under the program may not be used to pay any person who is:

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

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

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

Sec. 29.361. AMOUNT OF PAYMENT; FINANCING. (a) A parent of an eligible child shall receive each year that the child participates in the program a payment from the state to the child's
account in an amount that is equal to 90 percent of the state
average maintenance and operations expenditures per student in
average daily attendance for the preceding state fiscal year.

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

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

(d) A payment under Subsection (a) may not be financed using
federal money or money appropriated from the permanent school fund
or the available school fund.

(e) Not later than November 1 of each even-numbered year,
the comptroller shall submit to the legislature an estimate of the
total amount of funding required for the program for the following
state fiscal biennium.

Sec. 29.362. ADMINISTRATION OF ACCOUNTS. (a) The
comptroller shall make quarterly payments to each program
participant's account in equal amounts on or before the first day of
August, November, February, and May.

(b) The comptroller may deduct an amount from each quarterly
payment to a program participant's account to cover the
comptroller's cost of administering the program. The amount
deducted may not exceed three percent of the payment.

(c) Each quarter, the comptroller shall disburse to each
certified educational assistance organization an amount from the
total amount of money appropriated for purposes of this subchapter to cover the organization's cost of administering the program. The total amount disbursed to certified educational assistance organizations under this subsection for a fiscal year may not exceed five percent of the amount appropriated for purposes of this subchapter for that fiscal year.

(d) Before each payment is made under Subsection (a), each certified educational assistance organization shall:

(1) compare the list of program participants for whom the organization is responsible with public school enrollment lists maintained by the agency; and

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

(e) On the date on which a child who participated in the program is no longer eligible to participate in the program under Section 29.356(c), the child's account is closed and any remaining money is returned to the state for deposit in the Family Educational Relief Program fund.

Sec. 29.363. RANDOM AUDITING. (a) The comptroller may contract with a private entity to randomly audit accounts and the certified educational assistance organizations as necessary to ensure compliance with applicable law and the requirements of the program.

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

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

Sec. 29.364. SUSPENSION OF ACCOUNT. (a) The comptroller shall suspend the account of a program participant who fails to comply with applicable law or a requirement of the program.

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

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

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

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

(3) order full reinstatement of the account.

(d) The comptroller may recover money distributed under the program that was used for expenses not allowed under Section 29.360 from the program participant or the entity that received the money if the participant's account is suspended or closed under this section.
Sec. 29.365. TUITION AND FEES; REFUND PROHIBITED. (a) An education service provider may not charge a child participating in the program an amount greater than the standard amount charged for that service by the provider.

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

Sec. 29.366. REFERRAL TO ATTORNEY GENERAL. (a) If the comptroller or a certified educational assistance organization obtains evidence of fraudulent use of an account, the comptroller or organization may refer the case to the attorney general for investigation.

(b) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with the consenting local prosecutor to prosecute an offense referred to the attorney general under Subsection (a).

Sec. 29.367. SPECIAL EDUCATION NOTICE. (a) Each certified educational assistance organization shall post on the organization's Internet website and provide to each parent who submits an application for the program on behalf of a child with a disability a notice that:

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

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

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

(i) an individualized education program;

(ii) educational services provided in the least restrictive environment;

(iii) instruction from certified teachers;

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

(v) transition and planning services; and

(vi) supplementary aids and services;

(B) rights provided under Subchapter A; and

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

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

Sec. 29.368. PROGRAM PARTICIPANT, PROVIDER, AND VENDOR AUTONOMY. (a) An education service provider or vendor of educational products that receives money distributed under the program is not an agent of the state or federal government.

(b) The program does not expand the regulatory authority of
the state or any school district to impose any additional
regulation on an education service provider or vendor of
educational products except those reasonably necessary to enforce
the program as provided by this subchapter.

(c) An education service provider may not be required to
modify the provider's creed, practices, admissions policies,
curriculum, performance standards, or assessments, as applicable,
to receive money distributed under the program.

(d) In any proceeding challenging a rule adopted by a state
agency or officer under this subchapter, the agency or officer has
the burden of proof to establish that the rule:

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

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

Sec. 29.369. STUDENT RECORDS AND INFORMATION. (a) On
request by the parent of a child participating or seeking to
participate in the program, the school district or open-enrollment
charter school that the child would otherwise attend shall provide
a copy of the child's school records possessed by the district or
school, if any, to the child's parent or, if applicable, the private
school the child attends.

