88S40601 MM-F

By:  Jetton H.B. No. 115

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)  "Approved educational assistance organization" means an organization approved under Section 29.354 to support the administration of the program.

(3)  "Approved education-related expense" means an expense approved under Section 29.359.

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

(5)  "Cocurricular activity" means an activity that directly adds value to classroom instruction and curriculum, including an academic field trip, performance, contest, or display. The term does not include an athletic or other nonacademic activity.

(6)  "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.

(7)  "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.

(8)  "Program" means the program established under this subchapter.

(9)  "Program participant" means a child and 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 APPROVED EDUCATIONAL ASSISTANCE ORGANIZATIONS. (a) An organization may apply to the comptroller for approval as an approved educational assistance organization during an application period established by the comptroller.

(b)  To be eligible for approval, an organization must:

(1)  have the ability to perform the duties and functions required of an approved 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 education service providers and vendors of educational products, including by developing and maintaining an Internet website with information regarding those providers and vendors; and

(C)  accept and process payments for approved education-related expenses.

(c)  The comptroller may approve not more than five educational assistance organizations to support the administration of the program.

Sec. 29.355.  ELIGIBLE CHILD. (a) A child is eligible to participate in the program if the child is eligible to:

(1)  attend a public school under Section 25.001; or

(2)  enroll in a public school's prekindergarten program under Section 29.153.

(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 an approved educational assistance organization to enroll the child in the program for the following semester. The comptroller shall establish semiannual 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, an approved educational assistance organization shall, at the direction of the comptroller and subject to Subsection (c), fill the available positions by lottery in the following order:

(1)  siblings of children participating in the program;

(2)  children with a disability who are educationally disadvantaged;

(3)  children who are educationally disadvantaged;

(4)  children with a disability who are not educationally disadvantaged; and

(5)  applicants not described by Subdivision (1), (2), (3), or (4).

(c)  In filling available positions under Subsection (b), if a sibling of a child accepted into the program under that subsection applied to enroll in the program during the same application period in which the child was accepted, an approved educational assistance organization shall, subject to the availability of positions, concurrently accept the child and the child's sibling into the program.

(d)  The comptroller shall create an application form for the program. The application form must state the semiannual application deadlines established under Subsection (a).

(e)  Each approved educational assistance organization shall:

(1)  make the application form readily available through various sources, including the organization's Internet website; and

(2)  ensure that the application form, including any required supporting document, is capable of being submitted to the organization electronically.

(f)  An approved educational assistance organization shall post on the organization's Internet website an applicant and participant handbook with a description of the program, including information regarding:

(1)  approved education-related expenses;

(2)  the assistance the organization provides with respect to finding and selecting education service providers and vendors of educational products;

(3)  the application process under this section;

(4)  the program expenditures process under Section 29.360; and

(5)  the responsibilities of program participants.

(g)  An approved educational assistance organization shall annually provide to the parent of each child participating in the program the information described by Subsection (f). The organization may provide the information electronically.

(h)  An approved educational assistance organization:

(1)  may require the parent of a child participating in the program for whom the organization is responsible 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.

(i)  Not later than the 30th day after the date on which an approved educational assistance organization requires notice to be submitted under Subsection (h)(1), the organization shall notify the comptroller and each other approved educational assistance organization regarding each notice received under that subdivision.

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)  use money in the child's account only for approved education-related expenses;

(2)  share or authorize the administrator of an assessment instrument to share with the program participant's approved educational assistance organization and the researchers contracted under Section 29.371 the results of any assessment instrument required to be administered to the child under Section 29.358(b)(1)(B);

(3)  refrain from selling an item purchased with program money before the first anniversary of the purchase date; and

(4)  notify the program participant's approved educational assistance organization not later than the 30th day after the date on which the child:

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

(B)  graduates from high school; or

(C)  is no longer eligible to either:

(i)  enroll in a public school under Section 25.001; or

(ii)  enroll in a public school's prekindergarten program under Section 29.153.

