

By: Middleton

S.B. No. 176

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the establishment of the Texas Parental Empowerment
3 Program and an insurance premium tax credit for contributions made
4 for purposes of that program.

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

6 SECTION 1. SHORT TITLE. This Act may be cited as the Texas
7 Parental Empowerment Act of 2023.

8 SECTION 2. FINDINGS. The legislature finds that:

9 (a) parents should be empowered to direct the education of
10 their child;

11 (b) there is not one best educational option for all Texas
12 school children;

13 (c) children belong to their parents, not the government;

14 (d) the best education for Texas school children is one
15 directed by their parents, with all educational options made
16 available and accessible, wherein money follows the child to the
17 educational option that best meets their unique educational needs;

18 (e) in *Espinoza v. Montana Department of Revenue*(2020) and
19 in *Carson v. Makin* (2022), the United States Supreme Court found
20 that state prohibitions on the use of generally available state
21 tuition assistance programs for religious schools violates the Free
22 Exercise Clause of the First Amendment of the United States
23 Constitution; and

24 (f) this Act is intended to further provide for the general

1 diffusion of knowledge and to empower parents of students in this
2 state to direct the education of their children.

3 SECTION 3. Chapter 29, Education Code, is amended by adding
4 Subchapter J to read as follows:

5 SUBCHAPTER J. TEXAS PARENTAL EMPOWERMENT PROGRAM

6 Sec. 29.351. DEFINITIONS. In this subchapter:

7 (1) "Account" means a parental empowerment account
8 established under the program.

9 (2) "Certified educational assistance organization"
10 means an educational assistance organization certified under
11 Section 29.355 to administer the program.

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

15 (4) "Institution of higher education" and "private or
16 independent institution of higher education" have the meanings
17 assigned by Section 61.003.

18 (5) "Non-enrolled student" means a student who
19 receives instruction as described by Section 29.916(a)(1) from a
20 nonpublic school.

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

25 (7) "Program" means the Texas Parental Empowerment
26 Program established under this subchapter.

27 (8) "Program participant" means a child and a parent

1 of a child enrolled in the program.

2 Sec. 29.352. PURPOSE. The purpose of the Texas Parental
3 Empowerment Program is to provide students with additional
4 educational options in order to achieve a general diffusion of
5 knowledge and to empower parents of students in this state to direct
6 the education of their children.

7 Sec. 29.353. ESTABLISHMENT OF PROGRAM. The comptroller
8 shall establish the Texas Parental Empowerment Program to provide
9 funding for approved education-related expenses of eligible
10 children admitted into the program.

11 Sec. 29.354. TEXAS PARENTAL EMPOWERMENT PROGRAM FUND. (a)
12 The Texas Parental Empowerment Program fund is an account in the
13 general revenue fund to be administered by the comptroller.

14 (b) The fund is composed of:

15 (1) money transferred to the fund under Section
16 29.361A(a);

17 (2) general revenue transferred to the fund;

18 (3) money appropriated to the fund;

19 (4) gifts, grants, and donations received under
20 Section 29.371;

21 (5) contributions to the fund for which an entity
22 receives a credit against the entity's state premium tax liability
23 under Chapter 230, Insurance Code; and

24 (6) any other money available for purposes of the
25 program.

26 (c) Money in the fund may be appropriated only to the
27 comptroller for purposes of making payments to program participants

1 and administering the program under this subchapter.

2 Sec. 29.355. SELECTION OF CERTIFIED EDUCATIONAL ASSISTANCE
3 ORGANIZATIONS. (a) An organization may apply to the comptroller
4 for certification as a certified educational assistance
5 organization during an application period established by the
6 comptroller.

7 (b) To be eligible for certification, the organization
8 must:

9 (1) have the ability to perform the duties and
10 functions required of a certified educational assistance
11 organization under this subchapter as provided by the
12 organization's charter;

13 (2) be exempt from federal tax under Section 501(a) of
14 the Internal Revenue Code of 1986 by being listed as an exempt
15 organization in Section 501(c)(3) of that code;

16 (3) be in good standing with the state; and

17 (4) be able to administer the program, including the
18 ability to:

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

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

23 (c) The comptroller shall certify at least one but no more
24 than three educational assistance organizations to assist in
25 administering the program, including by verifying:

26 (1) a child's eligibility for the program; and

27 (2) the use of funds in a program participant's account

1 only for purposes approved under Section 29.360.

