

By: Simmons

H.B. No. 1335

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of an education savings account program for certain children with special needs and other educational disadvantages.

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

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

SUBCHAPTER J. EDUCATION SAVINGS ACCOUNT PROGRAM

Sec. 29.351. DEFINITIONS. In this subchapter:

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

(2) "Child with a disability" means a child who is:

(A) eligible to participate in a school district's special education program under Section 29.003; or

(B) covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).

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

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

1 National Credit Union Administration.

2 (5) "Parent" means a resident of this state who is a
3 natural or adoptive parent, managing or possessory conservator,
4 legal guardian, custodian, or other person with legal authority to
5 act on behalf of a child.

6 (6) "Postsecondary educational institution" means:

7 (A) an institution of higher education or a
8 private or independent institution of higher education as defined
9 by Section 61.003; or

10 (B) a career school or college as defined by
11 Section 132.001.

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

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

16 Sec. 29.352. PURPOSES. The purposes of the education
17 savings account program are to:

18 (1) improve public schools and overall academic
19 performance;

20 (2) promote efficiency;

21 (3) promote and preserve the liberties and rights of
22 the people; and

23 (4) increase parental options.

24 Sec. 29.353. ESTABLISHMENT OF PROGRAM. (a) The
25 comptroller shall establish and administer an education savings
26 account program to provide funding for certain education-related
27 expenses of eligible children.

1 (b) The comptroller, with cooperation from the agency,
2 shall ensure that information about the program is readily
3 available to the public through various sources, including the
4 comptroller's Internet website. The comptroller shall make
5 information about the program available to parents of an eligible
6 child through the comptroller's Internet website.

7 Sec. 29.354. ELIGIBLE CHILD. (a) A child is eligible to
8 participate in the program if the child is eligible to attend a
9 public school under Section 25.001 and:

10 (1) is a child with a disability;

11 (2) is in the conservatorship of the Department of
12 Family and Protective Services;

13 (3) has been:

14 (A) on or after September 1, 2017, found by a
15 school district to be a victim of bullying, as defined by Section
16 37.0832; or

17 (B) found by a court or jury to have engaged in
18 truant conduct under Section 65.101, Family Code;

19 (4) has dropped out of school or is a student at risk
20 of dropping out of school, as defined by Section 29.081, other than
21 a student described by Section 29.081(d)(12);

22 (5) is a homeless child or youth as described by 42
23 U.S.C. Section 11434a; or

24 (6) has been, as determined by the comptroller, a
25 victim of an offense described by any of the following sections of
26 the Penal Code:

27 (A) Section 20A.02 (Trafficking of Persons);

1 (B) Section 20A.03 (Continuous Trafficking of
2 Persons);

3 (C) Section 21.02 (Continuous Sexual Abuse of
4 Young Child or Children);

5 (D) Section 21.11 (Indecency with a Child);

6 (E) Section 22.011 (Sexual Assault);

7 (F) Section 22.021 (Aggravated Sexual Assault);

8 or

9 (G) Section 43.05 (Compelling Prostitution).

10 (b) A child who establishes eligibility under this section
11 may participate in the program until the earliest of the following
12 dates:

13 (1) the date on which the child no longer meets the
14 eligibility requirements under Subsection (a);

15 (2) the date that is three months after the date on
16 which the child either:

17 (i) graduates from high school; or,

18 (ii) receives a high school equivalency
19 certificate under Education Code Section 7.111;

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 (c) Notwithstanding Subsection (b), the comptroller shall
25 establish guidelines for, in the least disruptive manner possible:

26 (1) a child participating in the program to cease
27 participation and enroll in a public school, including an

1 open-enrollment charter school; and

2 (2) a child who previously participated in the program
3 and subsequently enrolled in a public school, including an
4 open-enrollment charter school, to resume participation in the
5 program.

6 Sec. 29.355. ENROLLMENT IN PROGRAM. (a) A parent of an
7 eligible child may enroll the child in the program for the following
8 school year.

9 (b) The comptroller shall by rule create an enrollment form
10 for the program and make the enrollment form readily available to
11 interested parents through various sources, including the
12 comptroller's Internet website.

13 (c) The comptroller shall work with the agency to include
14 necessary information in the enrollment form including resident
15 school district, last public school attended, information
16 necessary to identify the student in district and agency
17 information systems, and eligibility for free and reduced lunch.

