

By: Frank

H.B. No. 4340

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the establishment of the Education Savings Account  
3 Program to allow certain children to use public money to pursue  
4 educational alternatives to public schools and an insurance premium  
5 tax credit for contributions made for purposes of that program.

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

7 SECTION 1. The purpose of this Act is to provide additional  
8 educational options to assist families in this state in exercising  
9 the right to direct the education of their children.

10 SECTION 2. Chapter 29, Education Code, is amended by adding  
11 Subchapter J to read as follows:

12 SUBCHAPTER J. EDUCATION SAVINGS ACCOUNT PROGRAM

13 Sec. 29.351. DEFINITIONS. In this subchapter:

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

16 (2) "Certified educational assistance organization"  
17 means an educational assistance organization certified under  
18 Section 29.354 to assist in administering the program.

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

22 (4) "Cocurricular activity" means an activity that  
23 directly adds value to classroom instruction and curriculum,  
24 including an academic field trip, performance, contest,

1 demonstration, or display. The term does not include an athletic or  
2 other nonacademic activity.

3 (5) "Higher education provider" means an institution  
4 of higher education or a private or independent institution of  
5 higher education, as those terms are defined by Section 61.003.

6 (6) "Parent" means a resident of this state who is a  
7 natural or adoptive parent, managing or possessory conservator,  
8 legal guardian, custodian, or other person with legal authority to  
9 act on behalf of a child.

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

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

14 Sec. 29.352. ESTABLISHMENT OF PROGRAM. The comptroller  
15 shall establish the Education Savings Account Program to provide  
16 funding for approved education-related expenses of program  
17 participants.

18 Sec. 29.353. EDUCATION SAVINGS ACCOUNT PROGRAM FUND. (a)  
19 The Education Savings Account Program fund is an account in the  
20 general revenue fund to be administered by the comptroller.

21 (b) The fund is composed of:

22 (1) general revenue transferred to the fund;

23 (2) money appropriated to the fund;

24 (3) gifts, grants, and donations received under  
25 Section 29.369;

26 (4) contributions to the fund for which an entity  
27 receives a credit against the entity's state premium tax liability

1 under Chapter 230, Insurance Code; and

2 (5) any other money available for purposes of the  
3 program.

4 (c) Money in the fund may be appropriated only to the  
5 comptroller for purposes of making payments to program participants  
6 and administering the program under this subchapter.

7 Sec. 29.354. SELECTION OF CERTIFIED EDUCATIONAL ASSISTANCE  
8 ORGANIZATION. (a) An organization may apply to the comptroller for  
9 certification as a certified educational assistance organization  
10 during an application period established by the comptroller.

11 (b) To be eligible for certification, the organization  
12 must:

13 (1) have the ability to perform the duties and  
14 functions required of a certified educational assistance  
15 organization under this subchapter;

16 (2) be in good standing with the state;

17 (3) be exempt from taxation under Section 501(a),  
18 Internal Revenue Code of 1986, as an organization described by  
19 Section 501(c)(3) of that code; and

20 (4) be able to assist the comptroller in administering  
21 the program, including the ability to:

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

24 (B) assist prospective applicants, applicants,  
25 and program participants with finding preapproved education  
26 service providers and vendors of educational products; and

27 (C) verify that program funding is used only for

1 approved education-related expenses.

2 (c) The comptroller shall certify one educational  
3 assistance organization to assist in administering the program,  
4 including by:

5 (1) administering the application process under  
6 Section 29.356;

7 (2) assisting prospective applicants, applicants, and  
8 program participants with understanding eligible expenses and  
9 finding preapproved education service providers and vendors of  
10 educational products;

11 (3) ensuring money in a program participant's account  
12 is used only for approved expenses under Section 29.359; and

13 (4) publishing data and an annual report regarding:

14 (A) the number of program applications received,  
15 accepted, and waitlisted;

16 (B) program participant satisfaction; and

17 (C) assessment results reported under Section  
18 29.357(2).

19 Sec. 29.355. ELIGIBLE CHILD. (a) A child is eligible to  
20 participate in the program if the child is eligible to attend a  
21 public school under Section 25.001 and either:

22 (1) was enrolled in a public school during the entire  
23 preceding school year; or

24 (2) is enrolling in kindergarten or first grade for  
25 the first time.

