

# SENATE JOURNAL

EIGHTY-FIFTH LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**THIRTY-SECOND DAY**

(Continued)

(Thursday, March 30, 2017)

**AFTER RECESS**

The Senate met at 11:22 a.m. and was called to order by the President.

Pastor Matt Blackwell, The Austin Stone Community Church, Austin, offered the invocation as follows:

Father, we thank You for this day, today, that wasn't promised, but a day that You have given us to enjoy, to learn, to lead, and to love. So, this morning I pray for the flourishing of every Texan from Big Bend to the Piney Woods, from the canyon to the coast. And I pray for the men and women here who represent everyone who calls Texas home. Lord, You install leaders and give them the responsibility and authority to govern. So, let them lead as servants for good. Give them wisdom and discernment, boldness and humility. Grant them dignity in diversity and peace in adversity. Give us today the grace of eternal perspective so that we're able to see this day in light of all of eternity. Let us run our race with endurance until we finish our task and You call us home. Lord, we ask this for the glory of Your name and the good of Your people. In Christ's name I pray. Amen.

## **MESSAGES FROM THE GOVERNOR**

The following Messages from the Governor were read and were referred to the Committee on Nominations:

March 30, 2017

Austin, Texas

TO THE SENATE OF THE EIGHTY-FIFTH LEGISLATURE, REGULAR SESSION:

On January 13, 2017, I submitted the name of Joe C. Chow for appointment to the Texas Board of Medical Radiologic Technology for a term to expire February 1, 2017.

Because he resigned, I hereby withdraw his nomination and request that the Senate return the appointment to me.

Respectfully submitted,

/s/Greg Abbott  
Governor

March 30, 2017  
Austin, Texas

TO THE SENATE OF THE EIGHTY-FIFTH LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

To be members of the Texas Commission on the Arts for terms to expire as indicated:

To Expire August 31, 2017:

Kevin Yu

Dallas, Texas

(replacing Patricia A. "Patty" Bryant of Amarillo who resigned)

To Expire August 31, 2019:

Stephanie "Shawn" Stephens

Houston, Texas

(Ms. Stephens is being reappointed)

To Expire August 31, 2021:

Mila B. Gibson

Sweetwater, Texas

(Ms. Gibson is being reappointed)

Felix N. Padron, Jr.

San Antonio, Texas

(replacing Liza B. Lewis of San Antonio whose term expired)

Marci L. Roberts

Marathon, Texas

(replacing Alphonse A. Dotson of Voca whose term expired)

Respectfully submitted,

/s/Greg Abbott  
Governor

#### **PHYSICIAN OF THE DAY**

Senator Watson was recognized and presented Dr. Adriana Guerra of Austin as the Physician of the Day.

The Senate welcomed Dr. Guerra and thanked her for her participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

**(Senator Hancock in Chair)****GUESTS PRESENTED**

Senator Burton was recognized and introduced to the Senate a Kennedale Area Chamber of Commerce delegation.

The Senate welcomed its guests.

**SENATE RESOLUTION 542**

Senator Garcia, on behalf of Senator Miles, offered the following resolution:

**SR 542**, Recognizing March 30, 2017, as Vietnamese American Day.

The resolution was read and was adopted without objection.

**GUESTS PRESENTED**

Senator Garcia, on behalf of Senator Miles, joined by Senator Hinojosa, was recognized and introduced to the Senate a Vietnamese American Day delegation.

The Senate welcomed its guests.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Thursday, March 30, 2017 - 1

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the house to inform the senate that the house has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**HB 283**

Herrero

Relating to the creation of an open burn pit registry for certain service members and veterans.

**HB 377**

Oliverson

Relating to the issuance of specialty license plates to surviving spouses of certain military veterans.

**HB 1317**

King, Ken

Relating to the designation of U.S. Highway 287 in Claude as the Charles H. Roan Memorial Highway.

**HB 1818**

Gonzales, Larry

Relating to the continuation and functions of the Railroad Commission of Texas; providing for the imposition of fees.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**GUESTS PRESENTED**

Senator Lucio, joined by Senators Hinojosa, Uresti, and Menéndez, was recognized and introduced to the Senate a Lower Valley Hispanic Chamber of Commerce delegation.

The Senate welcomed its guests.

**SENATE RESOLUTIONS**

Senator Hall offered the following resolutions:

**SR 458**, Recognizing March 30, 2017, as Balch Springs Day.

The resolution was again read.

**SR 473**, Recognizing the fire departments that responded to a structure fire in Balch Springs.

The resolution was again read.

**SR 458** was previously adopted on Monday, March 20, 2017.

**SR 473** was previously adopted on Wednesday, March 22, 2017.

**GUESTS PRESENTED**

Senator Hall was recognized and introduced to the Senate a City of Balch Springs delegation, accompanied by members of the fire department and Fire Chief Randy Smith.

The Senate welcomed its guests.

**SENATE RESOLUTION 540**

Senator Menéndez offered the following resolution:

**SR 540**, Welcoming the San Antonio Hispanic Chamber of Commerce to the Capitol.

The resolution was read and was adopted without objection.

**GUESTS PRESENTED**

Senator Menéndez was recognized and introduced to the Senate a San Antonio Hispanic Chamber of Commerce delegation.

The Senate welcomed its guests.

**GUESTS PRESENTED**

Senator Hinojosa was recognized and introduced to the Senate a delegation of Robstown High School students and staff.

The Senate welcomed its guests.

**SENATE RESOLUTION 469**

Senator Hughes offered the following resolution:

**SR 469**, Recognizing March 29 and 30, 2017, as Rusk County Days.

The resolution was again read.

The resolution was previously adopted on Tuesday, March 21, 2017.

### **GUESTS PRESENTED**

Senator Hughes was recognized and introduced to the Senate a Rusk County delegation, accompanied by Rusk County Judge Joel Hale, Henderson Mayor Pat Brack, and Henderson Councilmembers Steve Higginbotham, Tommy Goode, and Thomas Ward.

The Senate welcomed its guests.

### **GUESTS PRESENTED**

Senator Lucio was recognized and introduced to the Senate family and friends of former Willacy County District Clerk Gilbert Lozano.

The Senate welcomed its guests.

### **SENATE RESOLUTION 539**

Senator Huffman offered the following resolution:

**SR 539**, Recognizing March 30, 2017, as Texas Doctors' Day.

The resolution was read and was adopted without objection.

### **COMMITTEE SUBSTITUTE**

### **SENATE BILL 128 ON SECOND READING**

Senator Garcia moved to suspend the regular order of business to take up for consideration **CSSB 128** at this time on its second reading:

**CSSB 128**, Relating to the inclusion of education and training regarding human trafficking in the curriculum of commercial driver's license training programs offered by public junior colleges and career schools and colleges and to certain requirements for commercial driver's licenses.

