

BILL ANALYSIS

Senate Research Center
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S.B. 1
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Across Texas, parents overwhelmingly approve of public schools and choose that path for their children's education; however, lawmakers must acknowledge that kids across Texas have diverse needs. S.B. 1 empowers parents to make choices for their children by opening up alternative education opportunities with their tax dollars by providing eligible students the opportunity to access a \$8,000/year education savings account (ESA). Currently, 31 states, Puerto Rico, and Washington, D.C., offer school choice, and there is no reason Texas should not offer the same opportunities.

Students would be eligible to apply for an ESA if they are a current public school student, current private school student or entering kindergarten or Pre-K for the first time. The ESA program provides funds to be spent on tuition and fees at an accredited private school and other approved educational expenses such as textbooks, uniforms, tutoring, transportation, educational therapies, and academic assessment fees. Various safeguards are put in place for the responsible use of funds and prevent fraud, including random audits of program accounts.

As proposed, S.B. 1 amends current law relating to the establishment of an education savings account program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 1 (Sections 29.358, 29.362, and 29.372, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that the purpose of this Act is to:

- (1) provide additional educational options to assist families in this state in exercising the right to direct the educational needs of their children; and
- (2) achieve a general diffusion of knowledge.

SECTION 2. Amends Chapter 29, Education Code, by adding Subchapter J, as follows:

SUBCHAPTER J. EDUCATION SAVINGS ACCOUNT PROGRAM

Sec. 29.351. DEFINITIONS. Defines "account," "certified educational assistance organization," "child with a disability," "higher education provider," "parent," "program," and "program participant."

Sec. 29.352. ESTABLISHMENT OF PROGRAM. Requires the Comptroller of Public Accounts of the State of Texas (comptroller) to establish a program to provide funding for approved education-related expenses of children participating in the program.

Sec. 29.353. PROGRAM FUND. (a) Provides that the program fund is an account in the general revenue fund to be administered by the comptroller.

(b) Provides that 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; and
- (4) any other money available for purposes of the program.

(c) Authorizes money in the fund to be appropriated only for the uses specified by this subchapter.

Sec. 29.354. SELECTION OF CERTIFIED EDUCATIONAL ASSISTANCE ORGANIZATIONS. (a) Authorizes an organization to apply to the comptroller for certification as a certified educational assistance organization during an application period established by the comptroller.

(b) Requires an organization, to be eligible for certification, to:

- (1) have the ability to perform the duties and functions required of a certified educational assistance organization under this subchapter;
- (2) be in good standing with the state; and
- (3) be able to assist the comptroller in administering the program, including the ability to:
 - (A) accept, process, and track applications for the program;
 - (B) assist prospective applicants, applicants, and program participants with finding preapproved education service providers and vendors of educational products;
 - (C) accept and process payments for approved education-related expenses; and
 - (D) verify that program funding is used only for approved education-related expenses.

(c) Authorizes the comptroller to certify not more than five educational assistance organizations to support the administration of the program, including by:

- (1) administering:
 - (A) the application process under Section 29.356; and
 - (B) the program expenditures process under Section 29.360; and
- (2) assisting prospective applicants, applicants, and program participants with understanding approved education-related expenses and finding preapproved education service providers and vendors of educational products.

Sec. 29.355. ELIGIBLE CHILD. (a) Provides that a child is eligible to participate in the program and is authorized, subject to available funding, to enroll in the program for the semester following the semester in which the child's application is submitted under Section 29.356 if the child is eligible to attend a public school under Section 25.001 (Admission) and either:

(1) was enrolled in a public school in this state for at least 90 percent of the school year preceding the school year for which the child applies to enroll in the program;

(2) is enrolling in prekindergarten or kindergarten for the first time; or

(3) attended a private school on a full-time basis for the preceding school year.

(b) Authorizes a child who establishes eligibility under this section to, subject to available funding and the requirements of this subchapter, 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, in a manner in which the child will be counted toward the school's average daily attendance for purposes of the allocation of funding under the foundation school program; or

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

Sec. 29.356. APPLICATION TO PROGRAM. (a) Authorizes a parent of an eligible child to apply to a certified educational assistance organization to enroll the child in the program for the following semester. Requires the comptroller to establish quarterly deadlines by which an applicant is required to complete and submit an application form to participate in the program.