26 (b) A sibling of a child who is eligible to participate in  
27 the program under Subsection (a) is eligible to participate in the

1 program if the sibling is eligible to attend a public school under  
2 Section 25.001.

3 (c) A child who establishes eligibility under this section  
4 may participate in the program until the earliest of the following  
5 dates:

6 (1) the date on which the child graduates from high  
7 school;

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

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

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

14 Sec. 29.356. APPLICATION TO PROGRAM. (a) A parent of an  
15 eligible child may apply to the certified educational assistance  
16 organization to enroll the child in the program for the following  
17 school year. The certified educational assistance organization  
18 shall:

19 (1) establish a reasonable annual deadline by which an  
20 applicant must complete and submit an application form to  
21 participate in the program; and

22 (2) on receipt of more acceptable applications for  
23 admission under this section than available positions in the  
24 program due to insufficient funding, prioritize applicants who are:

25 (A) members of a household with a total annual  
26 income that is at or below 200 percent of the income guidelines  
27 necessary to qualify for the national free or reduced-price lunch

1 program established under 42 U.S.C. Section 1751 et seq;

2 (B) students with a disability; or

3 (C) students who are covered by Section 504,  
4 Rehabilitation Act of 1973 (29 U.S.C. Section 794).

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

12 (c) The certified educational assistance organization shall  
13 post on the organization's Internet website an applicant and  
14 participant handbook with a description of the program, including:

15 (1) expenses allowed under the program under Section  
16 29.359;

17 (2) a list of preapproved education service providers  
18 and vendors of educational products under Section 29.358;

19 (3) the organization's expense reporting  
20 requirements; and

21 (4) a description of the responsibilities of program  
22 participants.

23 (d) The certified educational assistance organization shall  
24 annually provide to each program participant the information  
25 described by Subsection (c). The organization may provide the  
26 information electronically.

27 (e) A parent of a child described by Section 29.355(a)(2)(B)

1 may submit an application for the eligible child and the child's  
2 sibling concurrently. The certified educational assistance  
3 organization shall consider concurrently the applications of  
4 siblings who apply by the date established by the organization  
5 under Subsection (a).

6 (f) The certified educational assistance organization may  
7 not require a program participant in good standing to annually  
8 resubmit an application for continued participation in the program.

9 Sec. 29.357. PARTICIPATION IN PROGRAM. To receive funding  
10 under the program, a parent of an eligible child must agree to:

11 (1) spend money received through the program only for  
12 expenses allowed under Section 29.359;

13 (2) share or authorize the administrator of an  
14 assessment instrument to share with the certified educational  
15 assistance organization the results of any assessment instrument  
16 required to be administered to the child under Section  
17 29.358(b)(1)(B) or other law;

18 (3) refrain from selling an item purchased with  
19 program money in accordance with Section 29.359(a)(2) until the end  
20 of the 12th month after the date the item is purchased; and

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

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

26 (B) graduates from high school; or

27 (C) is no longer eligible to enroll in a public

1 school under Section 25.001.

2 Sec. 29.358. APPROVED PROVIDERS. (a) The comptroller  
3 shall by rule establish a process for the preapproval of education  
4 service providers and vendors of educational products for  
5 participation in the program. The comptroller shall set a  
6 reasonable quarterly deadline by which a provider or vendor must  
7 submit an application.

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

11 (1) for a private school, demonstrates the school's  
12 qualification to serve program participants, including:

13 (A) accreditation by an organization recognized  
14 by the Texas Private School Accreditation Commission; and

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

18 (2) for a private tutor, therapist, or teaching  
19 service:

20 (A) demonstrates the tutor's, therapist's, or  
21 service's qualification to serve program participants, including  
22 that the tutor or therapist or each employee of the service who  
23 intends to provide services to a program participant:

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

26 (ii) holds a relevant license or  
27 accreditation issued by a state, regional, or national licensing or



1 accreditation organization; or

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

4 (B) the tutor or therapist or each employee of  
5 the teaching service who intends to provide educational services to  
6 a program participant either:

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

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

14 (C) the tutor or therapist or each employee of  
15 the teaching service who intends to provide educational services to  
16 a program participant is not included in the registry under Section  
17 22.092; or

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

20 (c) The comptroller shall review the national criminal  
21 history record information or documentation for each private tutor,  
22 therapist, or teaching service employee who submits information or  
23 documentation under this section and verify that the individual is  
24 not included in the registry under Section 22.092. The tutor,  
25 therapist, or service must provide the comptroller with any  
26 information requested by the comptroller to enable the comptroller  
27 to complete the review.

