

1-1 By: Bettencourt, Campbell, Lucio S.B. No. 1968  
 1-2 (In the Senate - Filed March 12, 2021; April 1, 2021, read  
 1-3 first time and referred to Committee on Education; May 14, 2021,  
 1-4 reported adversely, with favorable Committee Substitute by the  
 1-5 following vote: Yeas 7, Nays 4; May 14, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Taylor	X			
1-8 Lucio	X			
1-9 Bettencourt	X			
1-10 Hall	X			
1-11 Hughes	X			
1-12 Menéndez		X		
1-13 Paxton	X			
1-14 Perry		X		
1-15 Powell		X		
1-16 Schwertner	X			
1-17 West		X		

1-19 COMMITTEE SUBSTITUTE FOR S.B. No. 1968 By: Bettencourt

1-20 A BILL TO BE ENTITLED  
 1-21 AN ACT

1-22 relating to the establishment of the Family Educational Relief  
 1-23 Program and an insurance premium tax credit for contributions made  
 1-24 for purposes of that program.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Chapter 29, Education Code, is amended by adding  
 1-27 Subchapter J to read as follows:

1-28 SUBCHAPTER J. FAMILY EDUCATIONAL RELIEF PROGRAM

1-29 Sec. 29.351. DEFINITIONS. In this subchapter:

1-30 (1) "Account" means a family educational relief  
 1-31 account established under the program.

1-32 (2) "Certified educational assistance organization"  
 1-33 means an educational assistance organization certified under  
 1-34 Section 29.355 to administer the program.

1-35 (3) "Child with a disability" means a child who is  
 1-36 eligible to participate in a school district's special education  
 1-37 program under Section 29.003.

1-38 (4) "Institution of higher education" and "private or  
 1-39 independent institution of higher education" have the meanings  
 1-40 assigned by Section 61.003.

1-41 (5) "Parent" means a resident of this state who is a  
 1-42 natural or adoptive parent, managing or possessory conservator,  
 1-43 legal guardian, custodian, or other person with legal authority to  
 1-44 act on behalf of a child.

1-45 (6) "Program" means the Family Educational Relief  
 1-46 Program established under this subchapter.

1-47 (7) "Program participant" means a child and a parent  
 1-48 of a child enrolled in the program.

1-49 Sec. 29.352. PURPOSE. The purpose of the Family  
 1-50 Educational Relief Program is to provide children from low-income  
 1-51 households with additional educational options in order to achieve  
 1-52 a general diffusion of knowledge.

1-53 Sec. 29.353. ESTABLISHMENT OF PROGRAM. The comptroller  
 1-54 shall establish the Family Educational Relief Program to provide  
 1-55 funding for approved education-related expenses of eligible  
 1-56 children admitted into the program.

1-57 Sec. 29.354. FAMILY EDUCATIONAL RELIEF PROGRAM FUND. (a)  
 1-58 The Family Educational Relief Program fund is an account in the  
 1-59 general revenue fund to be administered by the comptroller.

1-60 (b) The fund is composed of:

2-1                   (1) general revenue transferred to the fund;  
2-2                   (2) money appropriated to the fund;  
2-3                   (3) gifts, grants, and donations received under  
2-4 Section 29.370;  
2-5                   (4) contributions to the fund for which an entity  
2-6 receives a credit against the entity's state premium tax liability  
2-7 under Chapter 230, Insurance Code; and  
2-8                   (5) any other money available for purposes of the  
2-9 program.

2-10                  (c) Money in the fund may be appropriated only to the  
2-11 comptroller for purposes of making payments to program participants  
2-12 and administering the program under this subchapter.

2-13                  Sec. 29.355. SELECTION OF CERTIFIED EDUCATIONAL ASSISTANCE  
2-14 ORGANIZATIONS. (a) An organization may apply to the comptroller  
2-15 for certification as a certified educational assistance  
2-16 organization during an application period established by the  
2-17 comptroller.

2-18                  (b) To be eligible for certification, the organization  
2-19 must:

2-20                    (1) have the ability to perform the duties and  
2-21 functions required of a certified educational assistance  
2-22 organization under this subchapter as provided by the  
2-23 organization's charter;

2-24                    (2) be exempt from federal tax under Section 501(a) of  
2-25 the Internal Revenue Code of 1986 by being listed as an exempt  
2-26 organization in Section 501(c)(3) of that code;

2-27                    (3) be in good standing with the state; and  
2-28                    (4) be able to administer the program, including the  
2-29 ability to:

2-30                                (A) accept, process, and track applications for  
2-31 the program; and

2-32                                (B) verify that program funding is used only for  
2-33 approved education-related expenses.

