By:  Paxton S.B. No. 2483

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.  This Act may be cited as the Parent Empowerment Act.

SECTION 2.  The purpose of this Act is to provide families with additional educational options to assist in exercising their right to direct the educational needs of their children and achieve a general diffusion of knowledge.

SECTION 3.  Chapter 26, Education Code, is amended by adding Section 26.0025 to read as follows:

Sec. 26.0025.  RIGHT TO SELECT PUBLIC OR PRIVATE EDUCATION. (a) A parent or guardian is entitled to choose the educational setting for the parent or guardian's child, whether public or private.

(b)  If a parent or guardian chooses a private educational setting for the child, funding shall be directed to the child as provided in the manner described by Subchapter J, Chapter 29.

SECTION 4.  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 this subchapter.

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

(3)  "Cocurricular activity" means an activity that directly adds value to classroom instruction and curriculum, including academic field trips, performances, contests, demonstrations, and displays. Cocurricular activities are distinct from extracurricular activities, which include athletic and nonacademic activities.

(4)  "Education service provider" or "vendor of educational products" means a person who supplies goods or services listed under Section 29.360(a).

(5)  "Higher education provider" includes entities described by Sections 61.003(6) and (8) and accredited private postsecondary institutions that are exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)).

(6)  "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.

(7)  "Program" means the Education Savings Account program established under this subchapter.

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

Sec. 29.352.  PURPOSE. The purpose of this subchapter is to provide families with additional educational options to assist in exercising their right to direct the educational needs of their children.

Sec. 29.353.  ESTABLISHMENT OF PROGRAM. The comptroller shall establish an Education Savings Account program to provide funding for approved education-related expenses of program participants.

Sec. 29.354.  EDUCATION SAVINGS ACCOUNT PROGRAM FUND. (a) The Education Savings Account 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 to the comptroller only for purposes of making payments to program participants and administering the program under this subchapter.

Sec. 29.355.  SELECTION OF CERTIFIED EDUCATIONAL ASSISTANCE ORGANIZATION. (a) An organization may apply to the comptroller for certification as a certified educational assistance organization during an application period established by the comptroller. The comptroller may certify one or more educational assistance organizations to assist in administering the program.

(b)  To be eligible for certification, the applicant for certification as a certified educational assistance organization must:

(1)  be able 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 having the ability to:

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

(B)  help prospective applicants, applicants, and program participants find preapproved education service providers and vendors of educational products; and

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

(c)  A certified educational assistance organization shall assist the comptroller in administering the program, including by:

(1)  administering the application process in Section 29.357;

(2)  helping prospective applicants, applicants, and program participants understand eligible expenses and find preapproved education service providers and vendors of educational products;

(3)  expending the funds in a program participant's account only for purposes approved under Section 29.360; and

(4)  publishing data and an annual report regarding:

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

(B)  program participant satisfaction;

(C)  assessment results reported under Section 29.358(2); and

(D)  the number and percentage of program participants who, within one year after graduating from high school, are:

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

(ii)  career ready, as indicated by earning a credential listed in the credential library established by the Texas Workforce Commission and the Texas Higher Education Coordinating Board under Section 2308A.007, Government Code, or employment at or above the median wage in the graduate's region; or

(iii)  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.

Sec. 29.356.  ELIGIBLE CHILD. (a) A child is eligible to participate in the program if the child is eligible to attend a public school under Section 25.001 or 29.153(b).

(b)  A child who establishes eligibility under this section may participate in the program until the earliest date on which the child:

(1)  graduates from high school;

(2)  is no longer eligible to attend a public school under Section 25.001 or 29.153(b);

(3)  is entitled to the benefits of the Foundation School Program through enrollment in a public school; or

(4)  is declared ineligible for the program by the comptroller under this subchapter.

Sec. 29.357.  APPLICATION TO PROGRAM. (a) For the admission of applicants to the program, a certified educational assistance organization shall:

(1)  require an applicant to complete and submit an application form not later than a reasonable biennial deadline established by the certified educational assistance organization; and

(2)  on receipt of more acceptable applications for admission under this section than available positions in the program due to funding, prioritize students who are eligible for the free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq.

