

By: Patrick

S.B. No. 1410

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the Texas Equal Opportunity Scholarship Program.

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

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

SUBCHAPTER N. TEXAS EQUAL OPPORTUNITY SCHOLARSHIP PROGRAM

Sec. 29.551. DEFINITIONS. In this subchapter:

(1) "Certified organization" means an organization certified under Section 29.552.

(2) "Eligible student" means a student who meets the requirements of Section 29.559.

(3) "Opportunity scholarship" means a Texas Equal Opportunity Scholarship Program scholarship awarded under Section 29.557.

(4) "Qualified nonpublic school" means a school that meets the requirements of Section 29.560.

Sec. 29.552. CERTIFICATION OF ORGANIZATIONS; ADMINISTRATION OF PROGRAM. (a) The comptroller may select and certify not more than three organizations that meet the eligibility requirements of Section 29.553 to administer the Texas Equal Opportunity Scholarship Program. The comptroller shall select and certify three geographically diverse organizations that the comptroller determines are likely to best administer the program

1 from among the eligible organizations that apply.

2 (b) A certified organization may accept donations and award
3 opportunity scholarships in this state under the conditions and
4 limitations provided by this subchapter.

5 Sec. 29.553. ELIGIBILITY REQUIREMENTS FOR ORGANIZATIONS
6 APPLYING FOR CERTIFICATION. (a) An organization may apply to the
7 comptroller for certification under Section 29.552.

8 (b) An organization is eligible for selection and
9 certification by the comptroller if the organization:

10 (1) according to the organization's charter, has the
11 primary purpose of awarding scholarships to or paying educational
12 expenses for eligible students in public elementary or secondary
13 schools located in this state;

14 (2) uses its annual revenue for the purpose provided
15 by Subdivision (1), except for a portion of the revenue that may be
16 used for reasonable operating expenses;

17 (3) is exempt from federal tax under Section 501(a),
18 Internal Revenue Code of 1986, by being listed as an exempt
19 organization in Section 501(c)(3) of that code and meeting all
20 other applicable requirements for that exemption;

21 (4) is in good standing with this state;

22 (5) is located in this state;

23 (6) demonstrates, within the previous five-year
24 period, experience and expertise in awarding scholarships to
25 students in elementary and secondary schools; and

26 (7) agrees to be independently audited on an annual
27 basis and file the audit report with the comptroller if certified.

1 Sec. 29.554. REQUIREMENTS FOR CERTIFIED ORGANIZATIONS. (a)

2 A certified organization shall:

3 (1) comply at all times with the eligibility
4 requirements under Section 29.553(b);

5 (2) submit to an annual independent audit under
6 guidelines provided by the comptroller and file the audit report
7 with the comptroller;

8 (3) except as provided by Section 29.556(b),
9 distribute all money received from donations under this subchapter
10 within two school years of receipt;

11 (4) give each donor a receipt for money donated to the
12 certified organization under this subchapter that includes the name
13 of the certified organization, the name of the donor, the amount of
14 the donation, and any other information required by the
15 comptroller; and

16 (5) of the amount of money received from donations
17 made by donors for the purpose of providing scholarships under this
18 subchapter including all money donated by entities applying for a
19 tax credit in connection with the donation under Chapter 230,
20 Insurance Code, or Subchapter K, Chapter 171, Tax Code:

21 (A) distribute not less than 95 percent in the
22 form of opportunity scholarships; and

23 (B) use not more than five percent to pay
24 expenses of operating the organization.

25 (b) A certified organization may not:

26 (1) award all opportunity scholarships to students who
27 attend a particular school; or

1 (2) provide opportunity scholarships in a manner that
2 does not comply with Sections 29.556 and 29.557.

3 Sec. 29.555. REVOCATION OF CERTIFICATION. (a) The
4 comptroller shall revoke a certification under Section 29.552 if
5 the comptroller finds that a certified organization:

6 (1) is not in compliance with the requirements of
7 Section 29.554; or

8 (2) otherwise intentionally and substantially
9 violates this subchapter.

10 (b) Revocation of a certification under this section does
11 not affect the validity of a tax credit under Chapter 230, Insurance
12 Code, or Subchapter K, Chapter 171, Tax Code, relating to a donation
13 made before the date of revocation.