(b) The agency shall provide to each certified educational
assistance organization any information available to the agency
requested by the organization regarding a child who participates or
seeks to participate in the program. The organization may not retain information provided under this subsection beyond the period necessary to determine a child's eligibility to participate in the program.

Sec. 29.370. GIFTS, GRANTS, AND DONATIONS. The comptroller may solicit and accept gifts, grants, and donations from any public or private source for any expenses related to the administration of the program, including the initial implementation of the program.

Sec. 29.371. RULES; PROCEDURES. (a) The comptroller shall adopt rules and procedures only as necessary to implement, administer, and enforce this subchapter.

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

Sec. 29.372. PARENTAL AND STUDENT RIGHT TO INTERVENE IN CIVIL ACTION. (a) A program participant may intervene in any civil action challenging the constitutionality of the program or the insurance premium tax credit under Chapter 230, Insurance Code.

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

SECTION 2. Section 411.109, Government Code, is amended by adding Subsection (c) to read as follows:
The comptroller is entitled to obtain criminal history record information maintained by the department about a person who is a private tutor, a therapist, or an employee of a teaching service who intends to provide educational services to a child participating in the program established under Subchapter J, Chapter 29, Education Code, and is seeking approval to receive money distributed under that program.

SECTION 3. 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 FAMILY EDUCATIONAL RELIEF PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001. DEFINITIONS. In this chapter:

(1) "Fund" means the Family Educational Relief Program fund under Section 29.354, Education Code.

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

SUBCHAPTER B. CREDIT

Sec. 230.051. CREDIT. An entity may apply for a credit against the entity's state premium tax liability in the amount and under the conditions provided by this chapter. The comptroller shall award credits as provided by Section 230.053.

Sec. 230.052. 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 contributed to the fund during the period covered by the tax report or 50 percent of the entity's state premium tax liability for the report.
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(b) For the 2022 state fiscal year, the total amount of credits that may be awarded under this chapter may not exceed $200 million. For each subsequent state fiscal year, the total amount of credits that may be awarded is:

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

(2) 125 percent of the total amount of credits available under this subsection for the previous state fiscal year, if the total amount of credits awarded in the previous state fiscal year was at least 90 percent of the total amount of credits available under this subsection for that 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 allocated first to entities that received preliminary approval for a credit under Section 230.0525 and that apply under Section 230.053. The procedures must provide that any remaining credits are allocated to entities that apply under Section 230.053 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. 230.0525. PRELIMINARY APPROVAL FOR CREDIT. (a) Before making a contribution to the fund, 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 on a form provided by the comptroller that includes the amount the entity expects to contribute and any other information the comptroller requires.

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

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

(e) Final award of a credit preliminarily approved under this section remains subject to the limitations under Section 230.052(a) and all other requirements of this chapter.

Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must apply for a credit under this chapter on or with the tax report covering the period in which the contribution was made.

(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) Subject to Section 230.052(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 230.052(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 the notice under Subsection (d) is received. 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.
adopt rules and procedures to implement, administer, and enforce
this chapter.

Sec. 230.055. 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. 230.056. 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 4. Subchapter J, Chapter 29, Education Code, as
added by this Act, applies beginning with the 2022-2023 school
year.

SECTION 5. An entity may apply for a credit under Chapter
230, Insurance Code, as added by this Act, only for a contribution
made on or after the effective date of this Act.

SECTION 6. Not later than February 15, 2022, the
comptroller of public accounts shall adopt rules as provided by
Section 230.054, Insurance Code, as added by this Act.

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

SECTION 8. (a) The constitutionality and other validity
under the state or federal constitution of all or any part of
Subchapter J, Chapter 29, Education Code, as added by this Act, or
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 Subchapter J, Chapter 29, Education Code, as added by this Act, or 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 Subchapter J, Chapter 29, Education Code, as added by this Act, or 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 Subchapter J,
Chapter 29, Education Code, as added by this Act, or 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 9. This Act takes effect immediately if it receives
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1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect on the 91st day after the last day of the
5 legislative session.