(b) Requires a certified educational assistance organization, on receipt of more acceptable applications during an application period for admission under this section than available positions in the program due to insufficient funding, to, at the direction of the comptroller, fill the available positions by lottery as follows:

(1) for not more than 40 percent of available positions in the program, children described by Section 29.355(a)(1) or (2) who are educationally disadvantaged;

(2) for not more than 30 percent of the available positions in the program, children described by Section 29.355(a)(1) or (2) who are members of a household with a total annual income that is above 185 percent of the federal poverty guidelines and below 500 percent of the federal poverty guidelines;

(3) for not more than 20 percent of the available positions in the program, children with a disability described by Section 29.355(a)(1) or (2); and

(4) for any remaining available positions in the program, all other applicants not described by Subdivision (1), (2), or (3).

(c) Requires the comptroller to create an application form for the program and requires each certified educational assistance organization to make the application form readily available through various sources, including the organization's Internet website. Requires that the application form state the quarterly application deadlines established by the comptroller under Subsection (a). Requires each organization to ensure that the application form, including any required

supporting document, is capable of being submitted to the organization electronically.

(d) Requires a certified educational assistance organization to post on the organization's Internet website an applicant and participant handbook with a description of the program, including:

- (1) expenses allowed under the program under Section 29.359;
- (2) a list of preapproved education service providers and vendors of educational products under Section 29.358;
- (3) a description of the application process under this section and the program expenditures process under Section 29.360; and
- (4) a description of the responsibilities of program participants.

(e) Requires a certified educational assistance organization to annually provide to the parent of each child participating in the program the information described by Subsection (d). Authorizes the organization to provide the information electronically.

(f) Provides that a certified educational assistance organization:

- (1) is authorized to require the parent of a child participating in the program to submit annual notice regarding the parent's intent for the child to continue participating in the program for the next school year; and
- (2) is prohibited from requiring a program participant in good standing to annually resubmit an application for continued participation in the program.

Sec. 29.357. PARTICIPATION IN PROGRAM. Requires a parent of a child participating in the program, to receive funding under the program, to agree to:

- (1) spend money received through the program only for expenses allowed under Section 29.359;
- (2) share or authorize the administrator of an assessment instrument to share with the program participant's certified educational assistance organization the results of any assessment instrument required to be administered to the child under Section 29.358(b)(1)(B) or other law;
- (3) refrain from selling an item purchased with program money;
- (4) notify the program participant's certified educational assistance organization not later than 30 business days after:
 - (A) the date on which the child:
 - (i) enrolls in a public school, including an open-enrollment charter school;
 - (ii) graduates from high school; or
 - (iii) is no longer eligible to either:
 - (a) enroll in a public school under Section 25.001; or

(b) enroll in a public school's prekindergarten program under Section 29.153 (Free Prekindergarten for Certain Children); or

(B) the date established by the comptroller by which the child is required to enroll in a preapproved private school that the child did not enroll in a preapproved private school; and

(5) enroll the child in a preapproved private school by a deadline established by the comptroller.

Sec. 29.358. PREAPPROVED PROVIDERS AND VENDORS. (a) Requires the comptroller to establish by rule a process for the preapproval of education service providers and vendors of educational products for participation in the program. Requires the comptroller to allow for the submission of applications on a rolling basis.

(b) Requires the comptroller to 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, demonstrates:

(A) accreditation by an organization recognized by:

(i) the Texas Private School Accreditation Commission; or

(ii) the Texas Education Agency (TEA); and

(B) annual administration of a nationally norm-referenced assessment instrument or the appropriate assessment instrument required under Subchapter B (Assessment of Academic Skills), Chapter 39;

(2) for a public school, demonstrates:

(A) accreditation by TEA; and

(B) the ability to provide services or products to children participating in the program in a manner in which the children are not counted toward the school's average daily attendance;

(3) for a private tutor, therapist, or teaching service, demonstrates that:

(A) the tutor or therapist or each employee of the teaching service who intends to provide educational services to a child participating in the program:

(i) is an educator employed by or a retired educator formerly employed by a school accredited by TEA, an organization recognized by TEA, or an organization recognized by the Texas Private School Accreditation Commission;

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

(iii) is employed in or retired from a teaching or tutoring capacity at a higher education provider;

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

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

(ii) provided 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; and

(C) the tutor or therapist or each employee of the teaching service who intends to provide educational services to a child participating in the program is not included in the registry under Section 22.092 (Registry of Persons Not Eligible For Employment in Public Schools); or

(4) for a higher education provider, demonstrates nationally recognized postsecondary accreditation.