2-34                  (c) The comptroller shall certify at least one but no more  
2-35 than three educational assistance organizations to assist in  
2-36 administering the program, including by verifying:

2-37                    (1) a child's eligibility for the program; and  
2-38                    (2) the use of funds in a program participant's account  
2-39 only for purposes approved under Section 29.360.

2-40                  Sec. 29.356. ELIGIBLE CHILD. (a) A child is eligible to  
2-41 participate in the program if the child:

2-42                    (1) is eligible to attend a public school under  
2-43 Section 25.001;

2-44                    (2) attended a public school during the entire  
2-45 preceding school year; and

2-46                    (3) is a member of a household with a total annual  
2-47 income that is at or below the income guidelines necessary to  
2-48 qualify for the national free or reduced-price lunch program  
2-49 established under 42 U.S.C. Section 1751 et seq.

2-50                    (b) A sibling of a child who is eligible to participate in  
2-51 the program under Subsection (a) is eligible to participate in the  
2-52 program if the sibling is eligible to attend a public school under  
2-53 Section 25.001.

2-54                    (c) A child who establishes eligibility under this section  
2-55 may participate in the program until the earliest of the following  
2-56 dates:

2-57                                (1) the date on which the child graduates from high  
2-58 school;

2-59                                (2) the date on which the child is no longer eligible  
2-60 to attend a public school under Section 25.001;

2-61                                (3) the date on which the child enrolls in a public  
2-62 school, including an open-enrollment charter school; or

2-63                                (4) the date on which the child is declared ineligible  
2-64 for the program by the comptroller under this subchapter.

2-65                  Sec. 29.357. APPLICATION TO PROGRAM. (a) A parent of an  
2-66 eligible child may apply to a certified educational assistance  
2-67 organization to enroll the child in the program for the following  
2-68 school year. The parent must provide any information requested by  
2-69 the organization for purposes of verifying the child's eligibility

3-1 for the program.  
 3-2 (b) Each certified educational assistance organization  
 3-3 shall create an application form for the program and make the  
 3-4 application form readily available to interested parents through  
 3-5 various sources, including the organization's Internet website.  
 3-6 The organization shall ensure that the application form is capable  
 3-7 of being submitted to the organization electronically.  
 3-8 (c) Each certified educational assistance organization  
 3-9 shall post on the organization's Internet website and provide to  
 3-10 each parent who submits an application form to the organization a  
 3-11 publication that describes the operation of the program, including:  
 3-12 (1) expenses allowed under the program under Section  
 3-13 29.360;  
 3-14 (2) the organization's expense reporting  
 3-15 requirements; and  
 3-16 (3) a description of the responsibilities of program  
 3-17 participants and the duties of the organization under this  
 3-18 subchapter.  
 3-19 (d) Subject to the availability of funding, a certified  
 3-20 educational assistance organization shall admit into the program  
 3-21 each child for whom the organization received an application under  
 3-22 this section if the organization verifies that the child is  
 3-23 eligible to participate in the program. If available funding is  
 3-24 insufficient to admit each eligible child into the program, the  
 3-25 organization shall prioritize admitting children in the following  
 3-26 order:  
 3-27 (1) children who participated in the program in the  
 3-28 preceding school year;  
 3-29 (2) siblings of children who participated in the  
 3-30 program in the preceding school year; and  
 3-31 (3) children who demonstrate the greatest financial  
 3-32 need.  
 3-33 Sec. 29.358. PARTICIPATION IN PROGRAM. (a) To receive  
 3-34 funding under the program, a parent of an eligible child must agree  
 3-35 to:  
 3-36 (1) spend money received through the program only for  
 3-37 expenses allowed under Section 29.360; and  
 3-38 (2) notify the parent's certified educational  
 3-39 assistance organization not later than 30 days after the date on  
 3-40 which the child:  
 3-41 (A) enrolls in a public school, including an  
 3-42 open-enrollment charter school;  
 3-43 (B) graduates from high school; or  
 3-44 (C) is no longer eligible to enroll in a public  
 3-45 school under Section 25.001.  
 3-46 (b) The parent of a child participating in the program is  
 3-47 the trustee of the child's account.  
 3-48 (c) Each certified educational assistance organization  
 3-49 shall provide annually to each program participant for whom the  
 3-50 organization is responsible the publication provided under Section  
 3-51 29.357(c). The publication may be provided electronically.  
 3-52 Sec. 29.359. APPROVED PROVIDERS. (a) The comptroller  
 3-53 shall by rule establish a process for the preapproval of education  
 3-54 service providers and vendors of educational products for  
 3-55 participation in the program. The comptroller shall post on the  
 3-56 comptroller's Internet website and provide to each certified  
 3-57 educational assistance organization the list of preapproved  
 3-58 providers and vendors.  
 3-59 (b) The comptroller shall approve an education service  
 3-60 provider or vendor of educational products for participation in the  
 3-61 program if the provider or vendor:  
 3-62 (1) for a private school, executes a notarized  
 3-63 affidavit, with supporting documents, concerning the school's  
 3-64 qualification to serve program participants, including evidence  
 3-65 of:  
 3-66 (A) accreditation by an organization recognized  
 3-67 by the Texas Private School Accreditation Commission;  
 3-68 (B) annual administration of a nationally  
 3-69 norm-referenced assessment instrument or the appropriate