18 (d) The comptroller shall provide to each parent who submits
19 an enrollment form a publication that describes the operation of
20 the program, including:

21 (1) expenses allowed under the program under Section
22 29.357;

23 (2) expense reporting requirements; and

24 (3) a description of the responsibilities of program
25 participants and the duties of the comptroller under this
26 subchapter.

27 Sec. 29.356. PARTICIPATION IN PROGRAM. (a) To receive

1 funding under the program, a parent of an eligible child must agree
2 to:

3 (1) spend funds received through the program only for
4 expenses allowed under Section 29.357;

5 (2) notify the comptroller if the child enrolls in a
6 public school, including an open-enrollment charter school, not
7 later than the 30th day after the date of enrollment; and

8 (3) inform the comptroller if the child graduates from
9 high school.

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

12 (c) The comptroller shall provide annually to each program
13 participant the publication provided under Section 29.355(c).

14 Sec. 29.357. APPROVED EDUCATION-RELATED EXPENSES. (a)
15 Funds received under the program may be used only for the following
16 expenses incurred by a program participant:

17 (1) tuition and fees:

18 (A) at a private school accredited by an
19 organization that is recognized by the Texas Private School
20 Accreditation Commission;

21 (B) at a postsecondary educational institution
22 for courses eligible for the College Credit Program at Education
23 Code Sec. 28.009 for which the student may receive high school
24 credit based on the written agreement drawn up by the partner
25 institutions; or

26 (C) for an online educational course or program
27 through the State Virtual School Network as provided at Education

1 Code Chapter 30A for which the student may earn primary or secondary
2 school credit;

3 (2) the purchase of textbooks or other instructional
4 materials;

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

6 (4) fees for classes or other educational services
7 provided by a public school, if the classes or services do not
8 qualify the child to be included in the school's average daily
9 attendance;

10 (5) fees for services provided by a private tutor or
11 teaching service;

12 (6) for a child with a disability, fees for
13 educational therapies or services provided by a practitioner or
14 provider, only for fees that are not covered by any federal, state,
15 or local government benefits (including Medicaid and the
16 Children's Health Insurance Program) or by any private insurance
17 that the child is enrolled in at the time of receiving the
18 therapies or services;

19 (7) costs of computer hardware and software and other
20 technological devices which must have a clear ability to be used for
21 educational purposes, not to exceed in any year 10 percent of the
22 total amount paid to the program participant's account that year;

23 (8) fees for a nationally norm-referenced achievement
24 test or examination, an assessment instrument adopted by the agency
25 under Section 39.023, an advanced placement test or similar
26 examination, or any examination related to college or university
27 admission;

1 (9) contributions to a qualified tuition program
2 established for the child that meets the requirements of Section
3 529 or 530, Internal Revenue Code of 1986, not to exceed in any year
4 25 percent of the total amount paid to the program participant's
5 account that year; and

6 (10) fees for the management of the participant's
7 account charged by a financial institution.

8 (b) Expenses allowed under Subsection (a) do not include
9 expenses for:

10 (1) consumable supplies, including paper, pens,
11 pencils, folders, and notebooks;

12 (2) food; or

13 (3) before-school or after-school child care and child
14 care during school holidays and vacations.

15 (c) An education service provider or vendor of educational
16 products must provide a program participant with a receipt for each
17 expense allowed under Subsection (a) charged by the provider or
18 vendor to the participant.

19 (d) The content or religious nature of a product or service
20 may not be considered in determining whether a payment for the
21 product or service is an expense allowed under Subsection (a).

22 (e) A finding that a program participant used funds
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. 29.358. AMOUNT OF PAYMENT; FINANCING. (a) A parent of

1 an eligible child as described in Section 29.354 shall receive each
2 year that the child participates in the program a payment from the
3 Foundation School Program to the child's account in an amount that
4 is equal to 90 percent of the greater of, presuming 100% attendance
5 rate:

6 (1) Funding the students would have generated in both
7 state and local funds at their resident district excluding
8 Subchapter C, Chapter 42 except for Sections 42.151, 42.152 and
9 42.160 which shall be based on funding factors for which the student
10 qualified from the most recent year in attendance at a public school
11 unless enrollment in the program under this subchapter indicates a
12 change in eligibility status for those funding sections; or

13 (2) Funding the student would have generated in both
14 state and local funds at their resident district excluding
15 Subchapter C, Chapter 42 except for Sections 42.151, 42.152 and
16 42.160 which shall be based on the average at the resident district
17 of each special allotment under Sections 42.151 and 42.152, for
18 which the student's enrollment in the program under this subchapter
19 indicates eligibility.