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)  in each grade level and subject area in which an assessment instrument is required to be administered under Section 39.023(a)(1), (2), (3), or (4) or (c), 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:

(A)  demonstrates that 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 provides to the comptroller a national criminal history record information review completed by the tutor, therapist, or employee, as applicable, 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:

(i)  required to be discharged or refused to be hired by a school district under Section 22.085; or

(ii)  included in the registry under Section 22.092;

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

(5)  for a provider or vendor not described by Subdivision (1), (2), (3), or (4):

(A)  demonstrates the ability to provide to program participants services or products that are approved education-related expenses;

(B)  requires each employee of the provider or vendor who intends to provide educational services to a child participating in the program to provide to the comptroller a national criminal history record information review completed by the employee within a period established by comptroller rule; and

(C)  demonstrates that each employee of the provider or vendor who intends to provide educational services to a child participating in the program is not:

(i)  required to be discharged or refused to be hired by a school district under Section 22.085; or

(ii)  included in the registry under Section 22.092.

(c)  In recognizing an organization for purposes of Subsection (b)(1)(A)(ii), the agency shall ensure that the organization, through the organization's accreditation standards, supports the college, career, and military readiness of children participating in the program, including by coordinating with the Tri-Agency Workforce Initiative established under Chapter 2308A, Government Code.

(d)  The comptroller shall review the national criminal history record information or documentation for each private tutor, therapist, teaching service employee, or other employee of an education service provider or vendor of educational products 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, service, or other provider or vendor must provide the comptroller with any information requested by the comptroller to enable the comptroller to complete the review.

(e)  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.

(f)  A preapproved education service provider or vendor of educational products that no longer meets the requirements of this section must notify the comptroller, each approved educational assistance organization, and each program participant served by the provider or vendor under the program not later than the 15th day after the date that the provider or vendor no longer meets the requirements. The notice must include the reason the provider or vendor no longer meets the requirements of this section. The comptroller shall adopt a form for use under this subsection.

(g)  The comptroller shall by rule prohibit an education service provider or vendor of educational products that is not preapproved under Subsection (a) from receiving payment directly from a program participant's account for an approved education-related expense, including an expense incurred after the date on which a formerly preapproved provider or vendor no longer meets the requirements of this section.

Sec. 29.359.  APPROVED EDUCATION-RELATED EXPENSES. (a) Subject to Subsection (b), money in an account may be used only for the following education-related expenses incurred by a child participating in the program:

(1)  tuition and fees for a private school, higher education provider, or educational course or program;

(2)  the purchase of textbooks or other instructional materials;

(3)  uniforms required by a school, higher education provider, course, or program in which the child is enrolled;

(4)  costs related to cocurricular activities;

(5)  costs related to academic assessments;

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

(7)  fees for classes or other educational services provided by a public school, including an open-enrollment charter school, if the classes or services do not qualify the child to be included in the school's average daily attendance;

(8)  for a child with a disability, costs of computer hardware and software and other technological devices prescribed by a physician to facilitate a child's education, not to exceed in any year 10 percent of the total amount paid to the program participant's account that year;

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

(10)  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 in an account 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 approved 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 a preapproved education service provider or vendor of educational products for an approved education-related expense, the parent of a child participating in the program must submit a request in a form prescribed by comptroller rule to the approved educational assistance organization that serves the child.

(c)  Subject to Subsection (e) and Sections 29.362(g) and 29.364, on receiving a request under Subsection (b), an approved educational assistance organization shall verify that the request is for an approved education-related expense and, not later than the fifth business day after the date the organization verifies the request, send payment to the education service provider or vendor of educational products.

(d)  Notwithstanding Subsection (b), each approved educational assistance organization shall establish a process by which the parent of a child participating in the program who makes a payment for an approved education-related expense using money other than money in the child's account may request reimbursement for the expense from the child's account. The organization may require the use of an online platform for purposes of requesting reimbursement.

