

By: Frank

H.B. No. 5267

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:

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

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

24 (b) A sibling of a child who is eligible to participate in
25 the program under Subsection (a) is eligible to participate in the
26 program if the sibling is eligible to attend a public school under
27 Section 25.001.

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

4 (1) the date on which the child graduates from high
5 school;

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

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

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

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

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

20 (2) on receipt of more acceptable applications for
21 admission under this section than available positions in the
22 program due to insufficient funding, fill available positions:

23 (A) first, by students with a disability;

24 (B) second, by students who are covered by
25 Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794);

26 (C) third, by members of a household with a total
27 annual income that is at or below 200 percent of the income

1 guidelines necessary to qualify for the national free or
2 reduced-price lunch program established under 42 U.S.C. Section
3 1751 et seq;

4 (D) fourth, by students who are enrolled in a
5 public school during the entire preceding school year;

6 (E) fifth, by all remaining applicants.

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

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

17 (1) expenses allowed under the program under Section
18 29.359;

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

21 (3) the organization's expense reporting
22 requirements; and

23 (4) a description of the responsibilities of program
24 participants.

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

1 information electronically.

2 (e) A parent of a child described by Section 29.355(a)(2)(B)
3 may submit an application for the eligible child and the child's
4 sibling concurrently. The certified educational assistance
5 organization shall consider concurrently the applications of
6 siblings who apply by the date established by the organization
7 under Subsection (a).

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

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

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

15 (2) share or authorize the administrator of an
16 assessment instrument to share with the certified educational
17 assistance organization the results of any assessment instrument
18 required to be administered to the child under Section
19 29.358(b)(1)(B) or other law;

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

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

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

1 (B) graduates from high school; or

2 (C) is no longer eligible to enroll in a public
3 school under Section 25.001.

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

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

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

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

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

20 (2) for a private tutor, therapist, or teaching
21 service:

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

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

1 (ii) holds a relevant license or
2 accreditation issued by a state, regional, or national licensing or
3 accreditation organization; or

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

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

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

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

16 (C) the tutor or therapist or each employee of
17 the teaching service who intends to provide educational services to
18 a program participant is not included in the registry under Section
19 22.092; or

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

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

1 information requested by the comptroller to enable the comptroller
2 to complete the review.

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

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

14 (1) tuition and fees;

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

19 (3) costs related to academic assessments;

20 (4) costs related to cocurricular activities;

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

25 (6) fees for educational therapies or services
26 provided by a practitioner or provider, only for fees that are not
27 covered by any federal, state, or local government benefits such as

1 Medicaid or the Children's Health Insurance Program (CHIP) or by
2 any private insurance that the child is enrolled in at the time of
3 receiving the therapies or services.

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

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

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

13 (1) program participants may be efficiently
14 reimbursed for expenses described by Subsection (a)(2), (3), (4),
15 (5), or (6) incurred from an education service provider or vendor of
16 educational products that is not preapproved under Section
17 29.358(a); and

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

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

1 (b) Any money remaining in a child's account at the end of a
2 fiscal year is carried forward to the next fiscal year unless
3 another provision of this subchapter mandates the closure of the
4 account.

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

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

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

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

15 (1) a summary of participant enrollment in the
16 program;

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

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

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

25 (b) The comptroller may deduct an amount from each quarterly
26 payment to a program participant's account to cover the
27 comptroller's cost of administering the program. The amount

1 deducted may not exceed three percent of the payment.

2 (c) Each quarter, the comptroller shall disburse to the
3 certified educational assistance organization an amount from the
4 total amount of money appropriated for purposes of this subchapter
5 to cover the organization's cost of administering the program. The
6 total amount disbursed to the certified educational assistance
7 organization under this subsection for a fiscal year may not exceed
8 five percent of the amount appropriated for purposes of this
9 subchapter for that fiscal year.

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

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

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

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

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

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

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

9 (1) the certified educational assistance
10 organization;

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

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

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

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

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

1 (1) order closure of the suspended account;

2 (2) order temporary reinstatement of the account,
3 conditioned on the performance of a specified action by the program
4 participant; or

5 (3) order full reinstatement of the account.