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

7       Sec. 29.359. APPROVED EDUCATION-RELATED EXPENSES. (a)  
8 Subject to Subsection (b), money received under the program may be  
9 used only for the following expenses incurred by a program  
10 participant at a preapproved education service provider or vendor  
11 of educational products:

12               (1) tuition and fees;

13               (2) the purchase of textbooks or other instructional  
14 materials or uniforms required by a school, higher education  
15 provider, course, or online educational course or program in which  
16 the child is enrolled;

17               (3) costs related to academic assessments;

18               (4) costs related to cocurricular activities;

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

23               (6) fees for educational therapies or services  
24 provided by a practitioner or provider, only for fees that are not  
25 covered by any federal, state, or local government benefits such as  
26 Medicaid or the Children's Health Insurance Program (CHIP) or by  
27 any private insurance that the child is enrolled in at the time of

1 receiving the therapies or services.

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

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

9 (d) Notwithstanding Subsection (a), the comptroller shall  
10 by rule establish a process by which:

11 (1) program participants may be efficiently  
12 reimbursed for expenses described by Subsection (a)(2), (3), (4),  
13 (5), or (6) incurred from an education service provider or vendor of  
14 educational products that is not preapproved under Section  
15 29.358(a); and

16 (2) frequently used providers and vendors described by  
17 Subdivision (1) that are in good standing for three continuous  
18 school years may receive payment directly from an account.

19 Sec. 29.360. AMOUNT OF PAYMENT; FINANCING. (a) A parent of  
20 an eligible child shall receive each year that the child  
21 participates in the program a payment from the state from funds  
22 available under Section 29.353 to the child's account in an amount  
23 equal to 90 percent of the state average maintenance and operations  
24 revenue per student in average daily attendance for the preceding  
25 state fiscal year.

26 (b) Any money remaining in a child's account at the end of a  
27 fiscal year is carried forward to the next fiscal year unless

1 another provision of this subchapter mandates the closure of the  
2 account.

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

6 (d) A payment under Subsection (a) may not be financed using  
7 federal money.

8 (e) Payments received under this subchapter do not  
9 constitute taxable income to the eligible student's parent, unless  
10 otherwise provided by federal law.

11 (f) Not later than November 1 of each even-numbered year,  
12 the comptroller shall submit to the legislature:

13 (1) a summary of participant enrollment in the  
14 program;

15 (2) the amount of cost savings accruing to the state as  
16 a result of the program; and

17 (3) an estimate of the total amount of funding  
18 required for the program for the following state fiscal biennium.

19 Sec. 29.361. ADMINISTRATION OF ACCOUNTS. (a) The  
20 comptroller shall make quarterly payments to each program  
21 participant's account in equal amounts on or before the first day of  
22 July, October, January, and April.

23 (b) The comptroller may deduct an amount from each quarterly  
24 payment to a program participant's account to cover the  
25 comptroller's cost of administering the program. The amount  
26 deducted may not exceed three percent of the payment.

27 (c) Each quarter, the comptroller shall disburse to the

1 certified educational assistance organization an amount from the  
2 total amount of money appropriated for purposes of this subchapter  
3 to cover the organization's cost of administering the program. The  
4 total amount disbursed to the certified educational assistance  
5 organization under this subsection for a fiscal year may not exceed  
6 five percent of the amount appropriated for purposes of this  
7 subchapter for that fiscal year.

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

11 (1) verify with the agency that each program  
12 participant is not enrolled in a public school, including an  
13 open-enrollment charter school; and

14 (2) notify the comptroller if the organization  
15 determines that a program participant is enrolled in a public  
16 school, including an open-enrollment charter school.