The motion prevailed.

Senator Burton asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Garcia offered the following amendment to the bill:

### **Floor Amendment No. 1**

Amend **CSSB 128** (senate committee printing) as follows:

(1) Strike SECTION 3 of the bill, amending Section 522.022, Transportation Code (page 1, line 50, through page 2, line 9).

(2) In SECTION 4 of the bill, strike added Section 522.035(a), Transportation Code (page 2, lines 13-20).

(3) In SECTION 4 of the bill, in added Section 522.035(b), Transportation Code (page 2, line 21), strike "(b)".

(4) In SECTION 5 of the bill, in Subsection (c) of that SECTION (page 2, line 34), strike "adopt rules necessary to implement" and substitute "provide informational materials as required by".

(5) In SECTION 5 of the bill, strike Subsection (d) of that SECTION (page 2, lines 36-41).

(6) Renumber the SECTIONS of the bill accordingly.

The amendment to **CSSB 128** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

**CSSB 128** as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment.

### **COMMITTEE SUBSTITUTE SENATE BILL 128 ON THIRD READING**

Senator Garcia moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 128** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### **STATEMENT REGARDING SENATE BILL 128**

Senator Huffines submitted the following statement regarding **SB 128**:

Operating a vehicle on Texas roadways is a privilege. This regulatory approach presents an imperfect solution to an endemic problem that often manifests on Texas roads. Still, ending human trafficking - and maximizing opportunities to stop this tragedy - is imperative. Human trafficking is a horrendous act that deprives individuals of their liberty. Ending human trafficking should be a top priority for anyone that promotes liberty.

HUFFINES

### **SENATE BILL 601 ON SECOND READING**

Senator Campbell moved to suspend the regular order of business to take up for consideration **SB 601** at this time on its second reading:

**SB 601**, Relating to authorizing an exemption for open-enrollment charter schools from certain municipal drainage requirements.

The motion prevailed.

Senators Garcia, Rodríguez, and Menéndez asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on passage to engrossment except as follows:

Nays: Garcia, Rodríguez, Menéndez.

**SENATE BILL 601 ON THIRD READING**

Senator Campbell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 601** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Hinojosa, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Miles, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Garcia, Menéndez, Rodríguez.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

**SENATE BILL 758 ON SECOND READING**

Senator Menéndez moved to suspend the regular order of business to take up for consideration **SB 758** at this time on its second reading:

**SB 758**, Relating to bill payment assistance programs offered by certain municipalities.

The motion prevailed.

Senators Hall and Schwertner asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Nays: Hall, Schwertner.

**SENATE BILL 758 ON THIRD READING**

Senator Menéndez moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 758** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Garcia, Hancock, Hinojosa, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Menéndez, Miles, Nelson, Nichols, Perry, Rodríguez, Seliger, Taylor of Galveston, Taylor of Collin, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Hall, Schwertner.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

**(President in Chair)****COMMITTEE SUBSTITUTE  
SENATE BILL 28 ON SECOND READING**

On motion of Senator Creighton and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 28** at this time on its second reading:

**CSSB 28**, Relating to the financing of ports in the state.

The bill was read second time.

Senator Creighton offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 28** (senate committee printing) as follows:

(1) In SECTION 3 of the bill, in amended Section 55.006, Transportation Code (page 1, lines 37-48), strike Subsection (a) and substitute the following:

(a) The committee consists of nine ~~seven~~ members appointed ~~[by the commission. The members shall be appointed]~~ as follows:

(1) one member from the Port of Houston Authority appointed by the commission;

(2) three members who represent maritime ports on the upper Texas coast appointed by the commission; ~~and~~

(3) three members who represent maritime ports on the lower Texas coast appointed by the commission;

(4) one member appointed by the lieutenant governor; and

(5) one member appointed by the speaker of the house of representatives.

(2) In SECTION 4 of the bill, in added Section 56.003(b)(2), Transportation Code (page 2, lines 24-25), strike "under a Water Resources Reform and Development Act" and substitute "by the United States Congress".

The amendment to **CSSB 28** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent: Miles.

**CSSB 28** as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Absent: Miles.

**COMMITTEE SUBSTITUTE  
SENATE BILL 28 ON THIRD READING**

Senator Creighton moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 28** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.



The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### RECESS

On motion of Senator Whitmire, the Senate at 12:46 p.m. recessed until 1:15 p.m. today.

### AFTER RECESS

The Senate met at 1:29 p.m. and was called to order by the President.

### COMMITTEE SUBSTITUTE SENATE BILL 773 ON SECOND READING

Senator Uresti moved to suspend the regular order of business to take up for consideration **CSSB 773** at this time on its second reading:

**CSSB 773**, Relating to the authority of a judge to compel a criminal defendant who lacks capacity to take psychoactive medication.

The motion prevailed.

Senators Creighton, Hall, Huffines, and Zaffirini asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Nays: Creighton, Hall, Huffines, Zaffirini.

### COMMITTEE SUBSTITUTE SENATE BILL 773 ON THIRD READING

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 773** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Estes, Garcia, Hancock, Hinojosa, Huffman, Hughes, Kolkhorst, Lucio, Menéndez, Miles, Nelson, Nichols, Perry, Rodríguez, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin, Uresti, Watson, West, Whitmire.

Nays: Creighton, Hall, Huffines, Zaffirini.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4. (Same as previous roll call)

### COMMITTEE SUBSTITUTE SENATE BILL 3 ON SECOND READING

Senator Taylor of Galveston moved to suspend the regular order of business to take up for consideration **CSSB 3** at this time on its second reading:

**CSSB 3**, Relating to the establishment of an education savings account program and a tax credit scholarship and educational expense assistance program.

The motion prevailed by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Perry, Schwertner, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Menéndez, Miles, Nichols, Rodríguez, Seliger, Uresti, Watson, West, Whitmire, Zaffirini.

The bill was read second time.

**(Senator Hughes in Chair)**

**(President in Chair)**

Senator Taylor of Galveston offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 3** (senate committee printing) by striking all below the enacting clause and substituting the following:

ARTICLE 1. EDUCATION SAVINGS ACCOUNT PROGRAM

SECTION 1.01. 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:

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

(B) for whom an individualized education program has been developed under Section 29.005.

(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 National Credit Union Administration.

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

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

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

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

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

- (1) improve public schools and overall academic performance;
- (2) promote efficiency;
- (3) promote and preserve the liberties and rights of the people; and
- (4) increase parental options.