2 Sec. 29.356. ELIGIBLE CHILD. (a) A child is eligible to
3 participate in the program if the child:

4 (1) is enrolled in a school district, including a
5 public charter school, and was enrolled in that district or public
6 charter school during the entire preceding school year;

7 (2) is entering kindergarten for the first time; or

8 (3) is currently participating in the Texas Parental
9 Empowerment Program, established by this Chapter, and participated
10 in the program during the preceding school year.

11 (b) A child who is currently not enrolled in a public
12 school, but is otherwise eligible to enroll in public school under
13 Section 25.001, is eligible for the program, subject to available
14 funding described by Section 29.361A.

15 (c) A child who establishes eligibility under this section
16 may participate in the program until the earliest of the following
17 dates:

18 (1) the date on which the child graduates from high
19 school, except as provided by Section 29.363;

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

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

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

26 Sec. 29.357. APPLICATION TO PROGRAM. (a) A parent of an
27 eligible child may apply to a certified educational assistance

1 organization to enroll the child in the program for the following
2 school year. The parent must provide any information requested by
3 the organization for purposes of verifying the child's eligibility
4 for the program.

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

11 (c) Each certified educational assistance organization
12 shall post on the organization's Internet website and provide to
13 each parent who submits an application form to the organization a
14 publication that describes the operation of the program, including:

15 (1) expenses allowed under the program under Section
16 29.360;

17 (2) the organization's expense reporting
18 requirements; and

19 (3) a description of the responsibilities of program
20 participants and the duties of the organization under this
21 subchapter.

22 (d) Subject to the availability of funding, a certified
23 educational assistance organization shall admit into the program
24 each child for whom the organization received an application under
25 this section if the organization verifies that the child is
26 eligible to participate in the program. If available funding is
27 insufficient to admit each eligible child into the program, the

1 organization shall prioritize admitting children in the following
2 order:

3 (1) children who participated in the program in the
4 preceding school year;

5 (2) siblings of children who participated in the
6 program in the preceding school year; and

7 (3) children with a disability, as defined by Section
8 29.351(3).

9 Sec. 29.358. PARTICIPATION IN PROGRAM. (a) To receive
10 funding under the program, a parent of an eligible child must agree
11 to:

12 (1) spend money received through the program only for
13 expenses allowed under Section 29.360; and

14 (2) notify the parent's certified educational
15 assistance organization not later than 30 days after the date on
16 which the child:

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

19 (B) graduates from high school; or

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

22 (b) The parent of a child participating in the program is
23 the trustee of the child's account.

24 (c) Each certified educational assistance organization
25 shall provide annually to each program participant for whom the
26 organization is responsible the publication provided under Section
27 29.357(c). The publication may be provided electronically.

1 Sec. 29.359. APPROVED PROVIDERS; PARENTAL REVIEW
2 COMMITTEE. (a) The comptroller shall by rule establish a parental
3 review committee to review applications for preapproval of
4 education service providers and vendors of educational products for
5 participation in the program. The committee shall create a process
6 for program participants to request the preapproval of education
7 service providers and vendors of educational products for
8 participation in the program. The comptroller shall post on the
9 comptroller's Internet website and provide to each certified
10 educational assistance organization the list of preapproved
11 providers and vendors.

12 (b) The committee is made up of nine parents of school-aged
13 children, appointed as follows:

14 (1) three members appointed by the Governor:

15 (A) one parent of a child enrolled in public
16 school;

17 (B) one parent of a child enrolled in a private
18 school;

19 (C) one parent of a non-enrolled child;

20 (2) three members appointed by the Lieutenant
21 Governor:

22 (A) one parent of a child enrolled in public
23 school;

24 (B) one parent of a child enrolled in a private
25 school;

26 (C) one parent of a non-enrolled child; and

27 (3) three members appointed by the Speaker of the

1 Texas House of Representatives:

2 (A) one parent of a child enrolled in public
3 school;

4 (B) one parent of a child enrolled in a private
5 school;

6 (C) one parent of a non-enrolled child.

7 (c) Any person required to register as a lobbyist under
8 Chapter 305, Government Code, for the purpose of lobbying a member
9 of the legislature and any person employed by a nonprofit state
10 association or organization that primarily represents political
11 subdivisions and hires or contracts with a person required to
12 register as a lobbyist under Chapter 305, Government Code, is
13 prohibited from serving on the parental review committee.

