

By: Schatzline

H.B. No. 5112

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the establishment of an education savings account  
3 program.

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

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

7 SUBCHAPTER J. EDUCATION SAVINGS ACCOUNT PROGRAM

8 Sec. 29.351. DEFINITIONS. In this subchapter:

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

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

14 (3) "Curriculum" means a complete course of study for  
15 a particular content area or grade level.

16 (4) "Financial institution" means a bank, credit  
17 union, savings bank, or savings and loan association organized  
18 under the laws of this state, another state, or federal law that has  
19 its main office or a branch office in this state. The term does not  
20 include any institution the deposits of which are not insured by the  
21 Federal Deposit Insurance Corporation or the National Credit Union  
22 Administration.

23 (5) "Parent" means a resident of this state who is a  
24 natural or adoptive parent, managing or possessory conservator,

1 legal guardian, custodian, or other person with legal authority to  
2 act on behalf of a child.

3 (6) "Postsecondary educational institution" means:

4 (A) an institution of higher education or a  
5 private or independent institution of higher education as defined  
6 by Section 61.003; or

7 (B) a career school or college as defined by  
8 Section 132.001.

9 (7) "Program" means the education savings account  
10 program established under this subchapter.

11 (8) "Program participant" means a child and a parent  
12 of a child who has been accepted into the program.

13 Sec. 29.352. ESTABLISHMENT OF PROGRAM. (a) The  
14 commissioner shall establish and administer an education savings  
15 account program to provide funding for certain education-related  
16 expenses of eligible children.

17 (b) The agency may contract with a private organization to  
18 administer the program.

19 Sec. 29.353. 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.

22 (b) A child who establishes eligibility under this section  
23 may continue participating in the program until the earliest of the  
24 following dates:

25 (1) the date on which the child graduates from high  
26 school;

27 (2) the date on which the child is no longer eligible

1 to attend a public school under Section 25.001;

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

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

6 (c) Notwithstanding Subsection (b), the agency shall  
7 establish procedures for, in the least disruptive manner possible:

8 (1) a child participating in the program to cease  
9 participation and enroll in a public school, including an  
10 open-enrollment charter school; and

11 (2) a child who previously participated in the program  
12 and subsequently enrolled in a public school, including an  
13 open-enrollment charter school, to resume participation in the  
14 program.

15 Sec. 29.354. APPLICATION FOR PROGRAM. (a) A parent of an  
16 eligible child may apply on behalf of the child for participation in  
17 the program. The agency shall allow for the submission of  
18 applications on a rolling basis.

19 (b) The agency shall by rule create an application form for  
20 the program and make the application form readily available to  
21 interested parents through various sources, including the agency's  
22 Internet website.

23 (c) The agency shall provide to each applicant a publication  
24 that describes the operation of the program, including:

25 (1) expenses allowed under the program under Section  
26 29.356;

27 (2) a description of the responsibilities of program

1 participants and the duties of the agency under this subchapter;  
2 and

3 (3) a statement regarding the rights afforded to a  
4 child with a disability who is parentally placed in a private school  
5 under the Individuals with Disabilities Education Act (20 U.S.C.  
6 Section 1400 et seq.).

7 Sec. 29.355. PARTICIPATION IN PROGRAM. (a) To receive  
8 funding under the program, a parent of an eligible child must agree  
9 in writing to:

10 (1) ensure that the student will receive an education  
11 that includes, at a minimum, the subjects of reading, language,  
12 mathematics, social studies, and science;

13 (2) spend funds received through the program only for  
14 expenses allowed under Section 29.356;

15 (3) notify the agency as soon as practicable if the  
16 child enrolls in a public school, including an open-enrollment  
17 charter school; and

18 (4) inform the agency if the child graduates from high  
19 school.

20 (b) The agency shall provide annually to each program  
21 participant the publication provided to applicants under Section  
22 29.354.

23 Sec. 29.356. APPROVED PROVIDERS AND EDUCATION-RELATED  
24 EXPENSES. (a) The commissioner shall by rule establish a process  
25 for the preapproval of education service providers and vendors of  
26 educational products for participation in the program. The  
27 commissioner shall make the list of preapproved providers and

1 vendors readily available to applicants for the program and to  
2 program participants.

3 (b) A payment from an account may be made only to a  
4 preapproved education service provider or vendor of educational  
5 products.