4-1 assessment instrument required under Section 39.023;  
 4-2 (C) valid certificate of occupancy;  
 4-3 (D) policy statements regarding:  
 4-4 (i) admissions;  
 4-5 (ii) curriculum;  
 4-6 (iii) safety;  
 4-7 (iv) food service inspection;  
 4-8 (v) student to teacher ratios; and  
 4-9 (vi) assessments; and  
 4-10 (E) the school's agreement that program  
 4-11 participants are eligible to apply for scholarships offered by the  
 4-12 school to the same extent as other children;  
 4-13 (2) for a private tutor, therapist, or teaching  
 4-14 service:  
 4-15 (A) executes a notarized affidavit, with  
 4-16 supporting documents, concerning the tutor's, therapist's, or  
 4-17 service's qualification to serve program participants, including  
 4-18 evidence that the tutor or therapist or each employee of the service  
 4-19 who intends to provide services to a program participant:  
 4-20 (i) is certified under Subchapter B,  
 4-21 Chapter 21;  
 4-22 (ii) holds a relevant license or  
 4-23 accreditation issued by a state, regional, or national licensing or  
 4-24 accreditation organization; or  
 4-25 (iii) is employed in a teaching or tutoring  
 4-26 capacity at an institution of higher education or private or  
 4-27 independent institution of higher education; and  
 4-28 (B) the tutor or therapist or each employee of  
 4-29 the teaching service who intends to provide educational services to  
 4-30 a program participant either:  
 4-31 (i) completes a national criminal history  
 4-32 record information review; or  
 4-33 (ii) provides to the comptroller  
 4-34 documentation indicating that the tutor, therapist, or employee, as  
 4-35 applicable, has completed a national criminal history record  
 4-36 information review within a period established by comptroller rule;  
 4-37 (3) for an online educational course or program  
 4-38 provider, executes a notarized affidavit, with supporting  
 4-39 documents, concerning the provider's qualification to serve  
 4-40 program participants, including evidence of accreditation by an  
 4-41 organization recognized by the Texas Private School Accreditation  
 4-42 Commission; or  
 4-43 (4) for any provider or vendor not described by  
 4-44 Subdivision (1), (2), or (3), presents any necessary supporting  
 4-45 documents concerning the provider's or vendor's qualification to  
 4-46 serve program participants.  
 4-47 (c) The comptroller shall review the national criminal  
 4-48 history record information or documentation for each private tutor,  
 4-49 therapist, or teaching service who submits an application. The  
 4-50 tutor, therapist, or service must provide the comptroller with any  
 4-51 information requested by the comptroller to enable the comptroller  
 4-52 to complete the review.  
 4-53 (d) Each certified educational assistance organization  
 4-54 shall post on the organization's Internet website the list of  
 4-55 preapproved education service providers and vendors of educational  
 4-56 products provided under Subsection (a).  
 4-57 Sec. 29.360. APPROVED EDUCATION-RELATED EXPENSES. (a)  
 4-58 Subject to Subsection (b), money received under the program may be  
 4-59 used only for the following expenses incurred by a program  
 4-60 participant at a preapproved education service provider or vendor:  
 4-61 (1) tuition and fees:  
 4-62 (A) at a private school;  
 4-63 (B) at an institution of higher education or a  
 4-64 private or independent institution of higher education; or  
 4-65 (C) for an online educational course or program;  
 4-66 (2) the purchase of textbooks or other instructional  
 4-67 materials or uniforms required by a school, institution, course, or  
 4-68 program described by Subdivision (1) in which the child is  
 4-69 enrolled;

5-1 (3) fees for services provided by a private tutor or  
 5-2 teaching service; and

5-3 (4) fees for educational therapies or services  
 5-4 provided by a practitioner or provider, only for fees that are not  
 5-5 covered by any federal, state, or local government benefits such as  
 5-6 Medicaid or the Children's Health Insurance Program (CHIP) or by  
 5-7 any private insurance that the child is enrolled in at the time of  
 5-8 receiving the therapies or services.