14 (d) The committee shall approve an education service
15 provider or vendor of educational products for participation in the
16 program no later than 30 days after receipt of a complete
17 application, if the provider or vendor:

18 (1) for a private school, executes a notarized
19 affidavit, with supporting documents, concerning the school's
20 qualification to serve program participants, including evidence
21 of:

22 (A) annual administration of a nationally
23 norm-referenced assessment instrument;

24 (B) valid certificate of occupancy;

25 (C) policy statements regarding:

26 (i) admissions;

27 (ii) curriculum;

1 (iii) safety;

2 (iv) student to teacher ratios; and

3 (v) assessments;

4 (D) the school's agreement that program
5 participants are eligible to apply for scholarships offered by the
6 school to the same extent as other children; and

7 (E) accreditation by an organization recognized
8 by the Texas Education Agency or accreditation by Texas Private
9 School Accreditation Commission;

10 (2) for a private tutor, therapist, or teaching
11 service:

12 (A) executes a notarized affidavit, with
13 supporting documents, concerning the tutor's, therapist's, or
14 service's qualification to serve program participants, including
15 evidence that the tutor or therapist or each employee of the service
16 who intends to provide services to a program participant:

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

19 (ii) holds a relevant license or
20 accreditation issued by a state, regional, or national licensing or
21 accreditation organization; or

22 (iii) is employed in a teaching or tutoring
23 capacity at an institution of higher education or private or
24 independent institution of higher education; and

25 (B) the tutor or therapist or each employee of
26 the teaching service who intends to provide educational services to
27 a program participant either:

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

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

7 (3) for an online educational course or program
8 provider, executes a notarized affidavit, with supporting
9 documents, concerning the provider's qualification to serve
10 program participants; or

11 (4) for any provider or vendor not described by
12 Subdivision (1), (2), or (3), presents any necessary supporting
13 documents concerning the provider's or vendor's qualification to
14 serve program participants.

15 (e) The comptroller shall review the national criminal
16 history record information or documentation for each private tutor,
17 therapist, or teaching service who submits an application. The
18 tutor, therapist, or service must provide the comptroller with any
19 information requested by the comptroller to enable the comptroller
20 to complete the review. The comptroller shall report the findings
21 of the review to the parental review committee.

22 (f) Each certified educational assistance organization
23 shall post on the organization's Internet website the list of
24 preapproved education service providers and vendors of educational
25 products provided under Subsection (a).

26 Sec. 29.360. APPROVED EDUCATION-RELATED EXPENSES. (a)
27 Subject to Subsection (b), money received under the program may be

1 used only for the following expenses incurred by a program
2 participant at a preapproved education service provider or vendor:

3 (1) tuition and fees:

4 (A) at a private school;

5 (B) at an institution of higher education or a
6 private or independent institution of higher education;

7 (C) for an online educational course or program;

8 (D) a provider or vender approved under
9 Subsection (b)(4);

10 (2) the purchase of textbooks or other instructional
11 materials or uniforms required by a school, institution, course, or
12 program described by Subdivision (1) in which the child is
13 enrolled;

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

16 (4) fees for educational therapies or services
17 provided by a practitioner or provider, only for fees or portions of
18 fees that are not covered by any federal, state, or local government
19 benefits such as Medicaid or the Children's Health Insurance
20 Program (CHIP) or by any private insurance that the child is
21 enrolled in at the time of receiving the therapies or services;

22 (5) fees for services provided by a public school,
23 including individual classes and extracurricular programs;

24 (6) curriculum for instruction described by Section
25 [29.916\(a\)\(1\)](#);

26 (7) fees for a nationally standardized
27 norm-referenced achievement test, an advanced placement

1 examination, or any exams related to admissions to an institution
2 of higher education;

3 (8) transportation services between the residence of
4 the program participant and an education service provider, not to
5 exceed \$1,000 per school year; or

6 (9) computer hardware and technological devices
7 primarily used for an educational purpose, not to exceed 10% of the
8 amount deposited to a program participant's account, including:

9 (A) calculators;

10 (B) personal computers;

11 (C) laptops;

12 (D) tablet devices;

13 (E) microscopes;

14 (F) telescopes; and

15 (G) printers.

16 (b) Money received under the program may not be used to pay
17 any person who is:

18 (1) related to the program participant within the
19 third degree of consanguinity or affinity, as determined under
20 Chapter 573, Government Code; or

21 (2) a member of the program participant's household.

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

27 Sec. 29.361. AMOUNT OF PAYMENT; FINANCING. (a) The

1 comptroller shall establish and maintain an account for each
2 program participant.