6 (c) Funds received under the program may be used only for  
7 the following expenses incurred by a program participant:

8 (1) tuition and fees at a private school or  
9 postsecondary educational institution or for a nonpublic online  
10 educational course or program;

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

13 (3) payments for the purchase of a curriculum;

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

16 (5) for a child with a disability, fees for  
17 educational therapies or services provided by a practitioner,  
18 provider, paraprofessional, or educational aide;

19 (6) computer hardware and software and other  
20 technological devices primarily used for educational purposes;

21 (7) fees for a nationally norm-referenced achievement  
22 test or examination, an advanced placement test or similar  
23 examination, or any examination related to college or university  
24 admission and a preparatory course for such a test or examination;

25 (8) services provided by a public school, including an  
26 open-enrollment charter school, in a manner in which the child is  
27 not counted toward the school's average daily attendance;

1           (9) uniforms required by a school or institution  
2 described by Subdivision (1) in which the child is enrolled;

3           (10) tuition and fees for a summer education program  
4 or specialized after-school education program;

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

9           (12) any other expense approved by the agency.

10          (d) Any funds remaining in a program participant's account  
11 on the child's graduation from high school may be used by the child  
12 for tuition, fees, textbooks, and other instructional materials to  
13 attend or take courses from a postsecondary educational  
14 institution.

15          Sec. 29.357. AMOUNT OF PAYMENT; FINANCING. (a) A child  
16 participating in the program is entitled to receive annual funding  
17 from the Foundation School Program equal to the state and local  
18 maintenance and operations revenue to which the school district the  
19 child would otherwise attend would be entitled to receive for the  
20 child under Chapter 48 if the child were enrolled in the district.

21          (b) The parent of a child participating in the program may  
22 make payments for the expenses of educational programs, services,  
23 and products not covered by funds in the child's account.

24          (c) A payment under the program may not be financed using  
25 money appropriated from the available school fund.

26          Sec. 29.358. ADMINISTRATION OF ACCOUNTS. (a) The agency  
27 shall contract with a financial institution to establish and manage

1 an account for each child participating in the program. A program  
2 participant must be able to access the participant's account by  
3 using an online payment service.

4 (b) The commissioner shall make quarterly payments to each  
5 program participant's account in equal amounts on or before dates  
6 established by commissioner rule.

7 (c) The commissioner may deduct an amount from each  
8 quarterly payment to a program participant's account to cover the  
9 agency's cost of administering the program. The amount deducted  
10 may not exceed three percent of the payment.

11 (d) A child's account is closed and any remaining funds are  
12 returned to the state on the earliest of the following dates:

13 (1) the date on which the child graduates from a  
14 baccalaureate degree program at a postsecondary educational  
15 institution;

16 (2) the child's 26th birthday; or

17 (3) if the child has not enrolled in a postsecondary  
18 educational institution within the four-year period following the  
19 child's graduation from high school, the fourth anniversary of the  
20 date on which the child graduates from high school.

21 Sec. 29.359. AUDITING OF ACCOUNT. (a) The agency shall  
22 audit or contract with a private entity to audit accounts as  
23 necessary to ensure compliance with applicable law and the  
24 requirements of the program. At a minimum, the agency shall provide  
25 for an annual random audit of a specified number of accounts  
26 determined by the commissioner.

27 (b) In auditing an account, the agency or private entity

1 with which the agency contracts under Subsection (a) may require  
2 that a program participant provide further information and  
3 documentation regarding any payment from the participant's  
4 account.

5 Sec. 29.360. SUSPENSION OF ACCOUNT. (a) The commissioner  
6 by rule shall adopt procedures for the suspension and closure of an  
7 account on a finding that a program participant has failed to comply  
8 with applicable law or a requirement of the program or has  
9 substantially misused funds received under the program.

10 (b) The procedures must allow for:

11 (1) a program participant to be declared ineligible to  
12 participate in the program on a finding of intentional misconduct;  
13 and

14 (2) an appeal to the commissioner of a finding under  
15 Subdivision (1).

16 Sec. 29.361. REFUND PROHIBITED. An education service  
17 provider or a vendor of educational products receiving funds  
18 distributed under the program may not in any manner rebate, refund,  
19 or credit to or share with a program participant, or any person on  
20 behalf of a participant, any program funds paid or owed by the  
21 participant to the provider or vendor.

22 Sec. 29.362. REFERRAL TO THE ATTORNEY GENERAL. (a) If the  
23 agency obtains evidence of fraudulent use of an account, the  
24 commissioner may refer the case to the attorney general for  
25 investigation.

26 (b) With the consent of the appropriate local county or  
27 district attorney, the attorney general has concurrent



1 jurisdiction with the consenting local prosecutor to prosecute an  
2 offense referred to the attorney general under Subsection (a).