17 (e) On the date on which a child who participated in the  
18 program is no longer eligible to participate in the program under  
19 Section 29.355(b), the child's account is closed and any remaining  
20 money is returned to the state for deposit in the Education Savings  
21 Account Program fund.

22 Sec. 29.362. RANDOM AUDITING. (a) The comptroller may  
23 contract with a private entity to randomly audit accounts and the  
24 certified educational assistance organization as necessary to  
25 ensure compliance with applicable law and program requirements.

26 (b) In conducting an audit, the comptroller or private  
27 entity may require that a program participant or the certified

1 educational assistance organization provide additional information  
2 and documentation regarding any payment made under the program.

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

7 (1) the certified educational assistance  
8 organization;

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

11 (3) the parent of each child participating in the  
12 program who is affected by the violation.

13 Sec. 29.363. SUSPENSION OF ACCOUNT. (a) The comptroller  
14 shall suspend the account of a program participant who fails to  
15 remain in good standing by complying with applicable law or a  
16 requirement of the program.

17 (b) On suspension of an account under Subsection (a), the  
18 comptroller shall notify the program participant in writing that  
19 the account has been suspended and that no additional payments may  
20 be made from the account. The notification must specify the grounds  
21 for the suspension and state that the participant has 30 business  
22 days to respond and take any corrective action required by the  
23 comptroller.

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

26 (1) order closure of the suspended account;

27 (2) order temporary reinstatement of the account,

1 conditioned on the performance of a specified action by the program  
2 participant; or

3 (3) order full reinstatement of the account.

4 (d) The comptroller may recover money distributed under the  
5 program that was used for expenses not allowed under Section 29.359  
6 from the program participant or the entity that received the money  
7 if the program participant's account is suspended or closed under  
8 this section.

9 Sec. 29.364. TUITION AND FEES; REFUND PROHIBITED. (a) An  
10 education service provider or vendor of educational products may  
11 not charge a child participating in the program an amount greater  
12 than the amount charged for that service by the provider or vendor.

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

18 Sec. 29.365. REFERRAL TO DISTRICT ATTORNEY. If the  
19 comptroller or the certified educational assistance organization  
20 obtains evidence of fraudulent use of an account, the comptroller  
21 or organization shall notify the appropriate local county or  
22 district attorney with jurisdiction over the residence of the  
23 program participant.

24 Sec. 29.366. SPECIAL EDUCATION NOTICE. (a) The certified  
25 educational assistance organization shall post on the  
26 organization's Internet website and provide to each parent who  
27 submits an application for the program a notice that:

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

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

8                   (A) rights provided under the Individuals with  
9 Disabilities Education Act (20 U.S.C. Section 1400 et seq.); and

10                   (B) rights provided under Subchapter A.

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

14           Sec. 29.367. PROGRAM PARTICIPANT, PROVIDER, AND VENDOR  
15 AUTONOMY. (a) An education service provider or vendor of  
16 educational products that receives money distributed under the  
17 program is not a recipient of federal financial assistance on the  
18 basis of receiving that money.

19           (b) A rule adopted or action taken related to the program by  
20 an individual, governmental entity, court of law, or program  
21 administrator may not:

22                   (1) limit the independence or autonomy of an education  
23 service provider, vendor of educational products, or program  
24 participant;

25                   (2) consider the actions of an education service  
26 provider, vendor of educational products, or program participant to  
27 be the actions of an agent of state government;



1           (3) limit:

2                   (A) an education service provider's ability to  
3 determine the methods used to educate the provider's students or to  
4 exercise the provider's religious or institutional values; or

5                   (B) a program participant's ability to determine  
6 the participant's educational content or to exercise the  
7 participant's religious values;

8           (4) obligate an education service provider or program  
9 participant to act contrary to the provider's or participant's  
10 religious or institutional values, as applicable;

11           (5) impose any regulation on an education service  
12 provider, vendor of educational products, or program participant  
13 beyond those regulations necessary to enforce the requirements of  
14 the program; or

15           (6) require as a condition of receiving money  
16 distributed under the program:

17                   (A) an education service provider to modify the  
18 provider's creed, practices, admissions policies, curricula,  
19 performance standards, employment policies, or assessments; or

20                   (B) a program participant to modify the  
21 participant's creed, practices, curricula, performance standards,  
22 or assessments.