3 (b) Each year that the child participates in the program a
4 payment from the state to the program participant's account shall
5 be made in an amount that is equal to the state average maintenance
6 and operations expenditures per student in average daily attendance
7 for the preceding state fiscal year, as specified in Section
8 29.361A.

9 (c) Any money remaining in a program participant's account
10 at the end of a fiscal year is carried forward to the next fiscal
11 year unless another provision of this subchapter mandates the
12 closure of the account.

13 (d) The parent of a child participating in the program may
14 make payments for the expenses of educational programs, services,
15 and products not covered by money in the program participant's
16 account.

17 (e) A payment under this section may not be financed using
18 federal money.

19 (f) Not later than November 1 of each even-numbered year,
20 the comptroller shall submit to the legislature an estimate of the
21 total amount of funding required for the program for the following
22 state fiscal biennium.

23 Sec. 29.361A. SOURCES OF FUNDING. (a) For students
24 eligible to participate under Section 29.356(a), the comptroller
25 shall transfer an amount that is equal to the state average
26 maintenance and operations expenditures per student in average
27 daily attendance for the preceding state fiscal year from the

1 foundation school fund to be deposited in the account of a program
2 participant, described by Section 29.365(a).

3 (b) For students eligible to participate under Section
4 29.356(b), the comptroller shall deposit an amount equal to the
5 state average maintenance and operations expenditures per student
6 in average daily attendance for the preceding state fiscal year
7 from funds described by Sections 29.354(b)(2), (3), (4), (5), and
8 (6).

9 (c) Nothing in this section authorizes the use of federal
10 funds for the program.

11 Sec. 29.362. ADMINISTRATION OF ACCOUNTS. (a) The
12 comptroller shall make payments as necessary to each program
13 participant's account on or before the first day of the month.

14 (b) The comptroller may not deduct any amount from each
15 quarterly payment to a program participant's account to cover the
16 comptroller's cost of administering the program.

17 (c) The comptroller may use funds made available for the
18 program to cover the comptroller's cost of administering the
19 program.

20 (d) The comptroller shall disburse to each certified
21 educational assistance organization, as necessary, an amount from
22 the total amount of money appropriated for purposes of this
23 subchapter to cover the organization's cost of administering the
24 program. The total amount disbursed to certified educational
25 assistance organizations under this subsection for a fiscal year
26 may not exceed five percent of the amount appropriated for purposes
27 of this subchapter for that fiscal year.

1 (e) Before each payment is made under Subsection (a), each
2 certified educational assistance organization shall:

3 (1) compare the list of program participants for whom
4 the organization is responsible with public school enrollment lists
5 maintained by the agency; and

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

9 (f) Except as provided by Section 29.363, on the date on
10 which a child who participated in the program is no longer eligible
11 to participate in the program under Section 29.356(c), the child's
12 account is closed and any remaining money is returned to the state
13 for deposit in the Texas Parental Empowerment Program fund to be
14 used for program participants described by Section 29.356(b).

15 Sec. 29.363. APPLICATION FOR PROGRAM EXTENSION. (a) Each
16 certified educational assistance organization shall develop a form
17 pursuant to this section.

18 (b) A program participant may submit an application form to
19 the program participant's organization requesting an extension on
20 the use of funds remaining in the program participant's account for
21 an approved purpose, including:

22 (1) fees and tuition for:

23 (A) occupational licensing and certification;

24 (B) occupational licensing and certification
25 courses;

26 (C) enrollment in institutions of higher
27 education, including career schools and colleges as defined by

1 Section 132.001;

2 (2) the purchase of textbooks or other instructional
3 materials or uniforms required by a school, institution, course, or
4 program described by Subdivision (1) in which the program
5 participant is expected to be enrolled.

6 (c) The certified educational assistance organization shall
7 approve an extension of the program participants account if:

8 (1) the program participant has submitted the
9 application form to the organization no later than 30 days before
10 the program participant graduates high school or receives an
11 equivalent degree;

12 (2) the program participant has provided the
13 organization with documentation regarding the intended use of the
14 funds remaining in the program participant's account; and

15 (3) the intended use of the funds remaining in the use
16 of the participant's account are an approved purpose pursuant to
17 subsection (b).

18 (d) Each certified educational assistance organization
19 shall notify the comptroller of the program participants for which
20 the organization has approved the application for program extension
21 no later than 30 days after the program participant has submitted
22 the application for program extension.

23 (e) The certified educational assistance organization shall
24 notify the program participant in writing no later than 30 days
25 after the program participant has submitted the application that
26 their application for program extension has been approved. If the
27 application for program extension has been denied, the organization

1 shall notify the program participant in writing no later than 30
2 days after the program participant has submitted the application
3 that their application has been denied. The notification of denial
4 must specify the grounds for denial.