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

(b) The comptroller, with cooperation from the agency, shall ensure that information about the program is readily available to the public through various sources, including the agency's Internet website.

(c) The comptroller shall make information about the program available to parents of a child with a disability or a child who is educationally disadvantaged through the comptroller's Internet website. The information made available to parents of a child with a disability must include a notice that:

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

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

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

(i) an individualized education program;

(ii) educational services provided in the least restrictive environment;

(iii) instruction from certified teachers;

(iv) due process hearings to ensure proper and full implementation of an individualized education program;

(v) transition and planning services; and

(vi) supplementary aids and services;

(B) rights provided under Subchapter A, Chapter 29; and

(C) other rights provided under federal or state law.

Sec. 29.3531. EDUCATION SAVINGS ACCOUNT PROGRAM FUND. (a) The education savings account program fund is an account in the general revenue fund to be administered by the comptroller.

(b) The fund is composed of:

(1) general revenue transferred to the fund;

(2) money appropriated to the fund;

(3) gifts, grants, and donations received under Section 29.371; and

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

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

Sec. 29.354. ELIGIBLE CHILD. (a) A child is eligible to participate in the program if the child:

(1) is eligible to attend a public school under Section 25.001;

(2) is a member of a household with a total annual income that is at or below 175 percent of the income guidelines necessary to qualify for the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq.;

(3) attended a public school in this state during the entire preceding academic year; and

(4) resides in the attendance zone of a public school campus located in a county with a population of 285,000 or more.

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

(1) the date that is three months after the date on which the child graduates from high school;

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

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

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

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

(1) a child participating in the program to cease participation and enroll in a public school, including an open-enrollment charter school; and

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

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

(b) The comptroller shall by rule create an enrollment form for the program and make the enrollment form readily available to interested parents through various sources, including the comptroller's Internet website. An enrollment form for the program must be submitted to the comptroller electronically.

(c) The comptroller shall post on the comptroller's Internet website and provide to each parent who submits an enrollment form a publication that describes the operation of the program, including:

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

(2) expense reporting requirements; and

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

Sec. 29.356. PARTICIPATION IN PROGRAM. (a) To receive funding under the program, a parent of an eligible child must agree to:

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

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

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

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

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

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

(1) tuition and fees:

(A) at a private school accredited by an organization that:

(i) is recognized by the Texas Private School Accreditation Commission; or

(ii) has accredited at least 20 schools or any number of schools that serve a cumulative total of more than 1,000 students;

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

(C) for an online educational course or program;

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

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

(4) fees for services provided by a private tutor or teaching service;

(5) for a child with a disability, fees for educational therapies or services provided by a practitioner or provider;

(6) costs of computer hardware and software and other technological devices prescribed by a physician to facilitate a child's education, not to exceed in any year 10 percent of the total amount paid to the program participant's account that year;

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

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

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

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

(2) food; or

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

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

(d) The content, subject to Section 29.364(c), or religious nature of a product or service may not be considered in determining whether a payment for the product or service is an expense allowed under Subsection (a).

(e) A finding that a program participant used funds distributed under the program to pay for an expense not allowed under Subsection (a) does not affect the validity of any payment made by the participant for an expense that is allowed under that subsection.

Sec. 29.358. AMOUNT OF PAYMENT; FINANCING. (a) A parent of an eligible child shall receive each year that the child participates in the program a payment from the state to the child's account in an amount that is equal to:

(1) 75 percent of the state average maintenance and operations expenditures per student for the preceding state fiscal year; or

(2) if the child is a child with a disability, 90 percent of the state average maintenance and operations expenditures per student for the preceding state fiscal year.

(b) In addition to any funding the district receives under Chapter 42, for each child participating in the program, the school district the child would otherwise attend is entitled to receive for the first year in which the child participates in the program an amount equal to 50 percent of the difference between:

(1) the state average maintenance and operations expenditures per student for the preceding state fiscal year; and

(2) the amount the child's parent receives under Subsection (a) for the year.

(c) For the first year a child participates in the program, the child is included in the weighted average daily attendance of the school district the child would otherwise attend for purposes of determining the district's equalized wealth level under Chapter 41.

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

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

(f) A payment under Subsection (a) may not be financed using federal funds or money appropriated from the permanent school fund or the available school fund.

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

(b) The comptroller shall make quarterly payments to each program participant's account in equal amounts, with the first payment for each school year made on September 1 and the remaining payments made on or before the 15th day of November, February, and May.

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

(d) Not later than 30 days after the end of each fiscal year, the comptroller shall reconcile payments made to and from all accounts under the program.

(e) On the date on which a child who participated in the program is no longer eligible to participate in the program under Section 29.354(b), the child's account is closed and any remaining funds are returned to the state for deposit in the education savings account program fund.

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

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

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

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

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

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

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

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

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

(3) order full reinstatement of the account.

(d) The comptroller may recover funds distributed under the program that were used for expenses not allowed under Section 29.357(a) from the program participant or the entity that received the funds if the participant's account is suspended or closed under this section.

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

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

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

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

Sec. 29.364. PROVIDER ACCOUNTABILITY. (a) To receive funds distributed under the program, a private school must be accredited by an organization that:

(1) is recognized by the Texas Private School Accreditation Commission; or  
(2) has accredited at least 20 schools or any number of schools that serve a cumulative total of more than 1,000 students.

(b) A practitioner or provider who provides educational therapies or services for a child with a disability must be licensed or accredited by a regional or national accrediting organization to receive funds distributed under the program.

(c) A private tutor, teaching service, or online educational course or program provider must apply to and be approved by the commissioner to receive funds distributed under the program.

(d) To be eligible for approval under Subsection (c), a private tutor or each employee of a teaching service who intends to provide educational services to a program participant must:

(1) be a teacher who:  
(A) is certified under Subchapter B, Chapter 21;  
(B) holds a National Board Certification issued by the National Board for Professional Teaching Standards; or  
(C) has experience teaching at an institution of higher education or private or independent institution of higher education; and

(2) either:  
(A) complete a national criminal history record information review; or  
(B) provide to the commissioner documentation indicating that the tutor or employee, as applicable, has completed a national criminal history record information review within a period established by commissioner rule.

(e) The commissioner shall review the national criminal history record information or documentation for each private tutor or teaching service who submits an application under Subsection (c). The tutor or teaching service must provide the commissioner with any information requested by the commissioner to enable the commissioner to complete the review.

(f) The commissioner shall maintain and provide to the comptroller a list of private tutors, teaching services, and online educational courses or program providers approved to receive funds distributed under the program. The comptroller shall post the list on the comptroller's Internet website.