5-9 (b) Money received under the program may not be used to pay  
 5-10 any person who is:

5-11 (1) related to the program participant within the  
 5-12 third degree of consanguinity or affinity, as determined under  
 5-13 Chapter 573, Government Code; or

5-14 (2) a member of the program participant's household.

5-15 (c) A finding that a program participant used money  
 5-16 distributed under the program to pay for an expense not allowed  
 5-17 under Subsection (a) does not affect the validity of any payment  
 5-18 made by the participant for an expense that is allowed under that  
 5-19 subsection.

5-20 Sec. 29.361. AMOUNT OF PAYMENT; FINANCING. (a) A parent of  
 5-21 an eligible child shall receive each year that the child  
 5-22 participates in the program a payment from the state to the child's  
 5-23 account in an amount that is equal to 90 percent of the state  
 5-24 average maintenance and operations expenditures per student in  
 5-25 average daily attendance for the preceding state fiscal year.

5-26 (b) Any money remaining in a child's account at the end of a  
 5-27 fiscal year is carried forward to the next fiscal year unless  
 5-28 another provision of this subchapter mandates the closure of the  
 5-29 account.

5-30 (c) The parent of a child participating in the program may  
 5-31 make payments for the expenses of educational programs, services,  
 5-32 and products not covered by money in the child's account.

5-33 (d) A payment under Subsection (a) may not be financed using  
 5-34 federal money or money appropriated from the permanent school fund  
 5-35 or the available school fund.

5-36 (e) Not later than November 1 of each even-numbered year,  
 5-37 the comptroller shall submit to the legislature an estimate of the  
 5-38 total amount of funding required for the program for the following  
 5-39 state fiscal biennium.

5-40 Sec. 29.362. ADMINISTRATION OF ACCOUNTS. (a) The  
 5-41 comptroller shall make quarterly payments to each program  
 5-42 participant's account in equal amounts on or before the first day of  
 5-43 August, November, February, and May.

5-44 (b) The comptroller may deduct an amount from each quarterly  
 5-45 payment to a program participant's account to cover the  
 5-46 comptroller's cost of administering the program. The amount  
 5-47 deducted may not exceed three percent of the payment.

5-48 (c) Each quarter, the comptroller shall disburse to each  
 5-49 certified educational assistance organization an amount from the  
 5-50 total amount of money appropriated for purposes of this subchapter  
 5-51 to cover the organization's cost of administering the program. The  
 5-52 total amount disbursed to certified educational assistance  
 5-53 organizations under this subsection for a fiscal year may not  
 5-54 exceed five percent of the amount appropriated for purposes of this  
 5-55 subchapter for that fiscal year.

5-56 (d) Before each payment is made under Subsection (a), each  
 5-57 certified educational assistance organization shall:

5-58 (1) compare the list of program participants for whom  
 5-59 the organization is responsible with public school enrollment lists  
 5-60 maintained by the agency; and

5-61 (2) notify the comptroller if the organization  
 5-62 determines that a program participant is enrolled in a public  
 5-63 school, including an open-enrollment charter school.

5-64 (e) On the date on which a child who participated in the  
 5-65 program is no longer eligible to participate in the program under  
 5-66 Section 29.356(c), the child's account is closed and any remaining  
 5-67 money is returned to the state for deposit in the Family Educational  
 5-68 Relief Program fund.

5-69 Sec. 29.363. RANDOM AUDITING. (a) The comptroller may

6-1 contract with a private entity to randomly audit accounts and the  
 6-2 certified educational assistance organizations as necessary to  
 6-3 ensure compliance with applicable law and the requirements of the  
 6-4 program.

6-5 (b) In conducting an audit, the comptroller or private  
 6-6 entity may require that a program participant or certified  
 6-7 educational assistance organization provide additional information  
 6-8 and documentation regarding any payment made under the program.

6-9 (c) The private entity shall report to the comptroller any  
 6-10 violation of this subchapter or other relevant law found by the  
 6-11 entity during an audit conducted under this section.

6-12 Sec. 29.364. SUSPENSION OF ACCOUNT. (a) The comptroller  
 6-13 shall suspend the account of a program participant who fails to  
 6-14 comply with applicable law or a requirement of the program.

6-15 (b) On suspension of an account under Subsection (a), the  
 6-16 comptroller shall notify the program participant in writing that  
 6-17 the account has been suspended and that no additional payments may  
 6-18 be made from the account. The notification must specify the grounds  
 6-19 for the suspension and state that the participant has 10 business  
 6-20 days to respond and take any corrective action required by the  
 6-21 comptroller.

