By:  Creighton S.B. No. 1

(In the Senate - Filed October 9, 2023; October 9, 2023, read first time and referred to Committee on Education; October 10, 2023, reported favorably by the following vote: Yeas 10, Nays 3; October 10, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Creighton         X

Campbell             X

Bettencourt          X

Birdwell             X

Flores               X

King                 X

LaMantia                 X

Menéndez                 X

Middleton            X

Parker               X

Paxton               X

Springer             X

West                     X

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of an education savings account program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

SUBCHAPTER J. EDUCATION SAVINGS ACCOUNT PROGRAM

Sec. 29.351.  DEFINITIONS. In this subchapter:

(1)  "Account" means an education savings account established under the program.

(2)  "Certified educational assistance organization" means an organization certified under Section 29.354 to support the administration of 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)  "Higher education provider" means an institution of higher education or a private or independent institution of higher education, as those terms are defined 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 program established under this subchapter.

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

Sec. 29.352.  ESTABLISHMENT OF PROGRAM. The comptroller shall establish a program to provide funding for approved education-related expenses of children participating in the program.

Sec. 29.353.  PROGRAM FUND. (a) The 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; and

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

(c)  Money in the fund may be appropriated only for the uses specified by this subchapter.

Sec. 29.354.  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, an organization must:

(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)  The comptroller may 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) A child is eligible to participate in the program and may, subject to available funding, 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 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)  A child who establishes eligibility under this section may, 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) A parent of an eligible child may apply to a certified educational assistance organization to enroll the child in the program for the following semester. The comptroller shall establish quarterly deadlines by which an applicant must complete and submit an application form to participate in the program.

(b)  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, a certified educational assistance organization shall, 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)  The comptroller shall create an application form for the program and each certified educational assistance organization shall make the application form readily available through various sources, including the organization's Internet website. The application form must state the quarterly application deadlines established by the comptroller under Subsection (a). Each organization shall ensure that the application form, including any required supporting document, is capable of being submitted to the organization electronically.

(d)  A certified educational assistance organization shall 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)  A certified educational assistance organization shall annually provide to the parent of each child participating in the program the information described by Subsection (d). The organization may provide the information electronically.

(f)  A certified educational assistance organization:

(1)  may 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)  may not require a program participant in good standing to annually resubmit an application for continued participation in the program.

Sec. 29.357.  PARTICIPATION IN PROGRAM. To receive funding under the program, a parent of a child participating in the program must 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; or

(B)  the date established by the comptroller by which the child must 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) 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 allow for the submission of applications on a rolling basis.

(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, demonstrates:

(A)  accreditation by an organization recognized by:

(i)  the Texas Private School Accreditation Commission; or

(ii)  the agency; and

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

(2)  for a public school, demonstrates:

(A)  accreditation by the agency; 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 the agency, an organization recognized by the agency, 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; or

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

(c)  The comptroller shall 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. 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)  An education service provider or vendor of educational products shall provide information requested by the comptroller to verify the provider's or vendor's eligibility for preapproval under Subsection (b). The comptroller may not approve a provider or vendor if the comptroller cannot verify the provider's or vendor's eligibility for preapproval.

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

(f)  This section may not be construed to allow a learning pod, as defined by Section 27.001, 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) Subject to Subsection (b), money received under the program may 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)  Money received under the program may not be 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, Government Code.

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

Sec. 29.360.  PROGRAM EXPENDITURES. (a) The comptroller shall 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)  To initiate payment to an education service provider or vendor of educational products for an education-related expense approved under Section 29.359, the parent of a child participating in the program must submit a request in a form prescribed by comptroller rule to the certified educational assistance organization that serves the child.

(c)  Subject to Subsection (d) and Sections 29.362(h) and 29.364, on receiving a request under Subsection (b), a certified educational assistance organization shall 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)  A disbursement under this section may not exceed the applicable program participant's account balance.

(e)  A certified educational assistance organization shall 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) Regardless of the quarterly deadline by which the parent applies for enrollment in the program under Section 29.356(a), a parent of a child participating in the program shall 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)  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 from the available school fund or instructional materials and technology fund.

(e)  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)  Not later than May 1 of each year, the agency shall submit to the comptroller the data necessary to calculate the amount specified under Subsection (a).

Sec. 29.362.  ADMINISTRATION OF ACCOUNTS. (a)  On receipt of money distributed by the comptroller for purposes of making payments to program participants, a certified educational assistance organization shall 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)  Each year, the comptroller may 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)  Not later than the first day of the month preceding the start of each quarter, each certified educational assistance organization shall 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)  Each quarter, the comptroller shall 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 (e). The total amount disbursed to a certified educational assistance organization under this subsection for a state fiscal year may not exceed five percent of the amount distributed to the organization under the program for that fiscal year.