5 (f) An extension of the program participant's account does
6 not entitle the program participant to additional deposits by the
7 comptroller to the program participant's account, as described by
8 Section 29.362.

9 (g) Only the funds remaining in the program participant's
10 account on the day the program participant graduates high school or
11 receives an equivalent degree shall be made available to the
12 program participant, pursuant to this section.

13 Sec. 29.364. RANDOM AUDITING. (a) The comptroller may
14 contract with a private entity to randomly audit accounts and the
15 certified educational assistance organizations as necessary to
16 ensure compliance with applicable law and the requirements of the
17 program.

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

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

25 Sec. 29.365. SUSPENSION OF ACCOUNT. (a) The comptroller
26 shall suspend the account of a program participant who fails to
27 comply with applicable law or a requirement of the program.

1 (b) On suspension of an account under Subsection (a), the
2 comptroller shall notify the program participant in writing that
3 the account has been suspended and that no additional payments may
4 be made from the account. The notification must specify the grounds
5 for the suspension and state that the participant has 10 business
6 days to respond and must take any corrective action required by the
7 comptroller within the timeframe required by the comptroller.

8 (c) On the expiration of the 10-day period under Subsection
9 (b), the comptroller shall:

10 (1) order permanent closure of the suspended account
11 and declare the program participant ineligible for the program;

12 (2) order temporary reinstatement of the account,
13 conditioned on the performance of a specified action by the
14 participant; or

15 (3) order full reinstatement of the account.

16 (d) The comptroller may recover money distributed under the
17 program that was used for expenses not allowed under Section 29.360
18 from the program participant or the entity that received the money
19 if the participant's account is suspended or closed under this
20 section.

21 Sec. 29.366. TUITION AND FEES; REFUND PROHIBITED. (a) An
22 education service provider may not charge a child participating in
23 the program an amount greater than the standard amount charged for
24 that service by the provider.

25 (b) An education service provider or a vendor of educational
26 products receiving money distributed under the program may not in
27 any manner rebate, refund, or credit to or share with a program

1 participant, or any person on behalf of a participant, any program
2 money paid or owed by the participant to the provider or vendor.

3 Sec. 29.367. REFERRAL TO ATTORNEY GENERAL. (a) If the
4 comptroller or a certified educational assistance organization
5 obtains evidence of fraudulent use of an account, the comptroller
6 or organization may refer the case to the attorney general for
7 investigation.

8 (b) With the consent of the appropriate local county or
9 district attorney, the attorney general has concurrent
10 jurisdiction with the consenting local prosecutor to prosecute an
11 offense referred to the attorney general under Subsection (a).

12 Sec. 29.368. SPECIAL EDUCATION NOTICE. (a) Each certified
13 educational assistance organization shall post on the
14 organization's Internet website and provide to each parent who
15 submits an application for the program on behalf of a child with a
16 disability a notice that:

17 (1) states that a private school is not subject to laws
18 regarding the provision of educational services in the same manner
19 as a public school, and a child with a disability attending a
20 private school may not receive the services a child with a
21 disability attending a public school is entitled to receive under
22 federal and state law; and

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

26 (A) rights provided under the Individuals with
27 Disabilities Education Act (20 U.S.C. Section 1400 et seq.),

1 including:

- 2 (i) an individualized education program;
- 3 (ii) educational services provided in the
- 4 least restrictive environment;
- 5 (iii) instruction from certified teachers;
- 6 (iv) due process hearings to ensure proper
- 7 and full implementation of an individualized education program;
- 8 (v) transition and planning services; and
- 9 (vi) supplementary aids and services;
- 10 (B) rights provided under Subchapter A; and
- 11 (C) other rights provided under federal or state
- 12 law.

13 (b) A private school in which a child with a disability who

14 is participating in the program enrolls shall provide to the

15 child's parent a copy of the notice required under Subsection (a).

16 Sec. 29.369. 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 an agent of the state or federal government.

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

21 the state to impose any additional regulation on an education

22 service provider or vendor of educational products except those

23 reasonably necessary to prevent fraudulent use of program funds.

24 (c) No school district or municipality has the regulatory

25 authority to impose any regulation on an education service

26 provider, vendor of educational products, or program participants.

27 (d) An education service provider may not be required to

1 modify the provider's sincerely held religious beliefs, statement
2 of beliefs, creed, practices, admissions policies, curriculum,
3 performance standards, or assessments, as applicable, to receive
4 money distributed under the program.

