

BILL ANALYSIS

Senate Research Center

S.B. 1178
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Education
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2011, Arizona became the first state to set up Empowerment Scholarship Accounts. Under the Arizona program, parents who choose to opt-out of the state education system can receive educational funds that would otherwise go to that child's public school into an educational savings account. This money can then be used for multiple educational purposes, such as private school tuition, tutoring, online programs, or college savings programs. Florida has a similar program.

The Texas education system is becoming more diverse in the amount of choices parents have regarding how they wish for their children to be educated. Public school choice is especially important for parents of students with disabilities, especially if those students need specialized instruction. Four percent of all Texas public school children are enrolled in an open-enrollment charter school, and the number of children with disabilities who withdraw from public schools is also rising. The Texas Education Agency stated in a *Houston Chronicle* article that from 2003-2012, 50 percent of all children with disabilities withdrew from public schools.

S.B. 1178 establishes Education Savings Accounts in Texas. One-half of one percent of all students would be eligible, and the program would focus on students with disabilities, and those who are educationally disadvantaged (eligible to participate in the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq.). This bill will empower parents to make the best possible educational choices for their children.

As proposed, S.B. 1178 amends current law relating to establishing an education savings account program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Section 29.358, Education Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of education, the State Board of Education, the commissioner of higher education, and the comptroller of public accounts of the State of Texas in SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 29, Education Code, by adding Subchapter J, as follows:

SUBCHAPTER J. EDUCATION SAVINGS ACCOUNT PROGRAM

Sec. 29.351. DEFINITIONS. In this subchapter:

- (1) Defines "account."
- (2) Defines "child with a disability."
- (3) Defines "curriculum."

(4) Defines "financial institution." Provides that 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) Defines "institution of higher education."

(6) Defines "instructional material."

(7) Defines "parent."

(8) Defines "participating private school."

(9) Defines "program."

(10) Defines "program participant."

Sec. 29.352. ESTABLISHMENT OF PROGRAM. (a) Requires the commissioner of education (commissioner) to establish and administer the education savings account program (program) to provide funding to pay approved education-related expenses of eligible students. Provides that the parent of a child participating in the program may choose an education method that best serves the child's needs, whether by private school, private tutor, homeschooling, or another approved option.

(b) Provides that the annual number of new participants in the program is limited to one-half of one percent of the total number of students in average daily attendance in grades 1 through 12 in the state during the previous school year. Requires the Texas Education Agency (TEA), in the event that applicants exceed available spots in any given year, to give preference to any applicant who is a child with a disability or who is educationally disadvantaged.

(c) Requires TEA to make information about the program readily available to the public through various sources, including TEA's Internet website. Requires TEA to make special efforts to ensure that parents of a child with a disability or a child who is educationally disadvantaged are made aware of the program.

Sec. 29.353. ELIGIBLE CHILD. (a) Provides that a child is eligible to participate in the program if the child:

(1) is eligible to attend school under Section 25.001 (Admission); and

(2) was enrolled in a public school district during the preceding school year or is enrolling in first grade for the first time.

(b) Provides that the child, after a child establishes eligibility under Subsection (a) and begins participating in the program, is eligible to continue in the program, regardless of whether the child continues to meet the requirements of Subsection (a), until the earlier of the date on which the child graduates from high school or the child's 21st birthday, unless the child:

(1) enrolls in a public school district or open-enrollment charter school;

(2) changes residences and is no longer entitled under Section 25.001 to attend school in the school district under which the child's eligibility was established; or

(3) is declared ineligible for the program by order of the commissioner.

Sec. 29.354. AGREEMENT REQUIRED. Requires a parent of the child, before an eligible child may receive funding under this subchapter, to agree in writing:

- (1) to provide an education for the child that includes, at a minimum, the subjects of reading, grammar, mathematics, social studies, and science;
- (2) to spend program funding only on qualified education expenses described by Section 29.356;
- (3) to ensure that the child is annually administered the appropriate assessment instruments under Section 29.358;
- (4) to immediately notify TEA if the child enrolls in a public school district or open-enrollment charter school; and
- (5) to inform TEA of the child's graduation from high school.