23           (c) In a proceeding challenging a rule adopted by a state  
24 agency or officer under this subchapter, the agency or officer has  
25 the burden of proof to establish by clear and convincing evidence  
26 that the rule:

27                   (1) is necessary to implement or enforce the program

1 as provided by this subchapter;

2 (2) does not violate this section;

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

7 (4) is the least restrictive means of accomplishing  
8 the purpose of the program while recognizing the independence of an  
9 education service provider to meet the educational needs of  
10 students in accordance with the provider's religious or  
11 institutional values.

12 Sec. 29.368. STUDENT RECORDS AND INFORMATION. (a) On  
13 request by the parent of a child participating or seeking to  
14 participate in the program, the school district or open-enrollment  
15 charter school that the child would otherwise attend shall provide  
16 a copy of the child's school records possessed by the district or  
17 school, if any, to the child's parent or, if applicable, the private  
18 school the child attends.

19 (b) As necessary to verify a child's eligibility for the  
20 program, the agency shall provide to the certified educational  
21 assistance organization any information available to the agency  
22 requested by the organization regarding a child who participates or  
23 seeks to participate in the program. The organization may not  
24 retain information provided under this subsection beyond the period  
25 necessary to determine a child's eligibility to participate in the  
26 program.

27 Sec. 29.369. GIFTS, GRANTS, AND DONATIONS. The comptroller

1 and certified educational assistance organization may solicit and  
2 accept gifts, grants, and donations from any public or private  
3 source for any expenses related to the administration of the  
4 program, including establishing the program.

5 Sec. 29.370. RULES; PROCEDURES. (a) The comptroller shall  
6 adopt rules and procedures as necessary to implement, administer,  
7 and enforce this subchapter.

8 (b) A rule adopted under Subsection (a) is binding on an  
9 organization that applies for certification as an educational  
10 assistance organization and a state or local governmental entity,  
11 including a political subdivision, as necessary to implement,  
12 administer, and enforce this subchapter.

13 Sec. 29.371. APPEAL; JUDICIAL REVIEW. (a) A program  
14 participant may appeal to the comptroller an administrative  
15 decision made by the comptroller or certified educational  
16 assistance organization under this subchapter, including a  
17 decision regarding eligibility, allowable expenses, or the  
18 participant's removal from the program.

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

26 Sec. 29.372. RIGHT TO INTERVENE IN CIVIL ACTION. (a) A  
27 program participant, education service provider, or vendor of

1 educational products may intervene in any civil action challenging  
2 the constitutionality of the program or the insurance premium tax  
3 credit under Chapter 230, Insurance Code.

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

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

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

15 (1) private schools;

16 (2) public schools; ~~and~~

17 (3) nonprofit teacher organizations approved by the  
18 commissioner for the purpose of participating in the tutoring  
19 program established under Section 33.913; and

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

24 SECTION 4. Section 411.109, Government Code, is amended by  
25 adding Subsection (c) to read as follows:

26 (c) The comptroller is entitled to obtain criminal history  
27 record information maintained by the department about a person who

1 is a private tutor, a therapist, or an employee of a teaching  
2 service or school who intends to provide educational services to a  
3 child participating in the program established under Subchapter J,  
4 Chapter 29, Education Code, and is seeking approval to receive  
5 money distributed under that program.

6 SECTION 5. Subtitle B, Title 3, Insurance Code, is amended  
7 by adding Chapter 230 to read as follows:

8 CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO  
9 EDUCATION SAVINGS ACCOUNT PROGRAM

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 230.001. DEFINITIONS. In this chapter:

12 (1) "Fund" means the Education Savings Account Program  
13 fund under Section 29.353, Education Code.

14 (2) "State premium tax liability" means any liability  
15 incurred by an entity under Chapters 221 through 226.

16 SUBCHAPTER B. CREDIT

17 Sec. 230.051. CREDIT. An entity may apply for a credit  
18 against the entity's state premium tax liability in the amount and  
19 under the conditions provided by this chapter. The comptroller  
20 shall award credits as provided by Section 230.054.