5 (e) The curriculum or assessment requirements, performance
6 standards, practices, or creed of the education program provided to
7 non-enrolled students may not be required to be changed in order for
8 the non-enrolled student to participate in the program.

9 (f) With respect to a non-enrolled student's education
10 program, nothing in this subchapter shall be construed to permit an
11 agency of this state, a public school district, or any other
12 governmental body to exercise control, regulatory authority, or
13 supervision over a non-enrolled student or parent or person
14 standing in parental relation to a non-enrolled student beyond the
15 control, regulatory authority, or supervision in effect on January
16 1, 2023.

17 (g) In any proceeding challenging a rule adopted by a state
18 agency or officer under this subchapter, the agency or officer has
19 the burden of proof to establish that the rule:

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

22 (2) does not impose an undue burden on a program
23 participant or an education service provider or vendor of
24 educational products that receives or seeks to receive money
25 distributed under the program.

26 Sec. 29.370. STUDENT RECORDS AND INFORMATION. (a) On
27 request by the parent of a child participating or seeking to

1 participate in the program, the school district or open-enrollment
2 charter school that the child would otherwise attend shall provide
3 a copy of the child's school records possessed by the district or
4 school, if any, to the child's parent or, if applicable, the private
5 school the child attends.

6 (b) The agency shall provide to each certified educational
7 assistance organization any information available to the agency
8 requested by the organization regarding a child who participates or
9 seeks to participate in the program. The organization may not
10 retain information provided under this subsection beyond the period
11 necessary to determine a child's eligibility to participate in the
12 program.

13 Sec. 29.371. GIFTS, GRANTS, AND DONATIONS. The comptroller
14 may solicit and accept gifts, grants, and donations from any public
15 or private source for any expenses related to the administration of
16 the program, including the initial implementation of the program.

17 Sec. 29.372. RULES; PROCEDURES. (a) The comptroller shall
18 adopt rules and procedures only as necessary to implement,
19 administer, and enforce this subchapter, in accordance with Section
20 29.359.

21 (b) A rule adopted under Subsection (a) is binding on an
22 organization that applies for certification as an educational
23 assistance organization and a state or local governmental entity,
24 including a political subdivision, as necessary to implement,
25 administer, and enforce this subchapter.

26 Sec. 29.373 PARENTAL AND STUDENT RIGHT TO INTERVENE IN
27 CIVIL ACTION. (a) A program participant may intervene in any civil

1 action challenging the constitutionality of the program or the
2 insurance premium tax credit under Chapter 230, Insurance Code.

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

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

10 (c) The comptroller is entitled to obtain criminal history
11 record information maintained by the department about a person who
12 is a private tutor, a therapist, or an employee of a teaching
13 service who intends to provide educational services to a child
14 participating in the program established under Subchapter J,
15 Chapter 29, Education Code, and is seeking approval to receive
16 money distributed under that program.

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

19 CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO

20 TEXAS PARENTAL EMPOWERMENT PROGRAM

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 230.001. DEFINITIONS. In this chapter:

23 (1) "Fund" means the Texas Parental Empowerment
24 Program fund under Section 29.354, Education Code.

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

27 SUBCHAPTER B. CREDIT

1 Sec. 230.051. CREDIT. An entity may apply for a credit
2 against the entity's state premium tax liability in the amount and
3 under the conditions provided by this chapter. The comptroller
4 shall award credits as provided by Section 230.053.

5 Sec. 230.052. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a)
6 Subject to Subsections (b) and (c), the amount of an entity's credit
7 is equal to the amount contributed to the fund during the period
8 covered by the tax report or 100 percent of the entity's state
9 premium tax liability for the report.

10 (b) For the 2024 state fiscal year, the total amount of
11 credits that may be awarded under this chapter may not exceed \$200
12 million. For each subsequent state fiscal year, the total amount of
13 credits that may be awarded is:

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

17 (2) 125 percent of the total amount of credits
18 available under this subsection for the previous state fiscal year,
19 if the total amount of credits awarded in the previous state fiscal
20 year was at least 90 percent of the total amount of credits
21 available under this subsection for that fiscal year.

22 (c) The comptroller by rule shall prescribe procedures by
23 which the comptroller may allocate credits under this chapter. The
24 procedures must provide that credits are allocated first to
25 entities that received preliminary approval for a credit under
26 Section 230.0525 and that apply under Section 230.053. The
27 procedures must provide that any remaining credits are allocated to

1 entities that apply under Section 230.053 on a first-come,
2 first-served basis, based on the date the contribution was
3 initially made.