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

(c)  A certified educational assistance organization shall post on the organization's Internet website an applicant and program participant handbook that describes the program, including:

(1)  expenses allowed;

(2)  preapproved education service providers and vendors of educational products;

(3)  expense reporting requirements; and

(4)  program participant responsibilities.

(d)  A certified educational assistance organization shall annually provide to each program participant the information required under Subsection (c). The information may be provided electronically.

(e)  A program participant in good standing may not be required to resubmit an application for continued participation in the program each year.

(f)  A program participant may appeal any administrative decision made by the comptroller or a certified educational assistance organization pursuant to this subchapter, including enrollment eligibility, determinations of allowable expenses, or removal of the participant from the program.

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

(1)  spend program funds only for expenses allowed under Section 29.360;

(2)  share with the certified educational assistance organization the results of assessments required under Section 29.359(b)(1)(B);

(3)  not sell items purchased under Section 29.360(a)(2) until 12 months after the purchase; and

(4)  notify the certified educational assistance organization not later than 30 days after the date on which the child:

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

(B)  graduates from high school; or

(C)  is no longer eligible to enroll in a public school under Section 25.001 or 29.153(b).

Sec. 29.359.  PREAPPROVED PROVIDERS. (a) The comptroller shall by rule establish a process for the preapproval of education service providers and vendors of educational products for participation in the program. The comptroller shall require applicants to complete and submit an application form not later than a reasonable quarterly deadline.

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

(1)  for a school, the school demonstrates:

(A)  accreditation by:

(i)  the agency;

(ii)  an organization recognized by the agency; or

(iii)  an organization recognized by the Texas Private School Accreditation Commission; and

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

(2)  for a private tutor, therapist, or teaching service, the applicant demonstrates that:

(A)  the tutor or therapist or each employee who will provide services to a program participant:

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

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

(iii)  is employed in a teaching or tutoring capacity by a higher education provider;

(B)  the tutor or therapist or each employee who will provide services to a program participant either:

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

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

(C)  the tutor or therapist or each employee who will provide services to a program participant is not listed on the registry maintained under Section 22.092; or

(3)  for a higher education provider, the provider demonstrates postsecondary accreditation.

(c)  For each private tutor, therapist, or teaching service who submits an application, the comptroller shall:

(1)  review the national criminal history record information or documentation; and

(2)  verify that the applicant is not listed on the registry maintained under Section 22.092.

(d)  If requested by the comptroller, applicants may provide information to enable verification of eligibility for preapproval. Applicants whose eligibility cannot be verified under Subsection (b) may not be preapproved for participation in the program.

(e)  Subject to Sections 29.362(e) and 29.364, at a program participant's direction, the comptroller shall disburse to preapproved providers payments directly from the participant's account. Disbursements may not exceed the participant's account balance.

(f)  The comptroller shall by rule establish a process by which:

(1)  program participants may be efficiently reimbursed for eligible expenses under Section 29.360(a)(2), (4), (5), (6), or (7) incurred from education service providers and vendors of educational products that are not preapproved under Subsection (a); and

(2)  frequently utilized education service providers and vendors of educational products under Subsection (f)(1) that are in good standing for three continuous school years may receive payment directly from Education Savings Accounts.

Sec. 29.360.  APPROVED EDUCATION-RELATED EXPENSES. (a) Accounts may be used only for the following expenses incurred by a program participant:

(1)  tuition and fees at a preapproved school or higher education provider;

(2)  textbooks, other instructional materials, or uniforms required by a program participant's school, institution, course, or program;

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

(4)  academic assessments;

(5)  fees for educational therapies or services for which the program participant may not be reimbursed or is partially reimbursed by private insurance or federal, state, or local government benefits at the time of receiving the therapies or services;

(6)  fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider or vendor of educational products; and

(7)  cocurricular activities.

(b)  Money received under the program may not be used to pay any person who is a member of the program participant's household.

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

Sec. 29.361.  AMOUNT OF PAYMENT; FINANCING. (a) From funds available under Section 29.354, the comptroller shall:

(1)  deposit into each program participant's account an amount that is equal to the statewide average state and local public school maintenance and operations revenue per student in average daily attendance for the prior school year; and

(2)  reserve equal portions of funds for students who might apply by each biennial deadline established under Section 29.357(a).