21 Sec. 230.052. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a)  
22 Subject to Subsections (b) and (c), the amount of an entity's credit  
23 is equal to the lesser of the amount contributed to the fund during  
24 the period covered by the tax report or 75 percent of the entity's  
25 state premium tax liability for the report.

26 (b) For the 2024 state fiscal year, the total amount of  
27 credits that may be awarded under this chapter may not exceed \$500

1 million. For each subsequent state fiscal year, the total amount of  
2 credits that may be awarded is:

3 (1) the same total amount of credits available under  
4 this subsection for the previous state fiscal year, if Subdivision  
5 (2) does not apply; or

6 (2) 125 percent of the total amount of credits  
7 available under this subsection for the previous state fiscal year,  
8 if the total amount of credits awarded in the previous state fiscal  
9 year was at least 90 percent of the total amount of credits  
10 available under this subsection for that fiscal year.

11 (c) The comptroller by rule shall prescribe procedures by  
12 which the comptroller may allocate credits under this chapter. The  
13 procedures must provide that credits are allocated first to  
14 entities that received preliminary approval for a credit under  
15 Section 230.053 and that apply under Section 230.054. The  
16 procedures must provide that any remaining credits are allocated to  
17 entities that apply under Section 230.054 on a first-come,  
18 first-served basis, based on the date the contribution was  
19 initially made.

20 (d) The comptroller may require an entity to notify the  
21 comptroller of the amount the entity intends or expects to apply for  
22 under this chapter before the beginning of a state fiscal year or at  
23 any other time required by the comptroller.

24 Sec. 230.053. PRELIMINARY APPROVAL FOR CREDIT. (a) Before  
25 making a contribution to the fund, an entity may apply to the  
26 comptroller for preliminary approval of a credit under this chapter  
27 for the contribution.

1       (b) An entity must apply for preliminary approval on a form  
2 provided by the comptroller that includes the amount the entity  
3 expects to contribute and any other information the comptroller  
4 requires.

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

9       (d) The comptroller shall grant preliminary approval for a  
10 credit under this chapter for a state fiscal year if the sum of the  
11 amount of the credit and the total amount of all other credits  
12 preliminarily approved under this chapter does not exceed the  
13 amount provided by Section 230.052(b).

14       (e) Final award of a credit preliminarily approved under  
15 this section remains subject to the limitations under Section  
16 230.052(a) and all other requirements of this chapter.

17       Sec. 230.054. APPLICATION FOR CREDIT. (a) An entity must  
18 apply for a credit under this chapter on or with the tax report  
19 covering the period in which the contribution was made.

20       (b) The comptroller shall adopt a form for the application  
21 for the credit. An entity must use this form in applying for the  
22 credit.

23       (c) Subject to Section 230.052(c), the comptroller may  
24 award a credit to an entity that applies for the credit under  
25 Subsection (a) of this section if the entity is eligible for the  
26 credit and the credit is available under Section 230.052(b). The  
27 comptroller has broad discretion in determining whether to grant or

1 deny an application for a credit.

2 (d) The comptroller shall notify an entity in writing of the  
3 comptroller's decision to grant or deny the application under  
4 Subsection (a). If the comptroller denies an entity's application,  
5 the comptroller shall include in the notice of denial the reasons  
6 for the comptroller's decision.

7 (e) If the comptroller denies an entity's application under  
8 Subsection (a), the entity may request in writing a reconsideration  
9 of the application not later than the 10th day after the date the  
10 notice under Subsection (d) is received. If the entity does not  
11 request a reconsideration of the application on or before that  
12 date, the comptroller's decision is final.

13 (f) An entity that requests a reconsideration under  
14 Subsection (e) may submit to the comptroller, not later than the  
15 30th day after the date the request for reconsideration is  
16 submitted, additional information and documents to support the  
17 entity's request for reconsideration.

18 (g) The comptroller's reconsideration of an application  
19 under this section is not a contested case under Chapter 2001,  
20 Government Code. The comptroller's decision on a request for  
21 reconsideration of an application is final and is not appealable.

22 (h) This section does not create a cause of action to  
23 contest a decision of the comptroller to deny an application for a  
24 credit under this chapter.