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

8 Sec. 230.0525. PRELIMINARY APPROVAL FOR CREDIT. (a) Before
9 making a contribution to the fund, an entity may apply to the
10 comptroller for preliminary approval of a credit under this chapter
11 for the contribution.

12 (b) An entity must apply for preliminary approval on a form
13 provided by the comptroller that includes the amount the entity
14 expects to contribute and any other information the comptroller
15 requires.

16 (c) The comptroller shall grant preliminary approval for
17 credits under this chapter on a first-come, first-served basis,
18 based on the date the comptroller receives the application for
19 preliminary approval.

20 (d) The comptroller shall grant preliminary approval for a
21 credit under this chapter for a state fiscal year if the sum of the
22 amount of the credit and the total amount of all other credits
23 preliminarily approved under this chapter does not exceed the
24 amount provided by Section 230.052(b).

25 (e) Final award of a credit preliminarily approved under
26 this section remains subject to the limitations under Section
27 230.052(a) and all other requirements of this chapter.

1 Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must
2 apply for a credit under this chapter on or with the tax report
3 covering the period in which the contribution was made.

4 (b) The comptroller shall adopt a form for the application
5 for the credit. An entity must use this form in applying for the
6 credit.

7 (c) Subject to Section 230.052(c), the comptroller may
8 award a credit to an entity that applies for the credit under
9 Subsection (a) if the entity is eligible for the credit and the
10 credit is available under Section 230.052(b). The comptroller has
11 broad discretion in determining whether to grant or deny an
12 application for a credit.

13 (d) The comptroller shall notify an entity in writing of the
14 comptroller's decision to grant or deny the application under
15 Subsection (a). If the comptroller denies an entity's application,
16 the comptroller shall include in the notice of denial the reasons
17 for the comptroller's decision.

18 (e) If the comptroller denies an entity's application under
19 Subsection (a), the entity may request in writing a reconsideration
20 of the application not later than the 10th day after the date the
21 notice under Subsection (d) is received. If the entity does not
22 request a reconsideration of the application on or before that
23 date, the comptroller's decision is final.

24 (f) An entity that requests a reconsideration under
25 Subsection (e) may submit to the comptroller, not later than the
26 30th day after the date the request for reconsideration is
27 submitted, additional information and documents to support the

1 entity's request for reconsideration.

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

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

9 Sec. 230.054. RULES; PROCEDURES. The comptroller shall
10 adopt rules and procedures to implement, administer, and enforce
11 this chapter.

12 Sec. 230.055. ASSIGNMENT PROHIBITED; EXCEPTION. An entity
13 may not convey, assign, or transfer the credit allowed under this
14 chapter to another entity unless all of the assets of the entity are
15 conveyed, assigned, or transferred in the same transaction.

16 Sec. 230.056. NOTICE OF AVAILABILITY OF CREDIT. The
17 comptroller shall provide notice of the availability of the credit
18 under this chapter on the comptroller's Internet website, in the
19 instructions for insurance premium tax report forms, and in any
20 notice sent to an entity concerning the requirement to file an
21 insurance premium tax report.

22 SECTION 6. Chapter 30, Civil Practice and Remedies Code, is
23 amended by adding Section 30.023 to read as follows:

24 Sec. 30.023. AWARD OF ATTORNEY'S FEES IN ACTIONS
25 CHALLENGING CERTAIN EDUCATION LAWS. (a) Notwithstanding any other
26 law, any person, including an entity, attorney, or law firm, who
27 seeks declaratory or injunctive relief to prevent this state, a

1 political subdivision, any governmental entity or public official
2 in this state, or any person in this state from enforcing any
3 statute, ordinance, rule, regulation, or any other type of law that
4 empowers parents to direct their child's education, including money
5 following the child to any educational option the parent elects and
6 the use of a insurance premium tax credit program to fund in whole
7 or in part a parental empowerment program, in any state or federal
8 court, or that represents any litigant seeking such relief in any
9 state or federal court, is jointly and severally liable to pay the
10 costs and attorney's fees of the prevailing party.

11 (b) For purposes of this section, a party is considered a
12 prevailing party if a state or federal court:

13 (1) dismisses any claim or cause of action brought
14 against the party that seeks the declaratory or injunctive relief
15 described by Subsection (a), regardless of the reason for the
16 dismissal; or

17 (2) enters judgment in the party's favor on any such
18 claim or cause of action.