(e)  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)  On or before the first day of October and February, a certified educational assistance organization shall:

(1)  verify with the agency 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)  The comptroller by rule shall 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)  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, the child's account shall be closed and any remaining money returned to the comptroller for deposit in the program fund.

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

Sec. 29.363.  AUDITING. (a) The comptroller shall 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. The audit must 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)  In conducting an audit, the private entity may require a program participant or a certified educational assistance organization to provide information and documentation regarding any transaction occurring under the program.

(c)  The private entity shall 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. The comptroller shall 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) The comptroller shall 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)  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 30 business days to respond and take any corrective action required by the comptroller.

(c)  On the expiration of the 30-day period under Subsection (b), the comptroller shall:

(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)  The comptroller may 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. The money may be recovered from the program participant or the entity that received the money in accordance with Subtitles A and B, Title 2, Tax Code, or as provided by other law if the program participant's account is suspended or closed under this section. The comptroller shall deposit money recovered under this subsection to the credit of the program fund.

Sec. 29.365.  TUITION AND FEES; REFUND PROHIBITED. (a) An education service provider or vendor of educational products may not charge 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)  An education service provider or 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 DISTRICT ATTORNEY. 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, the comptroller shall 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) A certified educational assistance organization shall 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.

(b)  A private school in which a child with a disability who is a program participant 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 a recipient of federal financial assistance and may not be considered to be an agent of state government on the basis of receiving that money.

(b)  A rule adopted or other governmental action taken related to the program may not impose 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) 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)  As necessary to verify a child's eligibility for the program, the agency, a school district, or an open-enrollment charter school shall provide to a certified educational assistance organization any information available to the agency, 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. 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.

(c)  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)  shall comply with state and federal law regarding the confidentiality of student educational information; and

(2)  may not sell or otherwise distribute information regarding a child participating in the program.

Sec. 29.370.  GIFTS, GRANTS, AND DONATIONS. The comptroller and a certified educational assistance organization 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 establishing the program and contracting for the report required under Section 29.371.

Sec. 29.371.  ANNUAL REPORT. (a) The comptroller shall 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, 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)  In producing the report, each certified educational assistance organization shall:

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

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

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

Sec. 29.373.  APPEAL; JUDICIAL REVIEW. (a) A program participant may 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)  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 may 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) A program participant, education service provider, or vendor of educational products may intervene in any civil action challenging the constitutionality of the program.

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

SECTION 3.  Section 22.092(d), Education Code, is amended to read as follows:

(d)  The agency shall provide equivalent access to the registry maintained under this section to:

(1)  private schools;

(2)  public schools; [~~and~~]

(3)  nonprofit teacher organizations approved by the commissioner for the purpose of participating in the tutoring program established under Section 33.913; 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.  Section 411.109, Government Code, is amended by adding Subsection (b-1) and amending Subsection (c) to read as follows:

(b-1)  The comptroller is entitled 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)  Subject to Section 411.087 and consistent with the public policy of this state, the comptroller is entitled 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 Subsection (a), [~~or~~] (b), or (b-1); and

(2)  obtain from the department or any other criminal justice agency in this state criminal history record information maintained by the department or that criminal justice agency that relates to a person described by Subsection (a), [~~or~~] (b), or (b-1).

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

SECTION 6.  (a) Not later than May 15, 2024, the comptroller of public accounts shall adopt rules as provided by Section 29.372, Education Code, as added by this Act.

(b)  The comptroller of public accounts may identify rules required by the passage of Subchapter J, Chapter 29, Education Code, as added by this Act, that must be adopted on an emergency basis for purposes of the 2024-2025 school year and may use the procedures established under Section 2001.034, Government Code, for adopting those rules. The comptroller of public accounts is not required to make the finding described by Section 2001.034(a), Government Code, to adopt emergency rules under this subsection.

SECTION 7.  (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, may be determined in an action for declaratory judgment under Chapter 37, 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)  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, may be reviewed only by direct appeal to the Texas Supreme Court filed not later than the 15th business day after the date on which the order was entered. The Texas Supreme Court shall give precedence to appeals under this section over other matters.

(c)  The direct appeal is an accelerated appeal.

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

(e)  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;

(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)  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)  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.

(h)  This section does not authorize a taxpayer suit to contest the denial of a tax credit by the comptroller of public accounts.

SECTION 8.  It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act to each person or entity, is severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected.

SECTION 9.  This Act takes effect on the 91st day after the last day of the legislative session.

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