(g) A private tutor, teaching service, or online educational course or program provider may appeal to the comptroller the commissioner's rejection of an application submitted under Subsection (c).

(h) The commissioner may adopt rules necessary to exercise the commissioner's powers and duties under this section.

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

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

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

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

(c) The program does not expand the regulatory authority of the state or any school district to impose any additional regulation on an education service provider or vendor of educational products except those reasonably necessary to enforce the program as provided by this subchapter.

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

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

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

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

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

Sec. 29.366. STUDENT RECORDS AND INFORMATION. (a) On request by the parent of a child participating in the program, the school district or open-enrollment charter school that the child would otherwise attend shall provide a copy of the child's school records possessed by the district or school, if any, to the child's parent or, if applicable, the private school the child attends.

(b) The agency shall provide to the comptroller any information available to the agency requested by the comptroller regarding a child who participates or seeks to participate in the program. The comptroller may not retain information provided under this subsection beyond the period necessary to determine:

(1) a child's eligibility to participate in the program; or

(2) the amount of a payment to a program participant's account under Section 29.358.

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

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

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

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

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

Sec. 29.369. PARENT REVIEW COMMITTEE. (a) A parent review committee is established to assist the comptroller, at the comptroller's request, in:

(1) determining whether certain expenses are allowed under Section 29.357;

and

(2) reviewing an appeal of the commissioner's decision to reject an application of a private tutor, teaching service, or online educational course or program provider for approval under Section 29.364 to receive funds distributed under the program.

(b) The committee consists of the comptroller, or a representative designated by the comptroller, and eight members appointed by the comptroller. Each appointed member must be a parent of a child participating in the program. In making appointments to the committee, the comptroller shall ensure that parents from at least four counties are included.

(c) An appointed member of the committee serves a one-year term at the pleasure of the comptroller and may be reappointed.

(d) The comptroller or the representative designated by the comptroller, as applicable, is the chair of the committee and may vote on a matter before the committee only if there is a tie.

Sec. 29.370. RULES. The comptroller shall:

(1) adopt rules as necessary to implement this subchapter, including:

(A) rules regarding expense reporting requirements for program participants; and

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

(2) coordinate as necessary to:

(A) calculate annually the savings to the state from the implementation of the program; and

(B) prevent fraud in financial transactions under the program, including by adopting measures to permit anonymous fraud reporting by telephone hotline or online communication.

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

SECTION 1.02. Section 42.253, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Notwithstanding Subsection (b), the commissioner shall adjust enrollment estimates and entitlement for each school district for each school year based on information provided by the comptroller under Section 29.367 and the certified educational assistance organization under Section 230.0513, Insurance Code. This subsection expires September 1, 2021.

SECTION 1.03. Section 411.0901, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The Texas Education Agency is entitled to obtain criminal history record information maintained by the department about a person who is a private tutor or an employee of a teaching service who intends to provide educational services to a child participating in the program established under Subchapter J, Chapter 29, Education Code, and is seeking approval to receive funds distributed under that program.

SECTION 1.04. This article applies beginning with the 2018-2019 school year.

## ARTICLE 2. TAX CREDIT SCHOLARSHIP AND EDUCATIONAL EXPENSE ASSISTANCE PROGRAM

SECTION 2.01. Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 230 to read as follows:

### CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO CERTIFIED EDUCATIONAL ASSISTANCE ORGANIZATION SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001. DEFINITIONS. In this chapter:

(1) "Educational assistance organization" means an organization that:

(A) has the ability according to the organization's charter to award scholarships to or pay educational expenses for eligible students in:

(i) public elementary or secondary schools located in this state; or

(ii) nonpublic elementary or secondary schools located in this state:

(a) that meet the requirements of Section 230.052;

(b) at which a student may fulfill this state's compulsory attendance requirements; and

(c) that are not in violation of the federal Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.); and

(B) uses part of its annual revenue for the purpose provided by Paragraph (A).

(2) "State premium tax liability" means any liability incurred by an entity under Chapter 221, 222, or 224.

Sec. 230.002. RULES; PROCEDURES. (a) The comptroller shall adopt rules and procedures to implement, administer, and enforce this chapter.

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

SUBCHAPTER B. SCHOLARSHIP AND EDUCATIONAL EXPENSE ASSISTANCE PROGRAM

Sec. 230.051. SELECTION OF CERTIFIED EDUCATIONAL ASSISTANCE ORGANIZATIONS. (a) An organization may apply to the comptroller for certification as a certified educational assistance organization during an application period provided by the comptroller.

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

(1) must:

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

(B) be in good standing with the state;

(C) be located in the state;

(D) of the organization's annual revenue from contributions that are designated for scholarships or educational expense assistance for eligible students under this chapter, allocate:

(i) at least 75 percent for scholarships for eligible students to attend nonpublic schools;

(ii) at least 15 percent for assistance for educational expenses, including tuition, transportation, and instructional materials and other supplies, and for other related educational expense assistance as described by this section; and

(iii) not more than 10 percent for administrative expenses;

(E) award scholarships and assistance for qualifying educational expenses to eligible students who demonstrate the greatest financial and academic need;

(F) agree to give each donor a receipt for money contributed to the organization that includes the name of the organization, the name of the donor, the amount of the contribution, the information required by Section 230.054(c), and any other information required by the comptroller;

(G) demonstrate experience and technical expertise in:

(i) accepting, processing, and tracking applications for scholarships or educational expense assistance; and

(ii) awarding scholarships to students in primary or secondary schools;

(H) agree to be independently audited on an annual basis and file the audit with the comptroller; and

(I) disburse within two academic years of receipt contributions received from and designated by entities for scholarships or educational expense assistance under this chapter; and

(2) may not:

(A) award all scholarships under this chapter to students who attend a particular school or pay educational expenses incurred only at a particular school;

(B) provide to a student a scholarship in an annual amount that exceeds the amount provided under Section 230.055(a) or (b), unless the money used to provide the portion of the scholarship in excess of that amount was contributed by a person other than an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution; and

(C) provide to a student educational expense assistance in excess of the amount provided under Section 230.055(c) per academic year, unless the money used to provide the portion of the assistance in excess of that amount was contributed by a person other than an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution, including assistance for:

(i) facility fees;

(ii) instructional materials;

(iii) school supplies;

(iv) tutoring;

(v) academic after-school programs;

(vi) school or lab fees; and

(vii) transportation expenses, including the cost to transfer from one public school to another.