(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 ability of program participants to purchase educational programs, services, or products with their own account funds may not be infringed.

(d)  The Education Savings Account program fund may not receive federal revenue or revenue from the available school fund.

(e)  Not later than November 1 of each even-numbered year, the comptroller shall submit to the legislature a summary of program participant enrollment, an estimate of the savings accruing to the state as a result of the program, and an estimate of the total amount of funding required for the program for the following state fiscal biennium.

(f)  Account funds received by program participants do not constitute taxable income to the parent of the participating student.

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

(b)  Each year, the comptroller may deduct an amount from the total amount of money allocated to the Education Savings Account program fund to cover the cost of administering the program. The amount deducted may not exceed three percent of annual program funds.

(c)  Each quarter, the comptroller shall disburse to a certified educational assistance organization an amount from the total amount of money allocated to the Education Savings Account program fund to cover the organization's cost of administering the program. The amount disbursed each year may not exceed five percent of annual program funds.

(d)  Before payments are made under Subsection (a) in October and April, the certified educational assistance organization shall:

(1)  verify with the agency that a program participant is not entitled to the benefits of the Foundation School Program through enrollment in a public school; and

(2)  notify the comptroller if the organization determines that a program participant is enrolled in a public school, including an open-enrollment charter school, and entitled to the benefits of the Foundation School Program.

(e)  On the date on which a program participant is no longer eligible to participate in the program under Section 29.356, the comptroller shall close the program participant's account and return any remaining revenue to the Education Savings Account program fund.

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

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

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

(1)  certified educational assistance organization;

(2)  education service provider or vendor of educational products, as applicable; and

(3)  parents of affected program participants.

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 program requirements.

(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 30th business day 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)  If the program participant's account is suspended or closed under this section, the comptroller may recover from the participant or other entity money distributed to the account that was used for expenses not allowed under Section 29.360.

Sec. 29.365.  TUITION AND FEES; REFUND PROHIBITED. (a)  An education service provider or vendor of educational products may not charge a program participant an amount greater than the amount charged for that product or service by the provider or vendor to an individual who is not a program participant.

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

Sec. 29.366.  REFERRAL TO DISTRICT ATTORNEY. If the comptroller or a certified educational assistance organization obtains evidence of fraudulent use of an account, the comptroller or organization shall notify the district attorney with jurisdiction over the residence of the program participant.

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)  a private school is not subject in the same manner as a public school to federal and state laws regarding the provision of educational services to a child with a disability; 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 program participant with a disability 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) Receiving funds from the program does not make an education service provider or vendor of educational products a recipient of federal financial assistance.

(b)  A rule or other action by any person, governmental body, court of law, or administrator of the program shall not, in any matter related to the program:

(1)  limit the independence or autonomy of an education service provider;

(2)  deem the actions of an education service provider to be the actions of the state government or make the education service provider a state actor;

(3)  impose any additional regulation on education service providers beyond those necessary to enforce the requirements of the program;

(4)  require an education service provider to modify its creed, practices, admissions policies, curriculum, performance standards, employment policies, or assessments to accept recipients of funds from the program;

(5)  take any action that limits an education service provider in determining how to educate its students or in exercising its religious or institutional values; or

(6)  take any action that imposes an obligation on the education service provider to act contrary to its religious or institutional values.

(c)  With regard to a program participant who is not enrolled in an accredited school, a rule or other action by any person, governmental body, court of law, or administrator of the program may not, in any matter related to the program:

(1)  limit the independence or autonomy of the program participant;

(2)  deem the actions of the program participant to be the actions of the state government or make the program participant a state actor;

(3)  impose any additional regulation on the program participant beyond what is necessary to enforce the requirements of the program;

(4)  require the program participant to modify their creed, practices, admissions policies, curriculum, performance standards, employment policies, or assessments to accept recipients of funds from the program;

(5)  take any action that limits the program participant in determining their educational content or in exercising religious values; or

(6)  take any action that imposes an obligation on the program participant to act contrary to their religious values.