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

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

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

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

26 Sec. 29.366. SPECIAL EDUCATION NOTICE. (a) The certified
27 educational assistance organization shall post on the

1 organization's Internet website and provide to each parent who
2 submits an application for the program a notice that:

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

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

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

12 (B) rights provided under Subchapter A.

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

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

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

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

27 (2) consider the actions of an education service

1 provider, vendor of educational products, or program participant to
2 be the actions of an agent of state government;

3 (3) limit:

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

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

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

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

17 (6) require as a condition of receiving money
18 distributed under the program:

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

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

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

1 that the rule:

2 (1) is necessary to implement or enforce the program
3 as provided by this subchapter;

4 (2) does not violate this section;

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

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

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

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

1 program.

2 Sec. 29.369. GIFTS, GRANTS, AND DONATIONS. The comptroller
3 and certified educational assistance organization may solicit and
4 accept gifts, grants, and donations from any public or private
5 source for any expenses related to the administration of the
6 program, including establishing the program.

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

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

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

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

1 Sec. 29.372. RIGHT TO INTERVENE IN CIVIL ACTION. (a) A
2 program participant, education service provider, or vendor of
3 educational products may intervene in any civil action challenging
4 the constitutionality of the program or the insurance premium tax
5 credit under Chapter 230, Insurance Code.

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

13 SECTION 3. Section [22.092](#)(d), Education Code, is amended to
14 read as follows:

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

- 17 (1) private schools;
- 18 (2) public schools; ~~and~~
- 19 (3) nonprofit teacher organizations approved by the
20 commissioner for the purpose of participating in the tutoring
21 program established under Section [33.913](#); and

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

26 SECTION 4. Section [411.109](#), Government Code, is amended by
27 adding Subsection (c) to read as follows:

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

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

10 CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO
11 EDUCATION SAVINGS ACCOUNT PROGRAM

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 230.001. DEFINITIONS. In this chapter:

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

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

18 SUBCHAPTER B. CREDIT

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

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

1 (b) For the 2024 state fiscal year, the total amount of
2 credits that may be awarded under this chapter may not exceed \$500
3 million. For each subsequent state fiscal year, the total amount of
4 credits that may be awarded is:

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

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

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

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

26 Sec. 230.053. PRELIMINARY APPROVAL FOR CREDIT. (a) Before
27 making a contribution to the fund, an entity may apply to the

1 comptroller for preliminary approval of a credit under this chapter
2 for the contribution.

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

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

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

16 (e) Final award of a credit preliminarily approved under
17 this section remains subject to the limitations under Section
18 230.052(a) and all other requirements of this chapter.

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

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

25 (c) Subject to Section 230.052(c), the comptroller may
26 award a credit to an entity that applies for the credit under
27 Subsection (a) of this section if the entity is eligible for the

1 credit and the credit is available under Section 230.052(b). The
2 comptroller has broad discretion in determining whether to grant or
3 deny an application for a credit.

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

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

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

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

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

27 Sec. 230.055. RULES; PROCEDURES. The comptroller shall

1 adopt rules and procedures to implement, administer, and enforce
2 this chapter.

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

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

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

17 SECTION 7. An entity may apply for a credit under Chapter
18 230, Insurance Code, as added by this Act, only for a contribution
19 made on or after the effective date of this Act.

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

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

26 SECTION 10. (a) The constitutionality and other validity
27 under the state or federal constitution of all or any part of

1 Subchapter J, Chapter 29, Education Code, as added by this Act, or
2 Chapter 230, Insurance Code, as added by this Act, may be determined
3 in an action for declaratory judgment under Chapter 37, Civil
4 Practice and Remedies Code, in a district court in the county in
5 which the plaintiff resides or has its principal place of business.

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

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

18 (d) This section exercises the authority granted by Section
19 3-b, Article V, Texas Constitution.

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

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

1 (2) the applicant will suffer a probable injury that
2 is imminent and irreparable, and that the applicant has no other
3 adequate legal remedy; and

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

6 (f) An appeal under this section, including an
7 interlocutory, accelerated, or direct appeal, is governed, as
8 applicable, by the Texas Rules of Appellate Procedure, including
9 Rules 25.1(d)(6), 28.1, 32.1(g), 37.3(a)(1), 38.6(a) and (b),
10 40.1(b), and 49.4.

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

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

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

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