Sec. 29.355. AMOUNT OF PAYMENT; FINANCING. (a) Requires a child participating in the program to receive annual funding equal to 80 percent of the total average per student funding amount in the school district the child would otherwise attend, based on that district's funding during the preceding school year.

(b) Requires a child participating in the program who is a child with a disability or who is educationally disadvantaged, notwithstanding Subsection (a), to receive annual funding equal to 100 percent of the total average per student funding amount in the school district the child would otherwise attend, based on that district's funding during the preceding school year.

(c) Requires TEA to contract with an independent third party for the purpose of determining if a child participating in the program is a child with a disability or is educationally disadvantaged.

(d) Provides that a child who participates in the program is included in determining the average daily attendance under Section 42.005 (Average Daily Attendance) of the school district the child would otherwise attend. Requires that the amount of program funding received by the child be subtracted from the state funding payable to the school district.

Sec. 29.356. QUALIFIED EDUCATION EXPENSES; AGENCY APPROVAL.

(a) Requires that program funding only be used to pay the following qualified education expenses incurred by a program participant:

- (1) tuition and fees at a participating private school;
- (2) the purchase of textbooks required by a participating private school;
- (3) the purchase of a curriculum;
- (4) the purchase of instructional material;
- (5) tuition or fees for an online educational course or program;
- (6) professional fees of a private tutor or teaching service;
- (7) for a child with a disability, professional fees of a practitioner or provider of educational therapies or services;
- (8) fees for a nationally standardized norm-referenced achievement test or examination, an advanced placement examination or similar examination, or any examination related to college or university admission;
- (9) tuition and fees at an institution of higher education;

(10) the purchase of textbooks required by an institution of higher education;

(11) contributions to a qualified tuition program established for the child that meets the requirements of Section 529, Internal Revenue Code of 1986; and

(12) professional fees of a financial institution that manages the participant's account.

(b) Provides that education-related expenses that do not qualify under Subsection (a) and that may not be paid with program funding include:

(1) computer hardware or other technological devices;

(2) transportation;

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

(4) food; and

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

(c) Requires that all expense payments made from an account established under this subchapter be approved by TEA and be made only to a participating private school, institution of higher education, private tutor, vendor, or other provider of education services that has been approved by TEA.

(d) Requires a participating private school, institution of higher education, private tutor, vendor, or other provider of education services under this subchapter to provide program participants with a receipt for each qualifying education expense charged by the school, institution, tutor, vendor, or provider.

(e) Requires that nothing in this subchapter be construed to prohibit or limit the ability of a program participant to pay, with nonprogram funding, the costs of educational courses, materials, supplies, or services not covered by the program.

Sec. 29.357. APPLICATION FOR PROGRAM. (a) Authorizes a parent, from May 1 to July 1 of each year, to apply for participation in the program on behalf of the parent's child for the following school year.

(b) Requires TEA to use a standardized application form to determine a child's eligibility for the program. Requires TEA to make the application form readily available to interested parents through various sources, including TEA's Internet website.

(c) Requires TEA to provide to each applicant, and annually to each program participant, a publication that describes the operation of the program, including the type of expenses covered by the program, expense reporting requirements, a list of private schools participating in the program, and a description of the responsibilities of program participants and TEA.

Sec. 29.358. ACHIEVEMENT TESTING. (a) Requires each child participating in the program to be annually administered the appropriate grade-level state assessment instruments, or nationally standardized norm-referenced achievement tests, in math and language arts. Provides that a child with a disability for whom standardized testing is not appropriate, however, is not subject to this subsection.

(b) Requires that the results of all assessment instruments or tests administered under this section be reported to TEA in the manner required by TEA. Requires TEA to ensure that results may be efficiently reported in a manner that complies with student privacy laws and that allows aggregation of data by grade level, gender, race, family income level, and number of years of participation in the program.

(c) Requires TEA to publish the achievement test results, associated learning gains, and program graduation rates on TEA's Internet website.