(c) Requires the comptroller to review the national criminal history record information or documentation for each private tutor, therapist, or teaching service employee who submits information or documentation under this section and verify that the individual is not included in the registry under Section 22.092. Requires the tutor, therapist, or service to provide the comptroller with any information requested by the comptroller to enable the comptroller to complete the review.

(d) Requires an education service provider or vendor of educational products to provide information requested by the comptroller to verify the provider's or vendor's eligibility for preapproval under Subsection (b). Prohibits the comptroller from approving a provider or vendor if the comptroller cannot verify the provider's or vendor's eligibility for preapproval.

(e) Requires an education service provider or vendor of educational products that no longer meets the requirements of this section to notify the comptroller not later than the 30th business day after the date that the provider or vendor no longer meets the requirements.

(f) Prohibits this section from being construed to allow a learning pod, as defined by Section 27.001 (Definitions), or a home school to qualify as an approved education service provider or vendor of educational products.

Sec. 29.359. APPROVED EDUCATION-RELATED EXPENSES. (a) Authorizes money received under the program, subject to Subsection (b), to be used only for the following education-related expenses incurred by a child participating in the program at a preapproved education service provider or vendor of educational products:

(1) tuition and fees for a private school;

(2) the purchase of textbooks or other instructional materials or uniforms required by a school, higher education provider, or course in which the child is enrolled, including purchases made through a third-party vendor of educational products;

(3) costs related to academic assessments;

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

(5) fees for transportation provided by a fee-for-service transportation provider for the child to travel to and from a preapproved education service provider or vendor of educational products; and

(6) 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) Prohibits money received under the program from being used to pay any person who is related to the program participant within the third degree by consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code.

(c) Provides that 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 approved education-related expense that is allowed under that subsection.

Sec. 29.360. PROGRAM EXPENDITURES. (a) Requires the comptroller to disburse from the program fund to each certified educational assistance organization the amount specified under Section 29.361(a) for each child participating in the program served by the organization.

(b) Requires the parent of a child participating in the program, to initiate payment to an education service provider or vendor of educational products for an education-related expense approved under Section 29.359, to submit a request in a form prescribed by comptroller rule to the certified educational assistance organization that serves the child.

(c) Requires a certified educational assistance organization, subject to Subsection (d) and Sections 29.362(h) and 29.364, on receiving a request under Subsection (b), to verify that the request is for an expense approved under Section 29.359 and, not later than the 15th business day after the date the organization verifies the request, send payment to the education service provider or vendor of educational products.

(d) Prohibits a disbursement under this section from exceeding the applicable program participant's account balance.

(e) Requires a certified educational assistance organization to provide program participants with electronic access to:

(1) view the participant's current account balance;

(2) initiate the payment process under Subsection (b); and

(3) view a summary of the participant's past account activity, including payments from the account to education service providers and vendors of educational products.

Sec. 29.361. AMOUNT OF PAYMENT; FINANCING. (a) Requires a parent of a child participating in the program, regardless of the quarterly deadline by which the parent applies for enrollment in the program under Section 29.356(a), to receive each year that the child participates in the program payments from the state from funds available under Section 29.353 to the child's account equal to a total amount of \$8,000.

(b) Provides that 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) Authorizes the parent of a child participating in the program to make payments for the expenses of educational programs, services, and products not covered by money in the child's account.

(d) Prohibits a payment under Subsection (a) from being financed using federal money or money from the available school fund or instructional materials fund.

(e) Provides that payments received under this subchapter do not constitute taxable income to a parent of a child participating in the program, unless otherwise provided by federal law.

(f) Requires TEA, not later than May 1 of each year, to submit to the comptroller the data necessary to calculate the amount specified under Subsection (a).

Sec. 29.362. ADMINISTRATION OF ACCOUNTS. (a) Requires a certified educational assistance organization, on receipt of money distributed by the comptroller for purposes of making payments to program participants, to make quarterly payments to the account of each child participating in the program served by the organization in equal amounts on or before the first day of July, October, January, and April.

(b) Authorizes the comptroller, each year, to deduct from the total amount of money appropriated for purposes of this subchapter an amount, not to exceed three percent of that total amount, to cover the comptroller's cost of administering the program.

(c) Requires each certified educational assistance organization, not later than the first day of the month preceding the start of each quarter, to submit to the comptroller in the form prescribed by comptroller rule an estimate of the organization's costs of administering the program for that quarter.