19 (c) Regardless of whether a prevailing party sought to
20 recover costs or attorney's fees in the underlying action, a
21 prevailing party under this section may bring a civil action to
22 recover costs and attorney's fees against a person, including an
23 entity, attorney, or law firm, that sought declaratory or
24 injunctive relief described by Subsection (a) not later than the
25 third anniversary of the date on which, as applicable:

26 (1) the dismissal or judgment described by Subsection
27 (b) becomes final on the conclusion of appellate review; or

1 (2) the time for seeking appellate review expires.

2 (d) It is not a defense to an action brought under
3 Subsection (c) that:

4 (1) a prevailing party under this section failed to
5 seek recovery of costs or attorney's fees in the underlying action;

6 (2) the court in the underlying action declined to
7 recognize or enforce the requirements of this section; or

8 (3) the court in the underlying action held that any
9 provisions of this section are invalid, unconstitutional, or
10 preempted by federal law, notwithstanding the doctrines of issue or
11 claim preclusion.

12 SECTION 7. Subchapter J, Chapter 29, Education Code, as
13 added by this Act, applies beginning with the 2024-2025 school
14 year.

15 SECTION 8. 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 9. Not later than February 15, 2024, the
19 comptroller of public accounts shall adopt rules as provided by
20 Section 230.054, Insurance Code, as added by this Act.

21 SECTION 10. 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 11. (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 in a district court in Travis
2 County under Chapter 37, Civil Practice and Remedies Code, except
3 that this section does not authorize an award of attorney's fees
4 against this state and Section 37.009, Civil Practice and Remedies
5 Code, does not apply to an action filed under this section. This
6 section does not authorize a taxpayer suit to contest the denial of
7 a tax credit by the comptroller of public accounts.

8 (b) An appeal of a declaratory judgment or order, however
9 characterized, of a district court, including an appeal of the
10 judgment of an appellate court, holding or otherwise determining
11 that all or any part of Subchapter J, Chapter 29, Education Code, as
12 added by this Act, or Chapter 230, Insurance Code, as added by this
13 Act, is constitutional or unconstitutional, or otherwise valid or
14 invalid, under the state or federal constitution is an accelerated
15 appeal.

16 (c) If the judgment or order is interlocutory, an
17 interlocutory appeal may be taken from the judgment or order and is
18 an accelerated appeal.

19 (d) A district court in Travis County may grant or deny a
20 temporary or otherwise interlocutory injunction or a permanent
21 injunction on the grounds of the constitutionality or
22 unconstitutionality, or other validity or invalidity, under the
23 state or federal constitution of all or any part of Subchapter J,
24 Chapter 29, Education Code, as added by this Act, or Chapter 230,
25 Insurance Code, as added by this Act.

26 (e) There is a direct appeal to the Texas Supreme Court from
27 an order, however characterized, of a trial court granting or

1 denying a temporary or otherwise interlocutory injunction or a
2 permanent injunction on the grounds of the constitutionality or
3 unconstitutionality, or other validity or invalidity, under the
4 state or federal constitution of all or any part of Subchapter J,
5 Chapter 29, Education Code, as added by this Act, or Chapter 230,
6 Insurance Code, as added by this Act.

7 (f) The direct appeal is an accelerated appeal.

8 (g) This section exercises the authority granted by Section
9 3-b, Article V, Texas Constitution.

10 (h) The filing of a direct appeal under this section will
11 automatically stay any temporary or otherwise interlocutory
12 injunction or permanent injunction granted in accordance with this
13 section pending final determination by the Texas Supreme Court,
14 unless the supreme court makes specific findings that the applicant
15 seeking such injunctive relief has pleaded and proved that:

16 (1) the applicant has a probable right to the relief it
17 seeks on final hearing; and

18 (2) the applicant will suffer a probable injury that
19 is imminent and irreparable, and that the applicant has no other
20 adequate legal remedy.

21 (i) An appeal under this section, including an
22 interlocutory, accelerated, or direct appeal, is governed, as
23 applicable, by the Texas Rules of Appellate Procedure, including
24 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),
25 38.6(a) and (b), 40.1(b), and 49.4.

26 SECTION 12. If any provision of this Act or its application
27 to any person or circumstance is held invalid, the invalidity does

1 not affect other provisions or applications of this Act that can be
2 given effect without the invalid provision or application, and to
3 this end the provisions of this Act are declared severable.

4 SECTION 13. This Act takes effect January 1, 2024.