14 Sec. 29.556. ALLOCATION OF OPPORTUNITY SCHOLARSHIP MONEY.

15 (a) Except as provided by Subsection (b), of a certified
16 organization's money available to award opportunity scholarships
17 for each school year, the certified organization shall use:

18 (1) not more than 80 percent to award opportunity
19 scholarships under Section 29.557 to eligible students to attend
20 qualified nonpublic schools in this state; and

21 (2) not more than 20 percent to award opportunity
22 scholarships under Section 29.557 to eligible students to attend:

23 (A) tuition-supported prekindergarten programs
24 at public schools in this state; or

25 (B) educational after-school programs, if the
26 eligible students receiving the opportunity scholarships to attend
27 after-school programs attend public schools in this state.

1 (b) If a certified organization awards the maximum
2 opportunity scholarship to each eligible student described by
3 Subsection (a)(1) or (2) who applies for a school year but does not
4 award the maximum amount of the organization's money allowed by the
5 applicable subdivision for the year, the certified organization
6 shall carry forward the remaining money available under the
7 applicable subdivision for the year and use the money to award
8 opportunity scholarships to eligible students described by the
9 applicable subdivision for subsequent school years.

10 Sec. 29.557. AWARD OF OPPORTUNITY SCHOLARSHIPS. (a) For
11 each school year a certified organization shall award opportunity
12 scholarships according to the allocations prescribed by Section
13 29.556(a) to eligible students who apply as provided by this
14 section.

15 (b) A certified organization shall award opportunity
16 scholarships to applicants according to the following priority
17 groups in the manner provided by Subsections (c) and (d):

18 (1) the certified organization shall give first
19 priority to applicants, and the siblings of those applicants, who
20 were awarded an opportunity scholarship by the certified
21 organization for the current school year and who are applying to
22 renew the opportunity scholarship for the next school year;

23 (2) the certified organization shall give second
24 priority to applicants who currently attend a campus that is
25 assigned a performance rating of unacceptable performance under
26 Section 39.054; and

27 (3) the certified organization shall give third

1 priority to all other applicants.

2 (c) A certified organization may not award an opportunity
3 scholarship to an applicant in the priority group described by
4 Subsection (b)(2) for a school year unless the certified
5 organization awards an opportunity scholarship to each eligible
6 student in the priority group described by Subsection (b)(1) who
7 applies for that year. A certified organization may not award an
8 opportunity scholarship to an applicant in the priority group
9 described by Subsection (b)(3) for a school year unless the
10 certified organization awards an opportunity scholarship to each
11 eligible student in the priority groups described by Subsections
12 (b)(1) and (2) who apply for that year.

13 (d) If a certified organization is able to award an
14 opportunity scholarship to one or more, but not all, eligible
15 students in a priority group described by Subsection (b) who apply,
16 the certified organization shall use a lottery system to award
17 opportunity scholarships to eligible students in that group who
18 apply.

19 Sec. 29.558. LIMITATION ON AMOUNTS OF OPPORTUNITY
20 SCHOLARSHIPS. (a) The amount of an opportunity scholarship awarded
21 for a school year to a student to attend a qualified nonpublic
22 school or a tuition-supported prekindergarten program at a public
23 school may not exceed the amount of funding equal to 80 percent of
24 the statewide average amount of state and local funding provided to
25 school districts under Chapter 42 for a student in average daily
26 attendance.

27 (b) The amount of an opportunity scholarship awarded for a

1 school year to a student to attend an educational after-school
2 program may not exceed \$1,000.

3 Sec. 29.559. ELIGIBILITY OF STUDENTS. (a) A student is
4 eligible for an opportunity scholarship if:

5 (1) resides in the state of Texas;

6 (2) attended a public school for the majority of a
7 preceding year; and either

8 (A) is at risk of dropping out of school as
9 defined in Section 29.081; or,

10 (B) resides in a household that had, in the
11 household's most recently filed federal income tax return, a
12 household income not greater than 200 percent of the income
13 guidelines necessary to qualify for the national free or
14 reduced-price lunch program established under 42 U.S.C. Section
15 1751 et seq.

16 (b) A child who establishes eligibility under Subsection
17 (a) is entitled to continue participating until the earlier of the
18 date on which the child graduates from high school or the child's
19 21st birthday.