6-22 (c) On the expiration of the 10-day period under Subsection  
 6-23 (b), the comptroller shall:

6-24 (1) order permanent closure of the suspended account  
 6-25 and declare the program participant ineligible for the program;

6-26 (2) order temporary reinstatement of the account,  
 6-27 conditioned on the performance of a specified action by the  
 6-28 participant; or

6-29 (3) order full reinstatement of the account.

6-30 (d) The comptroller may recover money distributed under the  
 6-31 program that was used for expenses not allowed under Section 29.360  
 6-32 from the program participant or the entity that received the money  
 6-33 if the participant's account is suspended or closed under this  
 6-34 section.

6-35 Sec. 29.365. TUITION AND FEES; REFUND PROHIBITED. (a) An  
 6-36 education service provider may not charge a child participating in  
 6-37 the program an amount greater than the standard amount charged for  
 6-38 that service by the provider.

6-39 (b) An education service provider or a vendor of educational  
 6-40 products receiving money distributed under the program may not in  
 6-41 any manner rebate, refund, or credit to or share with a program  
 6-42 participant, or any person on behalf of a participant, any program  
 6-43 money paid or owed by the participant to the provider or vendor.

6-44 Sec. 29.366. REFERRAL TO ATTORNEY GENERAL. (a) If the  
 6-45 comptroller or a certified educational assistance organization  
 6-46 obtains evidence of fraudulent use of an account, the comptroller  
 6-47 or organization may refer the case to the attorney general for  
 6-48 investigation.

6-49 (b) With the consent of the appropriate local county or  
 6-50 district attorney, the attorney general has concurrent  
 6-51 jurisdiction with the consenting local prosecutor to prosecute an  
 6-52 offense referred to the attorney general under Subsection (a).

6-53 Sec. 29.367. SPECIAL EDUCATION NOTICE. (a) Each certified  
 6-54 educational assistance organization shall post on the  
 6-55 organization's Internet website and provide to each parent who  
 6-56 submits an application for the program on behalf of a child with a  
 6-57 disability a notice that:

6-58 (1) states that a private school is not subject to laws  
 6-59 regarding the provision of educational services in the same manner  
 6-60 as a public school, and a child with a disability attending a  
 6-61 private school may not receive the services a child with a  
 6-62 disability attending a public school is entitled to receive under  
 6-63 federal and state law; and

6-64 (2) provides information regarding rights to which a  
 6-65 child with a disability is entitled under federal and state law if  
 6-66 the child attends a public school, including:

6-67 (A) rights provided under the Individuals with  
 6-68 Disabilities Education Act (20 U.S.C. Section 1400 et seq.),  
 6-69 including:

7-1 (i) an individualized education program;  
 7-2 (ii) educational services provided in the  
 7-3 least restrictive environment;  
 7-4 (iii) instruction from certified teachers;  
 7-5 (iv) due process hearings to ensure proper  
 7-6 and full implementation of an individualized education program;  
 7-7 (v) transition and planning services; and  
 7-8 (vi) supplementary aids and services;  
 7-9 (B) rights provided under Subchapter A; and  
 7-10 (C) other rights provided under federal or state  
 7-11 law.

7-12 (b) A private school in which a child with a disability who  
 7-13 is participating in the program enrolls shall provide to the  
 7-14 child's parent a copy of the notice required under Subsection (a).

7-15 Sec. 29.368. PROGRAM PARTICIPANT, PROVIDER, AND VENDOR  
 7-16 AUTONOMY. (a) An education service provider or vendor of  
 7-17 educational products that receives money distributed under the  
 7-18 program is not an agent of the state or federal government.

7-19 (b) The program does not expand the regulatory authority of  
 7-20 the state or any school district to impose any additional  
 7-21 regulation on an education service provider or vendor of  
 7-22 educational products except those reasonably necessary to enforce  
 7-23 the program as provided by this subchapter.

7-24 (c) An education service provider may not be required to  
 7-25 modify the provider's creed, practices, admissions policies,  
 7-26 curriculum, performance standards, or assessments, as applicable,  
 7-27 to receive money distributed under the program.

7-28 (d) In any proceeding challenging a rule adopted by a state  
 7-29 agency or officer under this subchapter, the agency or officer has  
 7-30 the burden of proof to establish that the rule:

7-31 (1) is necessary to implement or enforce the program  
 7-32 as provided by this subchapter; and

7-33 (2) does not impose an undue burden on a program  
 7-34 participant or an education service provider or vendor of  
 7-35 educational products that receives or seeks to receive money  
 7-36 distributed under the program.