20 (b) If the child is eligible to participate based on more
21 than one group listed in Section 29.354(a), the payment under this
22 subsection is based on the group that would result in the greatest
23 payment amount.

24 (c) Any funds remaining in a child's account at the end of a
25 fiscal year are carried forward to the next fiscal year unless
26 another provision of this subchapter mandates the closure of the
27 account.

1 (d) The parent of a child participating in the program may
2 make payments for the expenses of educational programs, services,
3 and products not covered by funds in the child's account.

4 (e) A payment under the program may not be financed using
5 federal funds or money appropriated from the available school
6 fund.

7 Sec. 29.359. ADMINISTRATION OF ACCOUNTS. (a) The
8 comptroller may contract with one or more financial institutions to
9 establish and manage an account for each child participating in the
10 program. A program participant must be able to access the
11 participant's account by using a debit card or online or electronic
12 transfer payment service.

13 (b) The comptroller shall make quarterly payments to each
14 program participant's account in equal amounts on or before the
15 15th day of August, November, February, and May.

16 (c) The comptroller may deduct an amount from each quarterly
17 payment to a program participant's account to cover the
18 comptroller's cost of administering the program. The amount
19 deducted may not exceed three percent of the payment.

20 (d) Within the first month following the end of each fiscal
21 year, the comptroller shall reconcile payments made to and from all
22 accounts under the program.

23 (e) The comptroller shall coordinate as necessary to
24 calculate annually the savings to the state from the implementation
25 of the program.

26 (f) On the date on which a child ceases to participate in the
27 program for any reason, the child's account is closed and any

1 remaining funds are returned to the state for deposit in the
2 foundation school fund. This subsection does not affect a child's
3 eligibility to resume participation in the program.

4 (g) The comptroller may contract with a private entity to
5 administer all or any part of the program.

6 Sec. 29.360. RANDOM AUDITING OF ACCOUNTS. (a) The
7 comptroller shall randomly audit, or contract with a private entity
8 to randomly audit, accounts as necessary to ensure compliance with
9 applicable law and the requirements of the program.

10 (b) In auditing an account, the comptroller or private
11 entity may require that a program participant provide further
12 information and documentation regarding any payment from the
13 participant's account.

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

17 Sec. 29.361. SUSPENSION OF ACCOUNT. (a) The comptroller
18 shall suspend the account of a program participant who fails to
19 comply with applicable law or a requirement of the program,
20 including a requirement under Section 29.356(a), or who
21 substantially misuses funds received under the program.

22 (b) On suspension of an account under Subsection (a), the
23 comptroller shall notify the participant in writing that the
24 account has been suspended and that no further payments may be made
25 from the account. The notification must specify the grounds for the
26 suspension and state that the participant has 10 business days to
27 respond and take any corrective action required by the comptroller.

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

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

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

8 (3) order full reinstatement of the account.

9 (d) If a program participant's account is suspended or
10 closed under this section, the comptroller may recover funds that
11 were used for expenses not allowed under Section 29.357(a) from the
12 participant or the entity that received the funds.

13 Sec. 29.362. TUITION AND FEES; REFUND PROHIBITED. (a) An
14 education service provider may not charge a child participating in
15 the program an amount greater than the standard amount charged for
16 that service by the provider.

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

22 Sec. 29.363. REFERRAL TO ATTORNEY GENERAL. (a) If the
23 comptroller obtains evidence of fraudulent use of an account, the
24 comptroller may refer the case to the attorney general for
25 investigation.

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

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

3 Sec. 29.364. PROVIDER ACCOUNTABILITY. (a) A private
4 school must be accredited by an organization that is recognized by
5 the Texas Private School Accreditation Commission to receive funds
6 distributed under the program.

7 (b) A private tutor or teaching service and a practitioner
8 or provider who provides educational therapies or services for a
9 child with a disability must be licensed or accredited by a regional
10 or national accrediting organization to receive funds distributed
11 under the program.