20 Sec. 29.560. NONPUBLIC SCHOOL REQUIREMENTS. (a) A
21 certified organization may not award an opportunity scholarship for
22 a student to attend a nonpublic school unless the nonpublic school:

23 (1) is accredited by an organization that is
24 recognized by the Texas Private School Accreditation Commission;

25 (2) annually administers a nationally norm-referenced
26 assessment instrument or each appropriate assessment instrument
27 required under Section 39.023;

1 (3) qualifies as a school at which a student may
2 fulfill this state's compulsory attendance requirements;

3 (4) is not in violation of the federal Civil Rights Act
4 of 1964 (42 U.S.C. Section 2000a et seq.);

5 (5) holds a valid certificate of occupancy; and

6 (6) has written policy statements regarding:

7 (A) admissions;

8 (B) curriculum;

9 (C) safety;

10 (D) food service inspection; and

11 (E) student to teacher ratios.

12 (b) A nonpublic school that enrolls or accepts for
13 enrollment a student who applies for or is awarded an opportunity
14 scholarship shall provide to the certified organization to which
15 the student applies or that awards the opportunity scholarship a
16 notarized affidavit, with supporting documents, showing that the
17 nonpublic school meets the requirements of Subsection (a).

18 Sec. 29.561. RULES; PROCEDURES. (a) The comptroller shall
19 adopt rules and procedures to implement, administer, and enforce
20 this subchapter.

21 (b) A rule adopted under Subsection (a) is binding on any
22 state or local governmental entity, including a political
23 subdivision, as necessary to implement, administer, and enforce
24 this subchapter.

25 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended
26 by adding Chapter 230 to read as follows:

27 CHAPTER 230. CREDIT AGAINST PREMIUM TAXES

1 FOR DONATIONS TO TEXAS EQUAL OPPORTUNITY SCHOLARSHIP PROGRAM

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 230.001. DEFINITIONS. In this chapter:

4 (1) "Certified organization" has the meaning assigned
5 by Section 29.551, Education Code.

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

8 SUBCHAPTER B. CREDIT

9 Sec. 230.051. ELIGIBILITY. An entity is eligible for a
10 credit against the entity's state premium tax liability in the
11 amount and under the conditions and limitations provided by this
12 chapter.

13 Sec. 230.052. AMOUNT OF CREDIT; LIMITATION ON RETURN OF
14 CREDIT. (a) The amount of the credit is equal to the lesser of the
15 amount of donations made to a certified organization or fifteen
16 percent of the entity's state premium tax liability after applying
17 any other applicable credits.

18 (b) An entity is not entitled to have a donation to a
19 certified organization returned because of a change in the entity's
20 state premium tax liability or in the amount of the entity's tax
21 credit allowed under this chapter as a result of a federal or state
22 audit, assessment, redetermination, amended return, or similar
23 change in the entity's tax liability. The certified organization to
24 which an entity makes a donation shall notify the entity of this
25 provision.

26 Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must
27 apply for a credit under this chapter on or with the tax return for

1 the taxable year for which the credit is claimed.

2 (b) The comptroller shall adopt a form for the application
3 for the credit. An entity must use this form in applying for the
4 credit. The comptroller shall make the form available in electronic
5 and paper format in the same manner as other tax forms.

6 Sec. 230.054. RULES; PROCEDURES. (a) The comptroller
7 shall adopt rules and procedures to implement, administer, and
8 enforce this chapter.

9 (b) A rule adopted under Subsection (a) is binding on any
10 state or local governmental entity, including a political
11 subdivision, as necessary to implement, administer, and enforce
12 this chapter.

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

17 SECTION 3. Chapter 171, Tax Code, is amended by adding
18 Subchapter K to read as follows:

19 SUBCHAPTER K. TAX CREDIT FOR DONATIONS TO TEXAS EQUAL OPPORTUNITY
20 SCHOLARSHIP PROGRAM

21 Sec. 171.601. DEFINITION. In this subchapter, "certified
22 organization" has the meaning assigned by Section 29.551, Education
23 Code.

24 Sec. 171.602. ENTITLEMENT TO CREDIT. A taxable entity is
25 entitled to a credit in the amount and under the conditions and
26 limitations provided by this subchapter against the tax imposed
27 under this chapter.

1 Sec. 171.603. QUALIFICATION. A taxable entity qualifies
2 for a credit under this subchapter if the taxable entity donates
3 money to a certified organization.