7-37 Sec. 29.369. STUDENT RECORDS AND INFORMATION. (a) On  
 7-38 request by the parent of a child participating or seeking to  
 7-39 participate in the program, the school district or open-enrollment  
 7-40 charter school that the child would otherwise attend shall provide  
 7-41 a copy of the child's school records possessed by the district or  
 7-42 school, if any, to the child's parent or, if applicable, the private  
 7-43 school the child attends.

7-44 (b) The agency shall provide to each certified educational  
 7-45 assistance organization any information available to the agency  
 7-46 requested by the organization regarding a child who participates or  
 7-47 seeks to participate in the program. The organization may not  
 7-48 retain information provided under this subsection beyond the period  
 7-49 necessary to determine a child's eligibility to participate in the  
 7-50 program.

7-51 Sec. 29.370. GIFTS, GRANTS, AND DONATIONS. The comptroller  
 7-52 may solicit and accept gifts, grants, and donations from any public  
 7-53 or private source for any expenses related to the administration of  
 7-54 the program, including the initial implementation of the program.

7-55 Sec. 29.371. RULES; PROCEDURES. (a) The comptroller shall  
 7-56 adopt rules and procedures only as necessary to implement,  
 7-57 administer, and enforce this subchapter.

7-58 (b) A rule adopted under Subsection (a) is binding on an  
 7-59 organization that applies for certification as an educational  
 7-60 assistance organization and a state or local governmental entity,  
 7-61 including a political subdivision, as necessary to implement,  
 7-62 administer, and enforce this subchapter.

7-63 Sec. 29.372. PARENTAL AND STUDENT RIGHT TO INTERVENE IN  
 7-64 CIVIL ACTION. (a) A program participant may intervene in any civil  
 7-65 action challenging the constitutionality of the program or the  
 7-66 insurance premium tax credit under Chapter 230, Insurance Code.

7-67 (b) A court in which a civil action described by Subsection  
 7-68 (a) is filed may require that all program participants wishing to  
 7-69 intervene in the action file a joint brief. A program participant

8-1 may not be required to join a brief filed on behalf of the state or a  
 8-2 state agency.

8-3 SECTION 2. Section 411.109, Government Code, is amended by  
 8-4 adding Subsection (c) to read as follows:

8-5 (c) The comptroller is entitled to obtain criminal history  
 8-6 record information maintained by the department about a person who  
 8-7 is a private tutor, a therapist, or an employee of a teaching  
 8-8 service who intends to provide educational services to a child  
 8-9 participating in the program established under Subchapter J,  
 8-10 Chapter 29, Education Code, and is seeking approval to receive  
 8-11 money distributed under that program.

8-12 SECTION 3. Subtitle B, Title 3, Insurance Code, is amended  
 8-13 by adding Chapter 230 to read as follows:

8-14 CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO  
 8-15 FAMILY EDUCATIONAL RELIEF PROGRAM  
 8-16 SUBCHAPTER A. GENERAL PROVISIONS

8-17 Sec. 230.001. DEFINITIONS. In this chapter:

8-18 (1) "Fund" means the Family Educational Relief Program  
 8-19 fund under Section 29.354, Education Code.

8-20 (2) "State premium tax liability" means any liability  
 8-21 incurred by an entity under Chapters 221 through 226.

8-22 SUBCHAPTER B. CREDIT

8-23 Sec. 230.051. CREDIT. An entity may apply for a credit  
 8-24 against the entity's state premium tax liability in the amount and  
 8-25 under the conditions provided by this chapter. The comptroller  
 8-26 shall award credits as provided by Section 230.053.

8-27 Sec. 230.052. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a)  
 8-28 Subject to Subsections (b) and (c), the amount of an entity's credit  
 8-29 is equal to the lesser of the amount contributed to the fund during  
 8-30 the period covered by the tax report or 50 percent of the entity's  
 8-31 state premium tax liability for the report.

8-32 (b) For the 2022 state fiscal year, the total amount of  
 8-33 credits that may be awarded under this chapter may not exceed \$200  
 8-34 million. For each subsequent state fiscal year, the total amount of  
 8-35 credits that may be awarded is:

8-36 (1) the same total amount of credits available under  
 8-37 this subsection for the previous state fiscal year, if Subdivision  
 8-38 (2) does not apply; or

8-39 (2) 125 percent of the total amount of credits  
 8-40 available under this subsection for the previous state fiscal year,  
 8-41 if the total amount of credits awarded in the previous state fiscal  
 8-42 year was at least 90 percent of the total amount of credits  
 8-43 available under this subsection for that fiscal year.