(c) The comptroller shall certify one organization as the primary certified educational assistance organization and one organization as the secondary certified educational assistance organization. The comptroller shall select the organizations to certify as the primary and secondary certified educational assistance organizations from among the organizations that apply under Subsection (a) and meet the requirements of Subsection (b). The comptroller has broad discretion in selecting the primary and secondary certified educational assistance organizations.

(d) The comptroller shall notify all organizations that apply under Subsection (a) of the comptroller's selections under Subsection (c).

(e) The comptroller shall attempt to maintain one primary and one secondary certified educational assistance organization at all times. The comptroller shall provide an application period under Subsection (a) as soon as practicable after the comptroller learns there is, or is likely to be, a vacancy for the primary or secondary certified educational assistance organization.

(f) The comptroller's selections under Subsection (c) are final and are not appealable.

Sec. 230.0511. PERFORMANCE OF CERTIFIED EDUCATIONAL ASSISTANCE ORGANIZATION POWERS AND DUTIES. (a) Except as provided by Subsection (b), the organization certified as the primary certified educational assistance organization shall perform the powers and duties assigned to the certified educational assistance organization under this chapter.

(b) The organization certified as the secondary certified educational assistance organization shall perform the powers and duties assigned to the certified educational assistance organization under this chapter if:

(1) the organization certified as the primary certified educational assistance organization has its certification revoked; or

(2) the comptroller otherwise determines the organization certified as the primary educational assistance organization is unable to perform the powers and duties assigned to the certified educational assistance organization under this chapter.

(c) A reference in this chapter or other law to the certified educational assistance organization means the organization performing the powers and duties of the certified educational assistance organization under Subsection (a) or (b).

Sec. 230.0512. INFORMATION REGARDING SCHOLARSHIPS. (a) The certified educational assistance organization shall make information about scholarships under this chapter available to parents of a student who is eligible to apply for assistance under Section 230.053(a)(3)(E) through the organization's Internet website.

(b) The information made available must include a notice that:

(1) states that a nonpublic school is not subject to laws regarding the provision of educational services in the same manner as a public school, and a student with a disability attending a nonpublic school may not receive the services a student with a disability attending a public school is entitled to receive under federal and state law; and

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

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

(i) an individualized education program;

(ii) educational services provided in the least restrictive environment;

(iii) instruction from certified teachers;

(iv) due process hearings to ensure proper and full implementation of an individualized education program;

(v) transition and planning services; and

(vi) supplementary aids and services;

(B) rights provided under Subchapter A, Chapter 29, Education Code; and

(C) other rights provided under federal or state law.

Sec. 230.0513. REPORTING NUMBER OF SCHOLARSHIP RECIPIENTS. (a) Not later than October 1 of each year, the certified educational assistance organization shall notify the commissioner of education and the Legislative Budget Board of the likely number of students who will enroll in a nonpublic school instead of a public school using scholarships under this chapter, disaggregated by the school district or open-enrollment charter school the students would otherwise attend.

(b) Not later than March 1 of each year, the certified educational assistance organization shall provide final information to the commissioner of education and the Legislative Budget Board regarding the actual number of students described by Subsection (a), disaggregated in the same manner as the initial information under that subsection.

Sec. 230.052. NONPUBLIC SCHOOL REQUIREMENTS. The certified educational assistance organization may not award scholarships to or pay educational expenses for eligible students enrolled in a nonpublic school unless the nonpublic school executes a notarized affidavit, with supporting documents, concerning the school's qualification for scholarships and educational expense assistance for eligible students who receive assistance from the certified educational assistance organization, including evidence of:

(1) accreditation by the Texas Education Agency or by an organization that:

(A) is recognized by the Texas Private School Accreditation Commission; or

(B) has accredited at least 20 schools or any number of schools that serve a cumulative total of more than 1,000 students;

(2) annual administration of a nationally norm-referenced assessment instrument or the appropriate assessment instrument required under Section 39.023, Education Code;

(3) valid certificate of occupancy; and

(4) policy statements regarding:

(A) admissions;

(B) curriculum;

(C) safety;

(D) food service inspection; and

(E) student to teacher ratios.

Sec. 230.053. ELIGIBILITY OF STUDENTS; INCLUSION IN CALCULATION OF EQUALIZED WEALTH LEVEL. (a) A student is eligible to apply to the certified educational assistance organization for a scholarship or educational expense assistance under this chapter if:

(1) the student resides in the attendance zone of a public school campus located in a county with a population greater than 285,000;

(2) the student attended a public school in this state during the entire preceding academic year; and

(3) the student:

(A) is in foster care;

(B) is in institutional care;

(C) has a parent who is on active duty in the military;

(D) resides in a household with income not greater than 175 percent of the income guidelines necessary to qualify for the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq.; or

(E) is eligible under Section 29.003, Education Code, to participate in a school district's special education program, and has an individualized education program developed under Section 29.005, Education Code.

(b) In addition to the students eligible under Subsection (a), a student is eligible to apply for assistance from the certified educational assistance organization under this chapter if the student:

(1) meets the requirements of Subsection (a)(1); and

(2) previously qualified under Subsections (a)(2) and (3).

(c) A student may continue to receive assistance under this chapter until the earlier of the date the student graduates from high school or the student's 22nd birthday if the student:

(1) meets the requirements of Subsection (a)(1); and

(2) previously qualified under Subsections (a)(2) and (3)(E).

(d) The certified educational assistance organization shall award scholarships and educational expense assistance to eligible students who apply in accordance with this chapter.

(e) A student who receives a scholarship under this chapter is included for the first year the student receives the scholarship in the weighted average daily attendance of the school district the student would otherwise attend for purposes of determining the district's equalized wealth level under Chapter 41, Education Code.

Sec. 230.054. CREDIT FOR CONTRIBUTIONS. (a) An entity may apply for a credit under this chapter only for money contributed to the certified educational assistance organization and designated for scholarships or educational expense assistance for eligible students.

(b) An entity may not apply for a credit under this chapter for a contribution made to the certified educational assistance organization if:

(1) the entity requires that the contribution benefit a particular person or school; or

(2) the contribution is designated to provide a scholarship or educational expense assistance for an entity employee or for a spouse or dependent of an entity employee.

(c) An entity shall notify the certified educational assistance organization in writing when the entity makes a contribution if the entity may apply for a tax credit under this chapter for the contribution. An entity may not apply for a credit for the contribution unless the entity provides the notification at the time the contribution is made. The certified educational assistance organization shall indicate on the receipt provided under Section 230.051(b)(1)(F) that the entity made the notification under this subsection.

Sec. 230.055. LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL EXPENSE ASSISTANCE. (a) Except as provided by Subsection (b), the maximum scholarship amount the certified educational assistance organization may award to a student under this chapter using money contributed by an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution may not exceed 75 percent of the state average maintenance and operations expenditures per student for the preceding state fiscal year.