12 Sec. 29.365. PROGRAM PARTICIPANT, PROVIDER, AND VENDOR
13 AUTONOMY. (a) An education service provider or vendor of
14 educational products that receives funds distributed under the
15 program is not an agent of the state or federal government.

16 (b) Except as provided by this subchapter, the comptroller,
17 the agency, the State Board of Education, any other state agency, or
18 any school district may not:

19 (1) regulate the educational program of an education
20 service provider or vendor of educational products that receives
21 funds distributed under the program; or

22 (2) exercise control or supervision over a program
23 participant or an education service provider or vendor of
24 educational products that receives funds distributed under the
25 program.

26 (c) The program does not expand the regulatory authority of
27 the state or any school district to impose any additional

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

4 (d) A private school may not be required to modify the
5 school's creed, practices, admissions policies, curriculum,
6 performance standards, or assessments to receive funds distributed
7 under the program.

8 (e) A private school voluntarily selected by a parent for
9 the parent's child to attend or a parent who homeschools the
10 parent's child, with or without governmental assistance, may not be
11 required to comply with any state law or rule governing the
12 applicable educational program that was not in effect on January 1,
13 2017.

14 (f) In any proceeding challenging a rule adopted by a state
15 agency or officer under this subchapter, the agency or officer has
16 the burden of proof to establish that the rule:

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

19 (2) does not impose an undue burden on a program
20 participant or an education service provider or vendor of
21 educational products that receives or seeks to receive funds
22 distributed under the program.

23 Sec. 29.366. STUDENT RECORDS. On request by the parent of a
24 child participating in the program, the school district or
25 open-enrollment charter school that the child would otherwise
26 attend shall provide a copy of the child's school records possessed
27 by the district or school, if any, to the child's parent or, if

1 applicable, the private school the child attends.

2 Sec. 29.367. REPORTING NUMBER OF PARTICIPANTS. (a) Not
3 later than October 1 of each year, the comptroller shall notify the
4 commissioner and the Legislative Budget Board of the number of
5 eligible children likely to participate in the program,
6 disaggregated by the school district or open-enrollment charter
7 school the eligible children would otherwise attend.

8 (b) Not later than March 1 of each year, the comptroller
9 shall provide final information to the commissioner and the
10 Legislative Budget Board regarding the number of children
11 participating in the program, disaggregated in the same manner as
12 the initial information under Subsection (a).

13 Sec. 29.368. ANNUAL SURVEY. The comptroller may conduct an
14 annual parental satisfaction survey that asks each parent of a
15 child participating in the program to express:

16 (1) the parent's overall level of satisfaction with
17 the program; and

18 (2) the parent's opinion on specified topics and
19 issues relevant to the effectiveness of the program.

20 Sec. 29.369. GIFTS, GRANTS, AND DONATIONS. The comptroller
21 may solicit and accept gifts, grants, and donations from any public
22 or private source for any expenses related to the initial
23 implementation or administration of the program.

24 Sec. 29.370. AGENCY COLLECTION OF CERTAIN INFORMATION. (a)
25 The agency shall collect and maintain for each group described by
26 Section 29.354(a) information regarding:

27 (1) the number of students in that group enrolled at a

1 school district; and

2 (2) the statewide average school district entitlement
3 amount under Chapter 42 for a student in that group.

4 (b) The agency shall make available to the comptroller the
5 information collected and maintained under Subsection (a).

6 (c) The agency may collaborate with any relevant state
7 agency or other entity in carrying out the agency's duties under
8 this section.

9 (d) The commissioner may adopt rules as necessary to
10 implement this section.

11 Sec. 29.371. RULES. The comptroller shall adopt rules as
12 necessary to implement this subchapter, including:

13 (1) rules regarding expense reporting requirements
14 for program participants; and

15 (2) rules for implementing this subchapter in a manner
16 that ensures compliance with federal law regarding confidentiality
17 of student educational information, including the Family
18 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section
19 1232g).

20 SECTION 2. Section 42.253, Education Code, is amended by
21 adding Subsection (b-1) to read as follows:

22 (b-1) Notwithstanding Subsection (b), the commissioner
23 shall adjust enrollment estimates and entitlement for each school
24 district for each school year based on information provided by the
25 comptroller under Section 29.367. This subsection expires
26 September 1, 2020.