25 Sec. 230.055. RULES; PROCEDURES. The comptroller shall  
26 adopt rules and procedures to implement, administer, and enforce  
27 this chapter.



1       Sec. 230.056. ASSIGNMENT PROHIBITED; EXCEPTION. An entity  
2 may not convey, assign, or transfer the credit allowed under this  
3 chapter to another entity unless substantially all of the assets of  
4 the entity are conveyed, assigned, or transferred in the same  
5 transaction.

6       Sec. 230.057. NOTICE OF AVAILABILITY OF CREDIT. The  
7 comptroller shall provide notice of the availability of the credit  
8 under this chapter on the comptroller's Internet website, in the  
9 instructions for insurance premium tax report forms, and in any  
10 notice sent to an entity concerning the requirement to file an  
11 insurance premium tax report.

12       SECTION 6. Subchapter J, Chapter 29, Education Code, as  
13 added by this Act, applies beginning with the 2024-2025 school  
14 year.

15       SECTION 7. An entity may apply for a credit under Chapter  
16 230, Insurance Code, as added by this Act, only for a contribution  
17 made on or after the effective date of this Act.

18       SECTION 8. Not later than November 15, 2023, the  
19 comptroller of public accounts shall adopt rules as provided by  
20 Section 230.055, Insurance Code, as added by this Act.

21       SECTION 9. Chapter 230, Insurance Code, as added by this  
22 Act, applies only to a tax report originally due on or after the  
23 effective date of this Act.

24       SECTION 10. (a) The constitutionality and other validity  
25 under the state or federal constitution of all or any part of  
26 Subchapter J, Chapter 29, Education Code, as added by this Act, or  
27 Chapter 230, Insurance Code, as added by this Act, may be determined

1 in an action for declaratory judgment under Chapter 37, Civil  
2 Practice and Remedies Code, in a district court in the county in  
3 which the plaintiff resides or has its principal place of business.

4 (b) An order, however characterized, of a trial court  
5 granting or denying a temporary or otherwise interlocutory  
6 injunction or a permanent injunction on the grounds of the  
7 constitutionality or unconstitutionality, or other validity or  
8 invalidity, under the state or federal constitution of all or any  
9 part of Subchapter J, Chapter 29, Education Code, as added by this  
10 Act, or Chapter 230, Insurance Code, as added by this Act, may be  
11 reviewed only by direct appeal to the Texas Supreme Court filed not  
12 later than the 15th day after the date on which the order was  
13 entered. The Texas Supreme Court shall give precedence to appeals  
14 under this section over other matters.

15 (c) The direct appeal is an accelerated appeal.

16 (d) This section exercises the authority granted by Section  
17 3-b, Article V, Texas Constitution.

18 (e) The filing of a direct appeal under this section will  
19 automatically stay any temporary or otherwise interlocutory  
20 injunction or permanent injunction granted in accordance with this  
21 section pending final determination by the Texas Supreme Court,  
22 unless the supreme court makes specific findings that the applicant  
23 seeking such injunctive relief has pleaded and proved that:

24 (1) the applicant has a probable right to the relief it  
25 seeks on final hearing;

26 (2) the applicant will suffer a probable injury that  
27 is imminent and irreparable, and that the applicant has no other

1 adequate legal remedy; and

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

4 (f) An appeal under this section, including an  
5 interlocutory, accelerated, or direct appeal, is governed, as  
6 applicable, by the Texas Rules of Appellate Procedure, including  
7 Rules 25.1(d)(6), 28.1, 32.1(g), 37.3(a)(1), 38.6(a) and (b),  
8 40.1(b), and 49.4.

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

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

15 SECTION 11. It is the intent of the legislature that every  
16 provision, section, subsection, sentence, clause, phrase, or word  
17 in this Act, and every application of the provisions in this Act to  
18 each person or entity, are severable from each other. If any  
19 application of any provision in this Act to any person, group of  
20 persons, or circumstances is found by a court to be invalid for any  
21 reason, the remaining applications of that provision to all other  
22 persons and circumstances shall be severed and may not be affected.

23 SECTION 12. This Act takes effect September 1, 2023.