(b) A student who receives a payment to an education savings account under Section 29.358, Education Code, for a year is eligible to receive for the same year a scholarship from the certified educational assistance organization if the student is eligible for that assistance. The maximum scholarship amount the certified educational assistance organization may award to a student to whom this subsection applies using money contributed by an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution may not exceed the sum of:



(1) the difference between the amount of the payment under Section 29.358, Education Code, and the full tuition amount for the student's nonpublic school; and

(2) a transportation allowance not to exceed \$500.

(c) The maximum educational expense assistance the certified educational assistance organization may award to a student under this chapter using money contributed by an entity that notifies the organization under Section 230.054(c) that the entity may apply for a tax credit for the contribution may not exceed \$500 for the 2018 state fiscal year, increased by five percent each subsequent year.

Sec. 230.056. REVOCATION. (a) The comptroller shall revoke the certification provided under Section 230.051 if the comptroller finds that the certified educational assistance organization:

(1) is no longer eligible under Section 230.051; or

(2) intentionally and substantially violates this chapter.

(b) The comptroller has broad discretion in determining whether to revoke a certification under Subsection (a).

(c) The comptroller shall notify the certified educational assistance organization in writing of the comptroller's decision to revoke the organization's certification. If the comptroller revokes the organization's certification, the comptroller shall include in the notice of revocation the reasons for the revocation.

(d) If the comptroller revokes the certified educational assistance organization's certification under Subsection (a), the organization may request in writing a reconsideration of the revocation not later than the 10th day after the date of the notice under Subsection (c) or the revocation is final.

(e) An organization that requests a reconsideration under Subsection (d) may submit to the comptroller not later than the 30th day after the date the request for reconsideration is submitted additional information and documents to support the organization's request for reconsideration.

(f) The comptroller's reconsideration of a revocation under this section is not a contested case under Chapter 2001, Government Code. The comptroller's decision on a request for reconsideration of a revocation is final and is not appealable.

(g) This section does not create a cause of action to contest a decision of the comptroller to revoke the certified educational assistance organization's certification under this chapter.

(h) Revocation of a certification under this section does not affect the validity of a tax credit relating to a contribution made before the date of revocation.

Sec. 230.057. REPORT OF NET SAVINGS TO PUBLIC EDUCATION. (a) In this section, "net savings" means any positive difference in a state fiscal year between:

(1) the amount by which state spending on public education for that year is reduced as a result of students receiving scholarships and educational expense assistance from the certified educational assistance organization under this chapter; and

(2) the amount by which state revenue derived from Chapters 221, 222, and 224 is reduced as a result of tax credits under this chapter.

(b) Not later than December 31 of each even-numbered year, the comptroller shall determine the amount of net savings for the previous state fiscal biennium and make available to the public a report of that amount of savings.

SUBCHAPTER C. CREDIT

Sec. 230.101. CREDIT. An entity may apply for a credit against the entity's state premium tax liability in the amount and under the conditions and limitations provided by this chapter. The comptroller shall award credits as provided by Section 230.103.

Sec. 230.102. 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 of the qualifying contributions made to the certified educational assistance organization or 50 percent of the entity's state premium tax liability.

(b) The total amount of tax credits that may be awarded under this chapter for each state fiscal year may not exceed \$25 million.

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

Sec. 230.103. APPLICATION FOR CREDIT. (a) An entity must apply for a credit under this chapter on or with the tax return for the taxable year during which the qualifying contributions were made and submit with the application each receipt issued under Section 230.051(b)(1)(F) that includes the information required by Section 230.054(c).

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

(c) The comptroller may award a credit to an entity that applies for the credit under Subsection (a) if the entity is eligible for the credit and the credit is available under Section 230.102(b). The comptroller has broad discretion in determining whether to grant or deny an application for a credit.

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

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

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

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

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

Sec. 230.104. ASSIGNMENT PROHIBITED; EXCEPTION. An entity may not convey, assign, or transfer the credit allowed under this chapter to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

Sec. 230.105. NOTICE OF AVAILABILITY OF CREDIT. The comptroller shall provide notice of the availability of the credit under this chapter on the comptroller's Internet website, in the instructions for insurance premium tax report forms, and in any notice sent to an entity concerning the requirement to file an insurance premium tax report.

SECTION 2.02. An entity may apply for a credit under Chapter 230, Insurance Code, as added by this article, only for an expenditure made on or after the effective date of this article.

SECTION 2.03. Not later than February 15, 2018, the comptroller of public accounts shall adopt rules as provided by Section 230.002(a), Insurance Code, as added by this article.

SECTION 2.04. The comptroller of public accounts shall make the initial determination of net savings and report regarding that savings as required by Section 230.057, Insurance Code, as added by this article, not later than December 31, 2020, based on the state fiscal biennium ending August 31, 2019.

SECTION 2.05. This article applies only to a report originally due on or after the effective date of this article.

SECTION 2.06. This article takes effect January 1, 2018.

### ARTICLE 3. JUDICIAL REVIEW

SECTION 3.01. (a) The constitutionality and other validity under the state or federal constitution of all or any part of Subchapter J, Chapter 29, Education Code, as added by this Act, or Chapter 230, Insurance Code, as added by this Act, may be determined in an action for declaratory judgment in a district court in Travis County under Chapter 37, Civil Practice and Remedies Code, except that this section does not authorize an award of attorney's fees against this state and Section 37.009, Civil Practice and Remedies Code, does not apply to an action filed under this section. This section does not authorize a taxpayer suit to contest the denial of a tax credit by the comptroller of public accounts.

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

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

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

(e) There is a direct appeal to the Texas Supreme Court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of Subchapter J, Chapter 29, Education Code, as added by this Act, or Chapter 230, Insurance Code, as added by this Act.

(f) The direct appeal is an accelerated appeal.

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

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

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

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

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

#### ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. Except as otherwise provided by this Act:

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

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

The amendment to **CSSB 3** was read.

Senator Taylor of Galveston offered the following amendment to Floor Amendment No. 1:

#### **Floor Amendment No. 2**

Amend the proposed floor substitute to **CSSB 3** (85R19762) as follows:

(1) In SECTION 1.01 of the bill, in added Section 29.354(a), Education Code (page 4, lines 12 and 13), strike Subdivision (4) and substitute the following:

(4) resides in the attendance zone of a public school district located in a county:

(A) with a population of 285,000 or more; or

(B) in which the residents have approved participation in the program and receipt of scholarships and educational expense assistance under Chapter 230, Insurance Code, as provided by Subsection (a-1).