27 SECTION 3. Section 58.106(a), Family Code, is amended to

1 read as follows:

2 (a) Except as otherwise provided by this section,
3 information contained in the juvenile justice information system is
4 confidential information for the use of the department and may not
5 be disseminated by the department except:

6 (1) with the permission of the juvenile offender, to
7 military personnel of this state or the United States;

8 (2) to a criminal justice agency as defined by Section
9 [411.082](#), Government Code;

10 (3) to a noncriminal justice agency authorized by
11 federal statute or federal executive order to receive juvenile
12 justice record information;

13 (4) to a juvenile justice agency;

14 (5) to the Texas Juvenile Justice Department;

15 (6) to the office of independent ombudsman of the
16 Texas Juvenile Justice Department;

17 (7) to a district, county, justice, or municipal court
18 exercising jurisdiction over a juvenile; ~~and~~

19 (8) to the Department of Family and Protective
20 Services as provided by Section [411.114](#), Government Code; and

21 (9) to the comptroller for the purpose of determining
22 a child's eligibility to participate in the education savings
23 account program under Subchapter J, Chapter [29](#), Education Code.

24 SECTION 4. Section [58.204](#)(b), Family Code, is amended to
25 read as follows:

26 (b) On certification of records in a case under Section
27 [58.203](#), the department may permit access to the information in the

1 juvenile justice information system relating to the case of an
2 individual only:

3 (1) by a criminal justice agency for a criminal
4 justice purpose, as those terms are defined by Section 411.082,
5 Government Code;

6 (2) for research purposes, by the Texas Juvenile
7 Justice Department;

8 (3) by the person who is the subject of the records on
9 an order from the juvenile court granting the petition filed by or
10 on behalf of the person who is the subject of the records;

11 (4) with the permission of the juvenile court at the
12 request of the person who is the subject of the records;

13 (5) with the permission of the juvenile court, by a
14 party to a civil suit if the person who is the subject of the records
15 has put facts relating to the person's records at issue in the suit;
16 [~~or~~]

17 (6) with the written permission of the individual, by
18 military personnel, including a recruiter, of this state or the
19 United States if the individual is an applicant for enlistment in
20 the armed forces; or

21 (7) by the comptroller for the purpose of determining
22 the individual's eligibility to participate in the education
23 savings account program under Subchapter J, Chapter 29, Education
24 Code.

25 SECTION 5. Section 65.202, Family Code, is amended to read
26 as follows:

27 Sec. 65.202. CONFIDENTIALITY OF RECORDS. Records and files

1 created under this chapter may be disclosed only to:

2 (1) the judge of the truancy court, the truant conduct
3 prosecutor, and the staff of the judge and prosecutor;

4 (2) the child or an attorney for the child;

5 (3) a governmental agency if the disclosure is
6 required or authorized by law;

7 (4) a person or entity to whom the child is referred
8 for treatment or services if the agency or institution disclosing
9 the information has entered into a written confidentiality
10 agreement with the person or entity regarding the protection of the
11 disclosed information;

12 (5) the Texas Department of Criminal Justice and the
13 Texas Juvenile Justice Department for the purpose of maintaining
14 statistical records of recidivism and for diagnosis and
15 classification;

16 (6) the agency; [~~or~~]

17 (7) the comptroller for the purpose of determining a
18 child's eligibility to participate in the education savings account
19 program under Subchapter J, Chapter 29, Education Code; or

20 (8) with leave of the truancy court, any other person,
21 agency, or institution having a legitimate interest in the
22 proceeding or in the work of the court.

23 SECTION 6. Section 411.109, Government Code, is amended by
24 adding Subsection (c) to read as follows:

25 (c) The comptroller is entitled to obtain from the
26 department criminal history record information maintained by the
27 department that relates to a child for the purpose of determining

1 the child's eligibility to participate in the education savings
2 account program under Subchapter J, Chapter 29, Education Code.

3 SECTION 7. This Act applies beginning with the 2017-2018
4 school year.

5 SECTION 8. Not later than 45 days after the effective date
6 of this Act, the comptroller of public accounts shall adopt rules
7 necessary to implement the education savings account program under
8 Subchapter J, Chapter 29, Education Code, as added by this Act.

9 SECTION 9. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2017.