(d)  In any proceeding challenging a rule adopted under the authority of or related to this subchapter, the state agency, officer, or other person adopting the rule has the burden of proof to establish by clear and convincing evidence that the rule:

(1)  is necessary to implement the program;

(2)  does not violate this section;

(3)  does not impose an undue burden on a program participant or an education service provider or vendor of educational products that participates or applies to participate in the program; and

(4)  is the least restrictive means of accomplishing the intended purposes, while at the same time recognizing the independence of education service providers or vendors of educational products to meet the educational needs of their students in accordance with their religious or institutional values.

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 or is seeking to attend.

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

Sec. 29.370.  GIFTS, GRANTS, AND DONATIONS. The comptroller 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 program, including establishing the program.

Sec. 29.371.  RULES; PROCEDURES. (a) The comptroller shall adopt rules and procedures as necessary to implement, administer, and enforce this subchapter. The comptroller may adopt the initial rules in the manner provided by law for emergency rules.

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

Sec. 29.372.  RULES; PROCEDURES. The comptroller shall adopt rules and procedures as necessary to implement, administer, and enforce this subchapter. The comptroller may adopt the initial rules in the manner provided by law for emergency rules.

Sec. 29.373.  PARENTAL AND STUDENT RIGHT TO INTERVENE IN CIVIL ACTION. (a) A child, a parent, and education service providers or vendors of educational products who are eligible to participate in the program 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 children and parents of children who are eligible to participate in the program wishing to intervene in the action file a joint brief. Children and parents of children who are eligible to participate in the program may not be required to join a brief filed on behalf of the state or a state agency.

Sec. 29.374.  VENUE, STANDING, AND PROCEDURE IN LEGAL PROCEEDINGS CONCERNING THE PROGRAM. (a)  Any question regarding the constitutionality or other validity under the state or federal constitution of all or any part of this subchapter may be determined in any state district court in which the violation is alleged to have occurred or where the claimant resides or has its principal place of business.

(b)  An organization or parent of an eligible child who is adversely affected or aggrieved by a determination or order made by the comptroller or a certified educational assistance organization under this subchapter may obtain a review of such determination or order in any state district court in which the child resides or where the organization has its principal place of business.

(c)  An order or judgment, 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 this subchapter may be reviewed only by direct appeal to the Supreme Court of Texas filed not later than the 15th day after entry of the order or judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters. Such a direct appeal is an accelerated appeal.

(d)  The filing of a direct appeal under this section will automatically stay any temporary or otherwise interlocutory injunction or permanent injunction pending final determination by the Supreme Court of Texas, 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 legal remedy; and

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

(e)  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.

(f)  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.

SECTION 5.  Section 411.109, Government Code, is amended by adding Subsection (c) to read as follows:

(c)  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 or school who intends to provide educational services to a child participating in the program established under Subchapter J, Chapter 29, Education Code.

SECTION 6.  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 as required under Section 29.359.

SECTION 7.  Not later than November 15, 2023, the comptroller of public accounts shall adopt rules as provided by Section 29.372, Education Code, as added by this Act.

SECTION 8.  The comptroller of public accounts is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose or funds are provided through gifts, grants, or donations. If the legislature does not appropriate money specifically for that purpose and funds are not provided through gifts, grants, or donations, the comptroller may, but is not required to, implement this Act using other appropriations available for that purpose.

SECTION 9.  (a)  Any question regarding the constitutionality or 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 any state district court in which the violation is alleged to have occurred or where the claimant resides or has its principal place of business.

(b)  An organization or parent of an eligible child who is adversely affected or aggrieved by a determination or order made by the comptroller or a certified educational assistance organization under Subchapter J, Chapter 29, Education Code, as added by this Act may obtain a review of such order in any state district court in which the child resides or where the organization has its principal place of business.

(c)  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 Supreme Court of Texas filed within 15 days after entry of judgment. All appeals shall be heard and determined by the district court and the Supreme Court of Texas as expeditiously as possible with lawful precedence over other matters.

(d)  The direct appeal is an accelerated appeal.

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

(f)  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 legal remedy; and

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

(g)  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.

(h)  This section does not authorize an award of attorneys' fees against this state and Section 37.009, Civil Practice and Remedies Code, does not apply to an action filed under this section.

SECTION 10.  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, are 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 11.  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 September 1, 2023.