(d) Requires the comptroller, each quarter, to disburse from money appropriated for the program to each certified educational assistance organization the amount necessary to cover the organization's costs of administering the program for that quarter, calculated as provided by Subsection (c). Prohibits the total amount disbursed to a certified educational assistance organization under this subsection for a state fiscal year from exceeding five percent of the amount distributed to the organization under the program for that fiscal year.

(e) Provides that the amount of a certified educational assistance organization's disbursement under Subsection (d) is the lesser of:

(1) the amount of the organization's estimate submitted under Subsection (c);

(2) the product of the total amount to be disbursed and the average percentage of program participants served by the organization during the preceding quarter; or

(3) five percent of the amount distributed to the organization for purposes of making payments to program participants for that quarter.

(f) Requires a certified educational assistance organization, on or before the first day of October and February, to:

(1) verify with TEA that each child participating in the program is not enrolled in a public school, including an open-enrollment charter school,

in a manner in which the child is counted toward the school's average daily attendance for purposes of the allocation of state funding under the foundation school program;

(2) verify that each child participating in the program is enrolled in a preapproved private school; and

(3) notify the comptroller if the organization determines that a child participating in the program is:

(A) enrolled in a public school, including an open-enrollment charter school, in a manner in which the child is counted toward the school's average daily attendance for purposes of the allocation of state funding under the foundation school program; or

(B) not enrolled in a preapproved private school.

(g) Requires the comptroller by rule to establish a process by which a program participant may authorize the comptroller or a certified educational assistance organization to make a payment directly from the participant's account to a preapproved education service provider or vendor of educational products for an expense allowed under Section 29.359.

(h) Requires that the child's account, on the date on which a child who participated in the program is no longer eligible to participate in the program under Section 29.355 and payments for any education-related expenses allowed under Section 29.359 from the child's account have been completed, be closed and any remaining money returned to the comptroller for deposit in the program fund.

(i) Requires that any interest or other earnings attributable to money held by a certified educational assistance organization for purposes of the program, each quarter, be remitted to the comptroller for deposit in the program fund.

Sec. 29.363. AUDITING. (a) Requires the comptroller to contract with a private entity to audit accounts and program participant eligibility data not less than once per year to ensure compliance with applicable law and program requirements. Requires that the audit include a review of:

(1) a certified educational assistance organization's internal controls over program transactions; and

(2) compliance by:

(A) program participants with the requirements of Section 29.357; and

(B) certified educational assistance organizations with the requirements of Section 29.354.

(b) Authorizes the private entity, in conducting an audit, to require a program participant or a certified educational assistance organization to provide information and documentation regarding any transaction occurring under the program.

(c) Requires the private entity to report to the comptroller any violation of this subchapter or other relevant law, including any transactions the entity determines to be unusual or suspicious, found by the entity during an audit conducted under this section. Requires the comptroller to report the violation or transaction to:

- (1) the applicable certified educational assistance organization;
- (2) the education service provider or vendor of educational products, as applicable; and
- (3) the parent of each child participating in the program who is affected by the violation or transaction.

Sec. 29.364. **SUSPENSION OF ACCOUNT.** (a) Requires the comptroller to suspend the account of a program participant who fails to remain in good standing by complying with applicable law or a requirement of the program.

(b) Requires the comptroller, on suspension of an account under Subsection (a), to notify the program participant in writing that the account has been suspended and that no additional payments are authorized to be made from the account. Requires that the notification specify the grounds for the suspension and state that the participant has 30 business days to respond and take any corrective action required by the comptroller.

(c) Requires the comptroller, on the expiration of the 30-day period under Subsection (b), to:

- (1) order closure of the suspended account;
- (2) order temporary reinstatement of the account, conditioned on the performance of a specified action by the program participant; or
- (3) order full reinstatement of the account.

(d) Authorizes the comptroller to recover money distributed under the program that was used for expenses not allowed under Section 29.359 or for a child who was not eligible to participate in the program at the time of the expenditure. Authorizes the money to be recovered from the program participant or the entity that received the money in accordance with Subtitles A (General Provisions) and B (Enforcement and Collection), Title 2, Tax Code, or as provided by other law if the program participant's account is suspended or closed under this section. Requires the comptroller to deposit money recovered under this subsection to the credit of the program fund.

Sec. 29.365. **TUITION AND FEES; REFUND PROHIBITED.** (a) Prohibits an education service provider or vendor of educational products from charging a child participating in the program an amount greater than the standard amount charged for that service or product by the provider or vendor.

