

By: Bettencourt

S.B. No. 2354

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the establishment of the Education Savings Account  
3 Program to allow certain disadvantaged children and their siblings  
4 to use public money to pursue educational alternatives to public  
5 schools and an insurance premium tax credit for contributions made  
6 for purposes of that program.

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

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

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

13 SUBCHAPTER J. EDUCATION SAVINGS ACCOUNT PROGRAM

14 Sec. 29.351. DEFINITIONS. In this subchapter:

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

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

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

23 (4) "Cocurricular activity" means an activity that  
24 directly adds value to classroom instruction and curriculum,

1 including an academic field trip, performance, contest,  
2 demonstration, or display. The term does not include an athletic or  
3 other nonacademic activity.

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

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

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

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

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

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

22 (b) The fund is composed of:

23 (1) general revenue transferred to the fund;

24 (2) money appropriated to the fund;

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

27 (4) contributions to the fund for which an entity

1 receives a credit against the entity's state premium tax liability  
2 under Chapter 230, Insurance Code; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17           (B) program participant satisfaction; and

18           (C) assessment results reported under Section  
19 29.357(2).

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

23           (1) either:

24           (A) was enrolled in a public school during the  
25 entire preceding school year; or

26           (B) is enrolling in a school in this state for the  
27 first time; and

1           (2) meets one of the following criteria:

2                   (A) is a member of a household with a total annual  
3 income that is at or below 200 percent of the income guidelines  
4 necessary to qualify for the national free or reduced-price lunch  
5 program established under 42 U.S.C. Section 1751 et seq.;

6                   (B) is the sibling of a child who is eligible to  
7 participate in the program;

8                   (C) was eligible to participate in the program  
9 during a previous school year;

10                  (D) is a child with a disability; or

11                  (E) is covered by Section 504, Rehabilitation Act  
12 of 1973 (29 U.S.C. Section 794).

13           (b) A child who establishes eligibility under this section  
14 may participate in the program until the earliest of the following  
15 dates:

16                   (1) the date on which the child graduates from high  
17 school;

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

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

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

24           Sec. 29.356. APPLICATION TO PROGRAM. (a) A parent of an  
25 eligible child may apply to the certified educational assistance  
26 organization to enroll the child in the program for the following  
27 school year. The certified educational assistance organization

1 shall:

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

5 (2) on receipt of more acceptable applications for  
6 admission under this section than available positions in the  
7 program due to insufficient funding, prioritize applicants who are  
8 members of a household with a total annual income that is at or  
9 below the income guidelines necessary to qualify for the national  
10 free or reduced-price lunch program established under 42 U.S.C.  
11 Section 1751 et seq.

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

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

22 (1) expenses allowed under the program under Section  
23 29.359;

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

26 (3) the organization's expense reporting  
27 requirements; and

1           (4) a description of the responsibilities of program  
2 participants.

3           (d) The certified educational assistance organization shall  
4 annually provide to each program participant the information  
5 described by Subsection (c). The organization may provide the  
6 information electronically.

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

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

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

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

20                   (2) share or authorize the administrator of an  
21 assessment instrument to share with the certified educational  
22 assistance organization the results of any assessment instrument  
23 required to be administered to the child under Section  
24 29.358(b)(1)(B) or other law;

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

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

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

6                   (B) graduates from high school; or

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

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

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

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

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

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

25                   (2) for a private tutor, therapist, or teaching  
26 service:

27                           (A) demonstrates the tutor's, therapist's, or



1 service's qualification to serve program participants, including  
2 that the tutor or therapist or each employee of the service who  
3 intends to provide services to a program participant:

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

6 (ii) holds a relevant license or  
7 accreditation issued by a state, regional, or national licensing or  
8 accreditation organization; or

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

11 (B) the tutor or therapist or each employee of  
12 the teaching service who intends to provide educational services to  
13 a program participant either:

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

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

21 (C) the tutor or therapist or each employee of  
22 the teaching service who intends to provide educational services to  
23 a program participant is not included in the registry under Section  
24 22.092; or

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

27 (c) The comptroller shall review the national criminal

1 history record information or documentation for each private tutor,  
2 therapist, or teaching service employee who submits information or  
3 documentation under this section and verify that the individual is  
4 not included in the registry under Section 22.092. The tutor,  
5 therapist, or service must provide the comptroller with any  
6 information requested by the comptroller to enable the comptroller  
7 to complete the review.