3 Sec. 29.363. EDUCATION SERVICE PROVIDER AND VENDOR  
4 ACCOUNTABILITY. (a) The agency may declare an education service  
5 provider or a vendor of educational products ineligible to  
6 participate in the program if, after notice and hearing, the agency  
7 finds that the provider or vendor has:

8 (1) failed to comply with applicable law or the  
9 requirements of the program; or

10 (2) failed to provide a child participating in the  
11 program with promised educational services or products.

12 (b) An education service provider or vendor of educational  
13 products may appeal to the commissioner a finding under Subsection  
14 (a).

15 (c) If an education service provider or vendor of  
16 educational products is declared ineligible to participate in the  
17 program under this section, the agency shall:

18 (1) notify program participants of the declaration as  
19 soon as practicable; and

20 (2) reject any account expenditure made to the  
21 education service provider or vendor of educational products after  
22 the date of the declaration.

23 Sec. 29.364. EDUCATION SERVICE PROVIDER AND VENDOR  
24 AUTONOMY. (a) An education service provider or vendor of  
25 educational products that receives funds distributed under the  
26 program is not an agent of the state or federal government.

27 (b) The program does not expand the regulatory authority of

1 the state or any school district to impose any additional  
2 regulation on an education service provider or vendor of  
3 educational products except those reasonably necessary to enforce  
4 the program as provided by this subchapter.

5 (c) An education service provider or vendor of educational  
6 products may not be required to modify the provider's or vendor's  
7 creed, practices, admissions policies, or curriculum, as  
8 applicable, to receive money distributed under the program.

9 (d) In any proceeding challenging a rule adopted by a state  
10 agency or officer under this subchapter, the agency or officer has  
11 the burden of proof to establish that the rule:

12 (1) is necessary to implement or enforce the program  
13 as provided by this subchapter; and

14 (2) does not impose an undue burden on a program  
15 participant or an education service provider or vendor of  
16 educational products that receives or seeks to receive money  
17 distributed under the program.

18 Sec. 29.365. STUDENT RECORDS AND INFORMATION. On request  
19 by the parent of a child participating in the program, the school  
20 district or open-enrollment charter school that the child would  
21 otherwise attend shall provide a copy of the child's school records  
22 possessed by the district or school, if any, to the child's parent  
23 or, if applicable, the private school the child attends.

24 Sec. 29.366. PARENT REVIEW COMMITTEE. (a) A parent review  
25 committee is established to assist the commissioner in:

26 (1) determining whether certain expenses are allowed  
27 under Section 29.356;

1           (2) reviewing an appeal of the agency's decision to  
2 declare an education service provider or vendor of educational  
3 products ineligible to participate in the program under Section  
4 29.363; and

5           (3) implementing and administering the program.

6           (b) The committee consists of seven members appointed by the  
7 commissioner. Each member must be a parent of a child participating  
8 in the program. In making appointments to the committee, the  
9 commissioner shall ensure that parents from at least four counties  
10 are included.

11           (c) A member of the committee serves a one-year term at the  
12 pleasure of the commissioner and may be reappointed.

13           (d) The commissioner or the commissioner's designee is the  
14 nonvoting chair of the committee.

15           Sec. 29.367. GIFTS, GRANTS, AND DONATIONS. The  
16 commissioner may solicit and accept gifts, grants, and donations  
17 from any public or private source for the program.

18           Sec. 29.368. RIGHT TO INTERVENE IN CIVIL ACTION. (a) A  
19 program participant may intervene in any civil action challenging  
20 the constitutionality of the program.

21           (b) A court in which a civil action described by Subsection  
22 (a) is filed may require that all program participants wishing to  
23 intervene in the action file a joint brief. A program participant  
24 may not be required to join a brief filed on behalf of the state or a  
25 state agency.

26           Sec. 29.369. RULES. The commissioner shall adopt rules as  
27 necessary to implement this subchapter. The rules may include:

1           (1) establishing a telephonic or online anonymous  
2 fraud reporting service;

3           (2) requiring a surety bond from an education service  
4 provider or vendor of educational products that receives more than  
5 \$100,000 per year from funds distributed under the program; or

6           (3) providing for an education service provider or  
7 vendor of educational products to refund to a program participant's  
8 account payments made from that account.

9           SECTION 2. This Act applies beginning with the 2023-2024  
10 school year.

11           SECTION 3. Not later than 90 days after the effective date  
12 of this Act, the commissioner of education shall adopt rules  
13 necessary to implement the education savings account program under  
14 Subchapter J, Chapter 29, Education Code, as added by this Act.

15           SECTION 4. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2023.