(b) Prohibits an education service provider or vendor of educational products receiving money distributed under the program from in any manner rebating, refunding, or crediting to or sharing 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 DISTRICT ATTORNEY.** Requires the comptroller, if the comptroller obtains evidence of fraudulent use of an account or money distributed under the program by a certified educational assistance organization or program participant, to notify the appropriate local county or district attorney with jurisdiction over the principal place of business of the certified educational assistance organization or the residence of the program participant, as applicable.

Sec. 29.367. **SPECIAL EDUCATION NOTICE.** (a) Requires a certified educational assistance organization to post on the organization's Internet website and provide to each parent who submits an application for the program a notice that:

(1) states that a private school is not subject to federal and state laws regarding the provision of educational services to a child with a disability in the same manner as a public school; 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.); and

(B) rights provided under Subchapter A (Special Education Program).

(b) Requires a private school in which a child with a disability who is a program participant enrolls to 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) Provides that an education service provider or vendor of educational products that receives money distributed under the program is not a recipient of federal financial assistance and is prohibited from being considered to be an agent of state government on the basis of receiving that money.

(b) Prohibits a rule adopted or other governmental action taken related to the program from imposing requirements that are contrary to or limit the religious or institutional values or practices of an education service provider, vendor of educational products, or program participant, including by limiting the ability of the provider, vendor, or participant, as applicable, to:

(1) determine the methods of instruction or curriculum used to educate students;

(2) determine admissions and enrollment practices, policies, and standards;

(3) modify or refuse to modify the provider's, vendor's, or participant's religious or institutional values or practices, including operations, conduct, policies, standards, assessments, or employment practices that are based on the provider's, vendor's, or participant's religious or institutional values or practices; or

(4) exercise the provider's, vendor's, or participant's religious or institutional practices as determined by the provider, vendor, or participant.

Sec. 29.369. STUDENT RECORDS AND INFORMATION. (a) Requires the school district or open-enrollment charter school that the child would otherwise attend, on request by the parent of a child participating or seeking to participate in the program, to 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) Requires TEA, a school district, or an open-enrollment charter school, as necessary to verify a child's eligibility for the program, to provide to a certified educational assistance organization any information available to TEA, the district, or school requested by the organization regarding a child who participates or seeks to participate in the program, including information regarding the child's public school enrollment status and whether the child can be counted toward a public school's average daily attendance for purposes of the allocation of funding

under the foundation school program. Prohibits the organization from retaining information provided under this subsection beyond the period necessary to determine a child's eligibility to participate in the program.

(c) Provides that the certified educational assistance organization or an education service provider or vendor of educational products that obtains information regarding a child participating in the program:

(1) is required to comply with state and federal law regarding the confidentiality of student educational information; and

(2) is prohibited from selling or otherwise distributing information regarding a child participating in the program.

Sec. 29.370. GIFTS, GRANTS, AND DONATIONS. Authorizes the comptroller and a certified educational assistance organization to solicit and accept gifts, grants, and donations from any public or private source for any expenses related to the administration of the program, including establishing the program and contracting for the report required under Section 29.371.

Sec. 29.371. ANNUAL REPORT. (a) Requires the comptroller to require that each certified educational assistance organization compile program data and produce an annual longitudinal report regarding:

(1) the number of program applications received, accepted, and wait-listed, disaggregated by age;

(2) program participant satisfaction;

(3) the results of assessment instruments shared in accordance with Section 29.357(2);

(4) the effect of the program on public and private school capacity and availability;

(5) the amount of cost savings accruing to the state as a result of the program;

(6) in a report submitted in an even-numbered year only, an estimate of the total amount of funding required for the program for the next state fiscal biennium;

(7) the amount of gifts, grants, and donations received under Section 29.370; and

(8) based on surveys of former program participants or other sources available to an organization, the number and percentage of children participating in the program who, within one year after graduating from high school, are:

(A) college ready, as indicated by earning a minimum of 12 non-remedial semester credit hours or the equivalent or an associate degree from a postsecondary educational institution;

(B) career ready, as indicated by:

(i) earning a credential of value included in a library of credentials established under Section 2308A.007 (Credential Library), Government Code; or

(ii) employment at or above the median wage in the child's region; or

(C) military ready, as indicated by achieving a passing score set by the applicable military branch on the Armed Services Vocational Aptitude Battery and enlisting in the armed forces of the United States or the Texas National Guard.

(b) Requires each certified educational assistance organization, in producing the report, to:

(1) use appropriate analytical and behavioral science methodologies to ensure public confidence in the report; and

(2) comply with the requirements regarding the confidentiality of student educational information under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(c) Requires that the report cover a period of not less than five years and include, subject to Subsection (b)(2), the data analyzed and methodology used.