8-44 (c) The comptroller by rule shall prescribe procedures by  
 8-45 which the comptroller may allocate credits under this chapter. The  
 8-46 procedures must provide that credits are allocated first to  
 8-47 entities that received preliminary approval for a credit under  
 8-48 Section 230.0525 and that apply under Section 230.053. The  
 8-49 procedures must provide that any remaining credits are allocated to  
 8-50 entities that apply under Section 230.053 on a first-come,  
 8-51 first-served basis, based on the date the contribution was  
 8-52 initially made.

8-53 (d) The comptroller may require an entity to notify the  
 8-54 comptroller of the amount the entity intends or expects to apply for  
 8-55 under this chapter before the beginning of a state fiscal year or at  
 8-56 any other time required by the comptroller.

8-57 Sec. 230.0525. PRELIMINARY APPROVAL FOR CREDIT. (a) Before  
 8-58 making a contribution to the fund, an entity may apply to the  
 8-59 comptroller for preliminary approval of a credit under this chapter  
 8-60 for the contribution.

8-61 (b) An entity must apply for preliminary approval on a form  
 8-62 provided by the comptroller that includes the amount the entity  
 8-63 expects to contribute and any other information the comptroller  
 8-64 requires.

8-65 (c) The comptroller shall grant preliminary approval for  
 8-66 credits under this chapter on a first-come, first-served basis,  
 8-67 based on the date the comptroller receives the application for  
 8-68 preliminary approval.

8-69 (d) The comptroller shall grant preliminary approval for a



9-1 credit under this chapter for a state fiscal year if the sum of the  
9-2 amount of the credit and the total amount of all other credits  
9-3 preliminarily approved under this chapter does not exceed the  
9-4 amount provided by Section 230.052(b).

9-5 (e) Final award of a credit preliminarily approved under  
9-6 this section remains subject to the limitations under Section  
9-7 230.052(a) and all other requirements of this chapter.

9-8 Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must  
9-9 apply for a credit under this chapter on or with the tax report  
9-10 covering the period in which the contribution was made.

9-11 (b) The comptroller shall adopt a form for the application  
9-12 for the credit. An entity must use this form in applying for the  
9-13 credit.

9-14 (c) Subject to Section 230.052(c), the comptroller may  
9-15 award a credit to an entity that applies for the credit under  
9-16 Subsection (a) if the entity is eligible for the credit and the  
9-17 credit is available under Section 230.052(b). The comptroller has  
9-18 broad discretion in determining whether to grant or deny an  
9-19 application for a credit.

9-20 (d) The comptroller shall notify an entity in writing of the  
9-21 comptroller's decision to grant or deny the application under  
9-22 Subsection (a). If the comptroller denies an entity's application,  
9-23 the comptroller shall include in the notice of denial the reasons  
9-24 for the comptroller's decision.

9-25 (e) If the comptroller denies an entity's application under  
9-26 Subsection (a), the entity may request in writing a reconsideration  
9-27 of the application not later than the 10th day after the date the  
9-28 notice under Subsection (d) is received. If the entity does not  
9-29 request a reconsideration of the application on or before that  
9-30 date, the comptroller's decision is final.

9-31 (f) An entity that requests a reconsideration under  
9-32 Subsection (e) may submit to the comptroller, not later than the  
9-33 30th day after the date the request for reconsideration is  
9-34 submitted, additional information and documents to support the  
9-35 entity's request for reconsideration.

9-36 (g) The comptroller's reconsideration of an application  
9-37 under this section is not a contested case under Chapter 2001,  
9-38 Government Code. The comptroller's decision on a request for  
9-39 reconsideration of an application is final and is not appealable.

9-40 (h) This section does not create a cause of action to  
9-41 contest a decision of the comptroller to deny an application for a  
9-42 credit under this chapter.

9-43 Sec. 230.054. RULES; PROCEDURES. The comptroller shall  
9-44 adopt rules and procedures to implement, administer, and enforce  
9-45 this chapter.

9-46 Sec. 230.055. ASSIGNMENT PROHIBITED; EXCEPTION. An entity  
9-47 may not convey, assign, or transfer the credit allowed under this  
9-48 chapter to another entity unless all of the assets of the entity are  
9-49 conveyed, assigned, or transferred in the same transaction.

9-50 Sec. 230.056. NOTICE OF AVAILABILITY OF CREDIT. The  
9-51 comptroller shall provide notice of the availability of the credit  
9-52 under this chapter on the comptroller's Internet website, in the  
9-53 instructions for insurance premium tax report forms, and in any  
9-54 notice sent to an entity concerning the requirement to file an  
9-55 insurance premium tax report.