8 (d) An education service provider or vendor of educational  
9 products shall provide information requested by the comptroller to  
10 verify the provider's or vendor's eligibility for preapproval under  
11 Subsection (b). The comptroller may not approve a provider or  
12 vendor if the comptroller cannot verify the provider's or vendor's  
13 eligibility for preapproval.

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

19 (1) tuition and fees;  
20 (2) the purchase of textbooks or other instructional  
21 materials or uniforms required by a school, higher education  
22 provider, course, or online educational course or program in which  
23 the child is enrolled;

24 (3) costs related to academic assessments;

25 (4) costs related to cocurricular activities;

26 (5) fees for transportation provided by a  
27 fee-for-service transportation provider for the child to travel to

1 and from a preapproved education service provider or vendor of  
2 educational products; and

3 (6) fees for educational therapies or services  
4 provided by a practitioner or provider, only for fees that are not  
5 covered by any federal, state, or local government benefits such as  
6 Medicaid or the Children's Health Insurance Program (CHIP) or by  
7 any private insurance that the child is enrolled in at the time of  
8 receiving the therapies or services.

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

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

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

18 (1) program participants may be efficiently  
19 reimbursed for expenses described by Subsection (a)(2), (3), (4),  
20 (5), or (6) incurred from an education service provider or vendor of  
21 educational products that is not preapproved under Section  
22 29.358(a); and

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

26 Sec. 29.360. AMOUNT OF PAYMENT; FINANCING. (a) A parent of  
27 an eligible child shall receive each year that the child

1 participates in the program a payment from the state from funds  
2 available under Section 29.353 to the child's account in an amount  
3 equal to 90 percent of the state average maintenance and operations  
4 revenue per student in average daily attendance for the preceding  
5 state fiscal year.

6 (b) Any money remaining in a child's account at the end of a  
7 fiscal year is carried forward to the next fiscal year unless  
8 another provision of this subchapter mandates the closure of the  
9 account.

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

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

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

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

20 (1) a summary of participant enrollment in the  
21 program;

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

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

26 Sec. 29.361. ADMINISTRATION OF ACCOUNTS. (a) The  
27 comptroller shall make quarterly payments to each program

1 participant's account in equal amounts on or before the first day of  
2 July, October, January, and April.

3 (b) The comptroller may deduct an amount from each quarterly  
4 payment to a program participant's account to cover the  
5 comptroller's cost of administering the program. The amount  
6 deducted may not exceed three percent of the payment.

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

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

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

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

24 (e) On the date on which a child who participated in the  
25 program is no longer eligible to participate in the program under  
26 Section 29.355(b), the child's account is closed and any remaining  
27 money is returned to the state for deposit in the Education Savings

1 Account Program fund.

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

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

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

14 (1) the certified educational assistance  
15 organization;

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

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

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

24 (b) On suspension of an account under Subsection (a), the  
25 comptroller shall notify the program participant in writing that  
26 the account has been suspended and that no additional payments may  
27 be made from the account. The notification must specify the grounds

1 for the suspension and state that the participant has 30 business  
2 days to respond and take any corrective action required by the  
3 comptroller.

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

6 (1) order closure of the suspended account;

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

10 (3) order full reinstatement of the account.

11 (d) The comptroller may recover money distributed under the  
12 program that was used for expenses not allowed under Section 29.359  
13 from the program participant or the entity that received the money  
14 if the program participant's account is suspended or closed under  
15 this section.

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

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

25 Sec. 29.365. REFERRAL TO DISTRICT ATTORNEY. If the  
26 comptroller or the certified educational assistance organization  
27 obtains evidence of fraudulent use of an account, the comptroller

1 or organization shall notify the appropriate local county or  
2 district attorney with jurisdiction over the residence of the  
3 program participant.