(a-1) The residents of a county with a population of less than 285,000 may vote at a general election to allow children residing in that county to participate in the program and to receive scholarships and educational expense assistance under Chapter 230, Insurance Code, subject to applicable eligibility requirements. The county shall hold an election described by this subsection on the next uniform election date that permits compliance with applicable deadlines for the election if the county receives a petition requesting the election signed by at least five percent of the registered voters residing in the county.

(2) In SECTION 2.01 of the bill, in added Section 230.053(a), Insurance Code (page 24, lines 23 through 25), strike Subdivision (1) and substitute the following:

(1) the student resides in the attendance zone of a public school district located in a county:

(A) with a population of 285,000 or more; or

(B) in which the residents have approved participation in the program under Subchapter J, Chapter 29, Education Code, and receipt of scholarships and educational expense assistance under this chapter, as provided by Section 29.354(a-1), Education Code;

The amendment to Floor Amendment No. 1 to **CSSB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Senator Taylor of Galveston offered the following amendment to Floor Amendment No. 1:

### **Floor Amendment No. 3**

Amend Floor Amendment No. 1 to **CSSB 3** as follows:

(1) In SECTION 1.01 of the bill, strike added Section 29.351(2), Education Code, and insert the following:

(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) In SECTION 2.01, in added Section 230.053(a)(3)(E), Education Code, strike "and has an individualized education program developed under Section 29.005, Education Code" and substitute "or is covered by Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794)".

The amendment to Floor Amendment No. 1 to **CSSB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

Senator Taylor of Galveston offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 4**

Amend Floor Amendment No. 1, **CSSB 3** (senate floor substitute), as follows:

- (1) On page 4, line 12, strike "the attendance zone of".
- (2) On page 4, line 13, strike "campus" and substitute "district".
- (3) On page 4, line 13, between "located" and "in", insert "in whole or in part".
- (4) On page 24, line 23, strike "the attendance zone of".
- (5) On page 24, line 24, strike "campus" and substitute "district".
- (6) On page 24, line 24, between "located" and "in", insert "in whole or in part".

The amendment to Floor Amendment No. 1 to **CSSB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4 except as follows:

Nays: Birdwell.

Senator Perry offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 5**

Amend the proposed Floor Amendment No. 1 to **CSSB 3** (85R19762) as follows:

- (1) In added Section 29.354(a)(4), Education Code (page 4, line 13), between "more" and the underlined period, insert the following:  
"based upon the 2010 Census"
- (2) In added Section 230.053(a)(1), Education Code (page 24, line 25), between "285,000" and the underlined semicolon, insert the following:  
"based upon the 2010 Census"

The amendment to Floor Amendment No. 1 to **CSSB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5.

Senator Menéndez offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 6**

Amend Floor Amendment No. 1, Taylor, L., to **CSSB 3** as follows:

- (1) In SECTION 1.01 of the bill, in added Section 29.355, Education Code (page 5, between lines 20 and 21), insert the following appropriately lettered subsection:

( ) The comptroller shall provide to each parent who submits an enrollment form for a child with a disability a written copy of the notice described by Section 29.353(c). Before the parent may receive funding under the program, the parent must sign and return the notice to the comptroller.

- (2) In SECTION 2.01 of the bill, in added Section 230.053, Insurance Code (page 25, between lines 25 and 26), insert the following appropriately lettered subsection and reletter subsequent subsections accordingly:

( ) The certified educational assistance organization shall provide to each parent of a student with a disability who applies for a scholarship or educational expense assistance under this chapter a written copy of the notice described by Section 230.0512(b). Before the organization may award a scholarship or educational expense assistance to the student, the student's parent must sign and return the notice to the organization.

The amendment to Floor Amendment No. 1 to **CSSB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 6.

Senator Huffines offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 7**

Amend Floor Amendment No. 1 by Taylor, L. to **CSSB 3** in SECTION 1.01 of the bill, in added Section 29.357(a), Education Code (page 6, between lines 26 and 27), by inserting the following appropriately numbered subdivision and renumbering subsequent subdivisions accordingly:

( ) costs of transportation to and from school, not to exceed \$500 per year;

The amendment to Floor Amendment No. 1 to **CSSB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 7.

Senator Lucio offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 8**

Amend Floor Amendment No. 1, Taylor, L., to **CSSB 3** as follows:

(1) In SECTION 1.01 of the bill, in added Section 29.357(a), Education Code (page 7, line 7), strike "and".

(2) In SECTION 1.01 of the bill, in added Section 29.357(a), Education Code (page 7, line 9), between "institution" and the underlined period, insert the following:  
; and

(10) costs of breakfast or lunch provided to a child during the school day by a private school

(3) In SECTION 1.01 of the bill, in added Section 29.357(b)(2), Education Code (page 7, line 14), between "food" and the underlined semicolon, insert ", other than breakfast or lunch as authorized under Subsection (a)(10)".

The amendment to Floor Amendment No. 1 to **CSSB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 8.

Senator Bettencourt offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 9**

Amend the proposed Floor Amendment No. 1 to **CSSB 3** (85R19762) as follows:

Strike Section 29.357(a)(1)(A)(ii), (page 6, lines 12-14), Section 29.364(a)(2), (page 11, lines 23-24) and Section 230.052(1)(B), (page 24, lines 4-6) entirely.

The amendment to Floor Amendment No. 1 to **CSSB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 9.

Senator Kolkhorst offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 10**

Amend Floor Amendment No. 1, Taylor, L., to **CSSB 3** as follows:

(1) In SECTION 1.01 of the bill, in added Section 29.357(b), Education Code (page 7, line 14), strike "or".

(2) In SECTION 1.01 of the bill, in added Section 29.357(b), Education Code (page 7, line 16), between "vacations" and the underlined period, insert the following:  
; or

(4) any product or service that is based on the national curriculum standards developed by the Common Core State Standards Initiative

(3) In SECTION 1.01 of the bill, in added Section 29.357(d), Education Code (page 7, line 21), strike "The content, subject to Section 29.364(c)," and substitute "Subject to Subsection (b)(4) and Section 29.364(c), the content".

(4) In SECTION 1.01 of the bill, in added Section 29.364, Education Code (page 11, between lines 24 and 25), insert the following:

(a-1) A private school:

(1) shall not receive funds distributed under the program if the school uses a curriculum or instructional material that promotes, advances, or otherwise advocates for anti-American rhetoric or ideology; and

(2) must, in the manner provided by rules adopted by the comptroller, certify compliance with the requirements of Subdivision (1) before the school may receive funds distributed under the program.