(e)  A disbursement under this section may not exceed the applicable program participant's account balance.

(f)  An approved 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 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 to the child's account in a total amount equal to the sum of:

(1)  the state average maintenance and operations revenue per student in average daily attendance for the preceding state fiscal year; and

(2)  for a child who was a child with a disability at the time the child was initially determined to be eligible for enrollment in the program, the greater of:

(A)  $1,500; or

(B)  if applicable, the amount the school district in which the child was previously enrolled was entitled to receive for the child under Chapter 48 based on the child's participation in the district's special education program for the most recent school year in which the child participated in that program, as determined by commissioner rule, including any funding based on the intensity of service or service group for which the child qualified and excluding any amount attributable to:

(i)  the basic allotment under Section 48.051 for time the child spent in a general education setting; or

(ii)  the allotment under Section 48.101.

(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 is entitled to make payments for the expenses of educational programs, services, and products using money other than 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, an approved educational assistance organization shall make semiannual 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 and January.

(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 approved 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 approved 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 approved educational assistance organizations under this subsection for a state fiscal year may not exceed five percent of the amount appropriated for purposes of this subchapter for that fiscal year.

(e)  Subject to the limitation under Subsection (d), the amount of an approved educational assistance organization's disbursement under that subsection is the lesser of:

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

(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.

(f)  On or before the first day of October and February, an approved 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; and

(2)  notify the comptroller if the organization determines that a child participating in the program is 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.

(g)  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 approved education-related expenses 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.

(h)  Each quarter, any interest or other earnings attributable to money held by an approved 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) Subject to Subsection (b), the state auditor:

(1)  shall audit the comptroller and each approved educational assistance organization with respect to the program's operation at least once each state fiscal biennium; and

(2)  may audit accounts to ensure compliance with this subchapter.

(b)  Work performed under this section by the state auditor is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code.

Sec. 29.364.  SUSPENSION OF ACCOUNT. (a) An approved educational assistance organization 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. Not later than the fifth business day after the date on which the organization suspends an account, the organization shall notify the comptroller that the account has been suspended.

(b)  On suspension of an account under Subsection (a), the approved educational assistance organization 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 to comply with this subchapter.

(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)  A payment to a preapproved education service provider or vendor of educational products for an approved education-related expense initiated under Section 29.360(b) before an account is suspended under this section may not be denied on the basis of the suspension.

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 an approved educational assistance organization, education service provider, vendor of educational products, or program participant, the comptroller shall notify the appropriate local county or district attorney with jurisdiction over the principal place of business of the organization, provider, or vendor or the residence of the program participant, as applicable.

Sec. 29.367.  SPECIAL EDUCATION NOTICE. (a) An approved educational assistance organization shall post on the organization's Internet website 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, including an action taken by an approved educational assistance organization, 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 attends or previously attended 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 requested, 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 the state auditor and an approved educational assistance organization any information available to the agency, district, or school 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 state auditor and 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)  An approved 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:

(A)  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); and

(B)  state 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 an approved 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 contract with one or more qualified researchers employed by a higher education provider to compile and publish program data and produce an annual longitudinal report regarding:

(1)  the number of program applications received, accepted, and waitlisted, 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, availability, and quality;

(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 the researcher, the number and percentage of children who participated in the program and, 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 the 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 program data and the report, a researcher 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 the five most recent school years and include, subject to Subsection (b)(2), the data analyzed and methodology used.

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

(e)  To the extent consistent with state and federal law regarding the confidentiality of student educational information, the program data and report are public information under Chapter 552, Government Code.

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 an approved 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 an approved 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) to read as follows:

(b-1)  The comptroller is entitled to obtain criminal history record information maintained by the department about a person who is a private tutor, a therapist, or an employee of a teaching service, school, or other education service provider or vendor of educational products who intends to provide educational services to a child participating in the program established under Subchapter J, Chapter 29, Education Code, and is seeking approval to receive money distributed under that program.

SECTION 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 February 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 immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.