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

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

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

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

17 (B) rights provided under Subchapter A.

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

21 Sec. 29.367. PROGRAM PARTICIPANT, PROVIDER, AND VENDOR  
22 AUTONOMY. (a) An education service provider or vendor of  
23 educational products that receives money distributed under the  
24 program is not a recipient of federal financial assistance on the  
25 basis of receiving that money.

26 (b) A rule adopted or action taken related to the program by  
27 an individual, governmental entity, court of law, or program



1 administrator may not:

2 (1) limit the independence or autonomy of an education  
3 service provider, vendor of educational products, or program  
4 participant;

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

8 (3) limit:

9 (A) an education service provider's ability to  
10 determine the methods used to educate the provider's students or to  
11 exercise the provider's religious or institutional values; or

12 (B) a program participant's ability to determine  
13 the participant's educational content or to exercise the  
14 participant's religious values;

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

18 (5) impose any regulation on an education service  
19 provider, vendor of educational products, or program participant  
20 beyond those regulations necessary to enforce the requirements of  
21 the program; or

22 (6) require as a condition of receiving money  
23 distributed under the program:

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

27 (B) a program participant to modify the

1 participant's creed, practices, curricula, performance standards,  
2 or assessments.

3 (c) In a proceeding challenging a rule adopted by a state  
4 agency or officer under this subchapter, the agency or officer has  
5 the burden of proof to establish by clear and convincing evidence  
6 that the rule:

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

9 (2) does not violate this section;

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

14 (4) is the least restrictive means of accomplishing  
15 the purpose of the program while recognizing the independence of an  
16 education service provider to meet the educational needs of  
17 students in accordance with the provider's religious or  
18 institutional values.

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

26 (b) As necessary to verify a child's eligibility for the  
27 program, the agency shall provide to the certified educational

1 assistance organization any information available to the agency  
2 requested by the organization regarding a child who participates or  
3 seeks to participate in the program. The organization may not  
4 retain information provided under this subsection beyond the period  
5 necessary to determine a child's eligibility to participate in the  
6 program.

7 Sec. 29.369. GIFTS, GRANTS, AND DONATIONS. The comptroller  
8 and certified educational assistance organization may solicit and  
9 accept gifts, grants, and donations from any public or private  
10 source for any expenses related to the administration of the  
11 program, including establishing the program.

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

15 (b) A rule adopted under Subsection (a) is binding on an  
16 organization that applies for certification as an educational  
17 assistance organization and a state or local governmental entity,  
18 including a political subdivision, as necessary to implement,  
19 administer, and enforce this subchapter.

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

26 (b) A program participant, education service provider, or  
27 vendor of educational products who is adversely affected or

1 aggrieved by a decision made by the comptroller or certified  
2 educational assistance organization under this subchapter may file  
3 a suit challenging the decision in a district court in the county in  
4 which the program participant resides or the provider or vendor has  
5 its principal place of business, as applicable.

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

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

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

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

- 22 (1) private schools;
- 23 (2) public schools; ~~and~~
- 24 (3) nonprofit teacher organizations approved by the  
25 commissioner for the purpose of participating in the tutoring  
26 program established under Section 33.913; and
- 27 (4) the comptroller for the purpose of preapproving

1 education service providers and vendors of educational products  
2 under Section 29.358 for participation in the program established  
3 under Subchapter J, Chapter 29.

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

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

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

15 CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO

16 EDUCATION SAVINGS ACCOUNT PROGRAM

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 230.001. DEFINITIONS. In this chapter:

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

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

23 SUBCHAPTER B. CREDIT

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

Sec. 230.052. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a)

Subject to Subsections (b) and (c), the amount of an entity's credit is equal to the lesser of the amount contributed to the fund during the period covered by the tax report or 75 percent of the entity's state premium tax liability for the report.

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

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

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

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

(d) The comptroller may require an entity to notify the

1 comptroller of the amount the entity intends or expects to apply for  
2 under this chapter before the beginning of a state fiscal year or at  
3 any other time required by the comptroller.