9-56 SECTION 4. Subchapter J, Chapter 29, Education Code, as  
9-57 added by this Act, applies beginning with the 2022-2023 school  
9-58 year.

9-59 SECTION 5. An entity may apply for a credit under Chapter  
9-60 230, Insurance Code, as added by this Act, only for a contribution  
9-61 made on or after the effective date of this Act.

9-62 SECTION 6. Not later than February 15, 2022, the  
9-63 comptroller of public accounts shall adopt rules as provided by  
9-64 Section 230.054, Insurance Code, as added by this Act.

9-65 SECTION 7. Chapter 230, Insurance Code, as added by this  
9-66 Act, applies only to a tax report originally due on or after the  
9-67 effective date of this Act.

9-68 SECTION 8. (a) The constitutionality and other validity  
9-69 under the state or federal constitution of all or any part of

10-1 Subchapter J, Chapter 29, Education Code, as added by this Act, or  
10-2 Chapter 230, Insurance Code, as added by this Act, may be determined  
10-3 in an action for declaratory judgment in a district court in Travis  
10-4 County under Chapter 37, Civil Practice and Remedies Code, except  
10-5 that this section does not authorize an award of attorney's fees  
10-6 against this state and Section 37.009, Civil Practice and Remedies  
10-7 Code, does not apply to an action filed under this section. This  
10-8 section does not authorize a taxpayer suit to contest the denial of  
10-9 a tax credit by the comptroller of public accounts.

10-10 (b) An appeal of a declaratory judgment or order, however  
10-11 characterized, of a district court, including an appeal of the  
10-12 judgment of an appellate court, holding or otherwise determining  
10-13 that all or any part of Subchapter J, Chapter 29, Education Code, as  
10-14 added by this Act, or Chapter 230, Insurance Code, as added by this  
10-15 Act, is constitutional or unconstitutional, or otherwise valid or  
10-16 invalid, under the state or federal constitution is an accelerated  
10-17 appeal.

10-18 (c) If the judgment or order is interlocutory, an  
10-19 interlocutory appeal may be taken from the judgment or order and is  
10-20 an accelerated appeal.

10-21 (d) A district court in Travis County may grant or deny a  
10-22 temporary or otherwise interlocutory injunction or a permanent  
10-23 injunction on the grounds of the constitutionality or  
10-24 unconstitutionality, or other validity or invalidity, under the  
10-25 state or federal constitution of all or any part of Subchapter J,  
10-26 Chapter 29, Education Code, as added by this Act, or Chapter 230,  
10-27 Insurance Code, as added by this Act.

10-28 (e) There is a direct appeal to the Texas Supreme Court from  
10-29 an order, however characterized, of a trial court granting or  
10-30 denying a temporary or otherwise interlocutory injunction or a  
10-31 permanent injunction on the grounds of the constitutionality or  
10-32 unconstitutionality, or other validity or invalidity, under the  
10-33 state or federal constitution of all or any part of Subchapter J,  
10-34 Chapter 29, Education Code, as added by this Act, or Chapter 230,  
10-35 Insurance Code, as added by this Act.

10-36 (f) The direct appeal is an accelerated appeal.

10-37 (g) This section exercises the authority granted by Section  
10-38 3-b, Article V, Texas Constitution.

10-39 (h) The filing of a direct appeal under this section will  
10-40 automatically stay any temporary or otherwise interlocutory  
10-41 injunction or permanent injunction granted in accordance with this  
10-42 section pending final determination by the Texas Supreme Court,  
10-43 unless the supreme court makes specific findings that the applicant  
10-44 seeking such injunctive relief has pleaded and proved that:

10-45 (1) the applicant has a probable right to the relief it  
10-46 seeks on final hearing; and

10-47 (2) the applicant will suffer a probable injury that  
10-48 is imminent and irreparable, and that the applicant has no other  
10-49 adequate legal remedy.

10-50 (i) An appeal under this section, including an  
10-51 interlocutory, accelerated, or direct appeal, is governed, as  
10-52 applicable, by the Texas Rules of Appellate Procedure, including  
10-53 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),  
10-54 38.6(a) and (b), 40.1(b), and 49.4.

10-55 SECTION 9. The comptroller of public accounts is required  
10-56 to implement a provision of this Act only if the legislature  
10-57 appropriates money specifically for that purpose. If the  
10-58 legislature does not appropriate money specifically for that  
10-59 purpose, the comptroller may, but is not required to, implement  
10-60 this Act using other appropriations available for that purpose.

10-61 SECTION 10. This Act takes effect January 1, 2022.

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