(d) Requires the comptroller and each certified educational assistance organization to post the report on the comptroller's and organization's respective Internet websites.

Sec. 29.372. RULES; PROCEDURES. Requires the comptroller to adopt rules and procedures as necessary to implement, administer, and enforce this subchapter.

Sec. 29.373. APPEAL; JUDICIAL REVIEW. (a) Authorizes a program participant to appeal to the comptroller an administrative decision made by the comptroller or a certified educational assistance organization under this subchapter, including a decision regarding eligibility, allowable expenses, or the participant's removal from the program.

(b) Authorizes a program participant, education service provider, or vendor of educational products who is adversely affected or aggrieved by a decision made by the comptroller or a certified educational assistance organization under this subchapter to file a suit challenging the decision in a district court in the county in which the program participant resides or the provider or vendor has its principal place of business, as applicable.

Sec. 29.374. RIGHT TO INTERVENE IN CIVIL ACTION. (a) Authorizes a program participant, education service provider, or vendor of educational products to intervene in any civil action challenging the constitutionality of the program.

(b) Authorizes a court in which a civil action described by Subsection (a) is filed to require that all program participants, education service providers, and vendors of educational products wishing to intervene in the action file a joint brief. Prohibits a program participant, education service provider, or vendor of educational products from being required to join a brief filed on behalf of the state or a state agency.

SECTION 3. Amends Section 22.092(d), Education Code, as follows:

(d) Requires TEA to provide equivalent access to the registry maintained under this section to:

(1) makes no changes to this subdivision;

(2)-(3) makes nonsubstantive changes to these subdivisions; and

(4) the comptroller for the purpose of preapproving education service providers and vendors of educational products under Section 29.358 for participation in the program established under Subchapter J, Chapter 29.

SECTION 4. Amends Section 411.109, Government Code, by adding Subsection (b-1) and amending Subsection (c), as follows:

(b-1) Entitles the comptroller to obtain criminal history record information as provided by Subsection (c) about a person who is a private tutor, a therapist, or an employee of a teaching service or school 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.

(c) Entitles the comptroller, subject to Section 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency) and consistent with the public policy of this state, to:

(1) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by certain subsections, including Subsection (b-1); and

(2) makes conforming changes to this subdivision.

SECTION 5. Provides that Subchapter J, Chapter 29, Education Code, as added by this Act, applies beginning with the 2024–2025 school year.

SECTION 6. (a) Requires the comptroller, not later than May 15, 2024, to adopt rules as provided by Section 29.372, Education Code, as added by this Act.

(b) Authorizes the comptroller to identify rules required by the passage of Subchapter J, Chapter 29, Education Code, as added by this Act, that are required to be adopted on an emergency basis for purposes of the 2024–2025 school year and to use the procedures established under Section 2001.034 (Emergency Rulemaking), Government Code, for adopting those rules. Provides that the comptroller is not required to make the finding described by Section 2001.034(a) (relating to authorizing a state agency to adopt an emergency rule without prior notice or hearing if certain criteria are met), Government Code, to adopt emergency rules under this subsection.

SECTION 7. (a) Authorizes 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, to be determined in an action for declaratory judgment under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, in a district court in the county in which the violation is alleged to have occurred or where the plaintiff resides or has its principal place of business.

(b) Authorizes 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, to be reviewed only by direct appeal to the Supreme Court of Texas (supreme court) filed not later than the 15th business day after the date on which the order was entered. Requires the supreme court to give precedence to appeals under this section over other matters.

(c) Provides that the direct appeal is an accelerated appeal.

(d) Provides that this section exercises the authority granted by Section 3-b (Direct Appeal From Order Granting or Denying Injunction), Article V (Judicial Department), Texas Constitution.

(e) Provides that 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 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;

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

(3) maintaining the injunction is in the public interest.

(f) Provides that 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), 28.1, 32.1(g), 37.3(a)(1), 38.6(a) and (b), 40.1(b), and 49.4.

(g) Provides that this section does not authorize an award of attorney's fees against this state, and Section 37.009 (Costs), Civil Practice and Remedies Code, does not apply to an action filed under this section.

(h) Provides that this section does not authorize a taxpayer suit to contest the denial of a tax credit by the comptroller.

SECTION 8. Severability clause.

SECTION 9. Effective date: the 91st day after the last day of the legislative session.