4 Sec. 230.053. PRELIMINARY APPROVAL FOR CREDIT. (a) Before  
5 making a contribution to the fund, an entity may apply to the  
6 comptroller for preliminary approval of a credit under this chapter  
7 for the contribution.

8 (b) An entity must apply for preliminary approval on a form  
9 provided by the comptroller that includes the amount the entity  
10 expects to contribute and any other information the comptroller  
11 requires.

12 (c) The comptroller shall grant preliminary approval for  
13 credits under this chapter on a first-come, first-served basis,  
14 based on the date the comptroller receives the application for  
15 preliminary approval.

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

21 (e) Final award of a credit preliminarily approved under  
22 this section remains subject to the limitations under Section  
23 230.052(a) and all other requirements of this chapter.

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

27 (b) The comptroller shall adopt a form for the application

1 for the credit. An entity must use this form in applying for the  
2 credit.

3 (c) Subject to Section 230.052(c), the comptroller may  
4 award a credit to an entity that applies for the credit under  
5 Subsection (a) of this section if the entity is eligible for the  
6 credit and the credit is available under Section 230.052(b). The  
7 comptroller has broad discretion in determining whether to grant or  
8 deny an application for a credit.

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

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

20 (f) An entity that requests a reconsideration under  
21 Subsection (e) may submit to the comptroller, not later than the  
22 30th day after the date the request for reconsideration is  
23 submitted, additional information and documents to support the  
24 entity's request for reconsideration.

25 (g) The comptroller's reconsideration of an application  
26 under this section is not a contested case under Chapter 2001,  
27 Government Code. The comptroller's decision on a request for



1 reconsideration of an application is final and is not appealable.

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

5 Sec. 230.055. RULES; PROCEDURES. The comptroller shall  
6 adopt rules and procedures to implement, administer, and enforce  
7 this chapter.

8 Sec. 230.056. ASSIGNMENT PROHIBITED; EXCEPTION. An entity  
9 may not convey, assign, or transfer the credit allowed under this  
10 chapter to another entity unless substantially all of the assets of  
11 the entity are conveyed, assigned, or transferred in the same  
12 transaction.

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

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

22 SECTION 7. An entity may apply for a credit under Chapter  
23 230, Insurance Code, as added by this Act, only for a contribution  
24 made on or after the effective date of this Act.

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

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

4           SECTION 10. (a) The constitutionality and other validity  
5 under the state or federal constitution of all or any part of  
6 Subchapter J, Chapter 29, Education Code, as added by this Act, or  
7 Chapter 230, Insurance Code, as added by this Act, may be determined  
8 in an action for declaratory judgment under Chapter 37, Civil  
9 Practice and Remedies Code, in a district court in the county in  
10 which the plaintiff resides or has its principal place of business.

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

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

23           (d) This section exercises the authority granted by Section  
24 3-b, Article V, Texas Constitution.

25           (e) The filing of a direct appeal under this section will  
26 automatically stay any temporary or otherwise interlocutory  
27 injunction or permanent injunction granted in accordance with this

1 section pending final determination by the Texas Supreme Court,  
2 unless the supreme court makes specific findings that the applicant  
3 seeking such injunctive relief has pleaded and proved that:

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

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

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

11 (f) An appeal under this section, including an  
12 interlocutory, accelerated, or direct appeal, is governed, as  
13 applicable, by the Texas Rules of Appellate Procedure, including  
14 Rules 25.1(d)(6), 28.1, 32.1(g), 37.3(a)(1), 38.6(a) and (b),  
15 40.1(b), and 49.4.

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

19 (h) This section does not authorize a taxpayer suit to  
20 contest the denial of a tax credit by the comptroller of public  
21 accounts.

22 SECTION 11. It is the intent of the legislature that every  
23 provision, section, subsection, sentence, clause, phrase, or word  
24 in this Act, and every application of the provisions in this Act to  
25 each person or entity, are severable from each other. If any  
26 application of any provision in this Act to any person, group of  
27 persons, or circumstances is found by a court to be invalid for any

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1 reason, the remaining applications of that provision to all other  
2 persons and circumstances shall be severed and may not be affected.

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