(5) In SECTION 1.01 of the bill, in added Section 29.365(d), Education Code (page 13, line 24), strike "A private school" and substitute "Subject to Section 29.364(a-1), a private school".

(6) In SECTION 1.01 of the bill, in added Section 29.365(e), Education Code (page 13, line 28), strike "A private school" and substitute "Subject to Section 29.364(a-1), a private school".

(7) In SECTION 2.01 of the bill, in added Section 230.052, Insurance Code (page 23, line 23), between "REQUIREMENTS." and "The", insert "(a)".

(8) In SECTION 2.01 of the bill, following added Section 230.052, Insurance Code (page 24, between lines 17 and 18), insert the following:

(b) The certified educational assistance organization may not award scholarships to or pay educational expenses for eligible students enrolled in a nonpublic school unless the school includes in the affidavit required under Subsection (a) a statement that the school does not use a curriculum or instructional material that is based on the national curriculum standards developed by the Common Core State Standards Initiative.



Sec. 230.0521. PROHIBITED EDUCATIONAL EXPENSES. The certified educational assistance organization may not pay educational expenses incurred by an eligible student for a product or service that is based on the national curriculum standards developed by the Common Core State Standards Initiative.

The amendment to Floor Amendment No. 1 to **CSSB 3** was read and was adopted by the following vote: Yeas 20, Nays 11.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

### VOTE RECONSIDERED

On motion of Senator Taylor of Galveston and by unanimous consent, the vote by which Floor Amendment No. 10 was adopted was reconsidered.

Question: Shall Floor Amendment No. 10 to **CSSB 3** be adopted?

Senator Kolkhorst withdrew Floor Amendment No. 10.

Senator Rodríguez offered the following amendment to Floor Amendment No. 1:

#### **Floor Amendment No. 11**

Amend Floor Amendment No. 1 by Taylor, L. to **CSSB 3** as follows:

(1) In SECTION 1.01 of the bill, strike added Section 29.364(a), Education Code (page 11, lines 18 - 24), and substitute the following:

(a) To receive funds distributed under the program, a private school must:

(1) be accredited by an organization that:

(A) is recognized by the Texas Private School Accreditation Commission; or

(B) has accredited at least 20 schools or any number of schools that serve a cumulative total of more than 1,000 students;

(2) annually administer the appropriate assessment instruments required under Section 39.023;

(3) submit to the agency any information necessary to permit the commissioner to assign the school an annual campus performance rating under Section 39.054; and

(4) comply with any requirement of the commissioner or the agency for the assignment of the campus performance rating in the manner in which an independent school district or public school must comply with the requirement.

(2) In SECTION 1.01 of the bill, in added Sections 29.365(d) and (e), Education Code (page 13, lines 24 and 27), strike "A private school" and substitute "Except as otherwise provided by Section 29.364, a private school" in each instance that it appears.

(3) In SECTION 2.01 of the bill, in added Section 230.052, Insurance Code (page 23, line 23), strike "REQUIREMENTS." and substitute "REQUIREMENTS AND ACCOUNTABILITY. (a)".

(4) In SECTION 2.01 of the bill, in added Section 230.052, Insurance Code (page 24, lines 7 - 10), strike Subdivision (2) and substitute the following:

(2) annual administration of the appropriate assessment instruments required under Section 39.023, Education Code, and receipt of an acceptable annual campus performance rating assigned by the commissioner of education under Section 39.054, Education Code;

(5) In SECTION 2.01 of the bill, in added Section 230.052, Insurance Code (page 24, between lines 17 and 18), insert the following:

(b) A nonpublic school that enrolls an eligible student must:

(1) submit to the Texas Education Agency any information necessary to permit the commissioner of education to assign the school an annual campus performance rating under Section 39.054, Education Code; and

(2) comply with any requirement of the commissioner of education or the Texas Education Agency for the assignment of the campus performance rating in the manner in which an independent school district or public school must comply with the requirement.

The amendment to Floor Amendment No. 1 to **CSSB 3** was read and failed of adoption by the following vote: Yeas 13, Nays 18.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Schwertner, Seliger, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Taylor of Galveston, Taylor of Collin.

Question recurring on the adoption of Floor Amendment No. 1 to **CSSB 3**, the amendment as amended was adopted by the following vote: Yeas 18, Nays 13.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Hughes, Kolkhorst, Lucio, Nelson, Perry, Schwertner, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Huffman, Menéndez, Miles, Nichols, Rodríguez, Seliger, Uresti, Watson, West, Whitmire, Zaffirini.

**CSSB 3** as amended was passed to engrossment by the following vote: Yeas 18, Nays 13.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Hughes, Kolkhorst, Lucio, Nelson, Perry, Schwertner, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Huffman, Menéndez, Miles, Nichols, Rodríguez, Seliger, Uresti, Watson, West, Whitmire, Zaffirini.

### REMARKS ORDERED PRINTED

On motion of Senator Burton and by unanimous consent, the remarks by Senators Taylor of Galveston and Burton regarding **CSSB 3** were ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Burton:** Chairman Taylor, I just want to ask you a quick question today about some of the language in Senate Bill 3 surrounding discreet protections of private schools. Several constituents have reached out to me and inquired about the phrase "may not," which is used in multiple places in the bill and the substitute as well. For instance, in the floor substitute, page 7, line 21 through 24 reads, the content or religious nature of a product or service may not be considered in determining whether a payment for the product or service in the expense allowed, et cetera, et cetera. These constituents have concerns that "may not" is not strong enough because as we know in legislative language, "may" is permissive and "shall" is compulsory. I just want to, can you explain to us and those out there with this specific concern, the choice of the phrase "may not" over something seemingly stronger, such as "shall not"?

**Senator Taylor of Galveston:** Sure, and thank you for that question. In legalese, they're both at the same level, "may not" and "shall not." Now, you're correct, it's permissive if we say in statute that you may do something, or you shall do something, "may" is permissive, "shall," there's no choice. In this case, "may not" and "shall not" have the same legal definition. I think the best example I can give you is like when your mom told you, you may not do that, that wasn't permissive. It was pretty, pretty serious if, you had consequences.

**Senator Burton:** It's a more polite way of saying it, correct?

**Senator Taylor of Galveston:** Yeah, it's just a polite way of saying, you're not going to do that.

**Senator Burton:** Okay, so it has—

**Senator Taylor of Galveston:** So—

**Senator Burton:** —that stronger meaning.

**Senator Taylor of Galveston:** —it's, it is exactly the same.

**Senator Burton:** Okay, that's what I needed to know.

#### ADJOURNMENT

On motion of Senator Whitmire, the Senate at 4:36 p.m. adjourned until 4:37 p.m. today.