4 Sec. 171.604. AMOUNT OF CREDIT; LIMITATION ON RETURN OF
5 CREDIT. (a) The amount of the credit is equal to the lesser of the
6 amount of donations made to a certified organization during the
7 privilege period or fifteen percent of the amount of franchise tax
8 due, after applying any other applicable credits.

9 (b) A taxable entity is not entitled to have a donation
10 returned because of a change in the taxable entity's tax liability
11 under this chapter or in the amount of the taxable entity's tax
12 credit allowed under this subchapter as a result of a federal or
13 state audit, assessment, redetermination, amended return, or
14 similar change in the taxable entity's tax liability. The certified
15 organization to which a taxable entity makes a donation shall
16 notify the taxable entity of this provision.

17 Sec. 171.605. APPLICATION FOR CREDIT. (a) A taxable entity
18 must apply for a credit under this subchapter on or with the tax
19 report for the period for which the credit is claimed.

20 (b) The comptroller shall adopt a form for the application
21 for the credit. A taxable entity must use this form in applying for
22 the credit. The comptroller shall make the form available in
23 electronic and paper format in the same manner as other tax forms.

24 Sec. 171.606. RULES; PROCEDURES. (a) The comptroller
25 shall adopt rules and procedures to implement, administer, and
26 enforce this subchapter.

27 (b) A rule adopted under Subsection (a) is binding on any

1 state or local governmental entity, including a political
2 subdivision, as necessary to implement, administer, and enforce
3 this subchapter.

4 Sec. 171.607. ASSIGNMENT PROHIBITED; EXCEPTION. A taxable
5 entity may not convey, assign, or transfer the credit allowed under
6 this subchapter to another taxable entity unless all assets of the
7 taxable entity are conveyed, assigned, or transferred in the same
8 transaction.

9 SECTION 4. (a) The constitutionality and other validity
10 under the state or federal constitution of all or any part of
11 Subchapter N, Chapter 29, Education Code, Chapter 230, Insurance
12 Code, or Subchapter K, Chapter 171, Tax Code, as added by this Act,
13 may be determined in an action for declaratory judgment in a
14 district court in Travis County under Chapter 37, Civil Practice
15 and Remedies Code.

16 (b) An appeal of a declaratory judgment or order, however
17 characterized, of a district court, including an appeal of the
18 judgment of an appellate court, holding or otherwise determining
19 that all or any part of Subchapter N, Chapter 29, Education Code,
20 Chapter 230, Insurance Code, or Subchapter K, Chapter 171, Tax
21 Code, as added by this Act, is constitutional or unconstitutional,
22 or otherwise valid or invalid, under the state or federal
23 constitution is an accelerated appeal.

24 (c) If the judgment or order is interlocutory, an
25 interlocutory appeal may be taken from the judgment or order and is
26 an accelerated appeal.

27 (d) A district court in Travis County may grant or deny a

1 temporary or otherwise interlocutory injunction or a permanent
2 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 N,
5 Chapter 29, Education Code, Chapter 230, Insurance Code, or
6 Subchapter K, Chapter 171, Tax Code, as added by this Act.

7 (e) There is a direct appeal to the supreme court from an
8 order, however characterized, of a trial court granting or denying
9 a temporary or otherwise interlocutory injunction or a permanent
10 injunction on the grounds of the constitutionality or
11 unconstitutionality, or other validity or invalidity, under the
12 state or federal constitution of all or any part of Subchapter N,
13 Chapter 29, Education Code, Chapter 230, Insurance Code, or
14 Subchapter K, Chapter 171, Tax Code, as added by this Act.

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

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

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

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

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

1 adequate legal remedy.

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

7 SECTION 5. A credit may be claimed under Chapter 230,
8 Insurance Code, or Subchapter K, Chapter 171, Tax Code, as added by
9 this Act, only for a donation made on or after January 1, 2014.

10 SECTION 6. Subchapter N, Chapter 29, Education Code, as
11 added by this Act, applies beginning with the 2013-2014 school
12 year.

13 SECTION 7. (a) Except as provided by Subsection (b) of this
14 section:

15 (1) this Act takes effect immediately if it receives a
16 vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution; and

18 (2) if this Act does not receive the vote necessary for
19 immediate effect, this Act takes effect September 1, 2013.

20 (b) Chapter 230, Insurance Code, and Subchapter K, Chapter
21 171, Tax Code, as added by this Act, take effect January 1, 2014.