(d) Provides that a student's failure to demonstrate satisfactory academic progress, as determined under commissioner rule, may constitute grounds for the commissioner to declare the student ineligible for the program.

Sec. 29.359. ACCREDITATION. (a) Requires that a participating private school be accredited by a private organization recognized by the commissioner before it may accept students under the program.

(b) Requires a private tutor or teaching service, or a practitioner or provider of educational therapies or services for a child with a disability, to be licensed or accredited by a regional or national accrediting organization recognized by the commissioner before it is authorized to accept students under the program.

Sec. 29.360. ADMINISTRATION OF ACCOUNTS. (a) Requires TEA to contract with a financial institution to establish and manage accounts under the program. Requires the institution to establish an account for each child participating in the program. Authorizes program participants to access their account by using a debit card or online payment service.

(b) Requires that funding under the program be transferred to each participant's account in quarterly installments of equal amount to be made on or before the 25th day of August, November, February, and May.

(c) Authorizes TEA to deduct from each installment of funds an amount, not to exceed three percent, to cover TEA's cost of overseeing accounts and administering the program.

(d) Requires TEA to establish, based on market rates, reasonable fees that may be charged by a financial institution that manages accounts under the program.

Sec. 29.361. EXPENSE REPORTING. (a) Requires program participants, on or before quarterly deadlines established by TEA, to submit an expense report to TEA detailing all transactions made on the participant's account during the reporting quarter. Provides that only expenses incurred during the reporting quarter may be approved by TEA.

(b) Requires that an expense report include:

(1) receipts and invoices documenting all transactions made on the account; and

(2) a quarterly statement of account provided to the participant by the financial institution that manages the account.

(c) Requires TEA to disallow any expense that is not a qualified education expense under Section 29.356 or for which documentation is incomplete. Requires TEA, for each disallowed transaction, to request repayment in full from the program participant. Provides that no additional program funding, pending repayment, may be transferred to the participant's account. Requires the commissioner, if repayment is not made on or before the 30th day after the request for repayment is made, to close the account.

(d) Authorizes a program participant to request TEA approval of an expense that was not preapproved by TEA. Provides that an approval request under this subsection is only effective if:

- (1) made in writing using the proper form provided by TEA; and
- (2) submitted to TEA before or concurrently with the submission of the relevant expense report.

(e) Provides that repeated violations of expense reporting requirements by a program participant, whether intentional or unintentional, may constitute grounds for the commissioner to declare the participant ineligible for the program.

Sec. 29.362. AUDITING OF ACCOUNT. Requires TEA to audit accounts as needed to ensure compliance with applicable law and the requirements of the program. Requires TEA, at a minimum, to conduct one random audit of each account annually. Provides that TEA, in auditing an account, may require that a program participant provide further information and documentation regarding any transaction on the participant's account.

Sec. 29.363. SUSPENSION OF ACCOUNT. Requires the commissioner to suspend the account of any program participant who fails to comply with applicable law or a requirement of the program, including the terms of an agreement under Section 29.354, or who commits a substantial misuse of program funds. Requires the commissioner to notify the participant in writing that the account has been suspended and that no further transactions will be allowed on or disbursements made from the account. Requires that the notification specify the grounds for the suspension and state that the participant has 10 business days to respond and take any corrective action ordered by the commissioner. Requires the commissioner, following the expiration of the 10-day period, to:

- (1) order permanent closure of the suspended account and declare the participant ineligible for the program;
- (2) order temporary reinstatement of the account, conditioned on the performance of specified action by the participant; or
- (3) order full reinstatement of the account.

Sec. 29.364. TUITION AND FEES; REFUND PROHIBITED. (a) Prohibits a participating private school from:

- (1) charging a child participating in the program that attends the school a tuition amount greater than the standard tuition rate at the school; or
- (2) assessing any additional charge, other than a fee that the board of trustees of a school district is authorized to charge under Section 11.158 (Authority to Charge Fees), for providing an educational program or service to the child.

(b) Prohibits a participating private school, institution of higher education, private tutor, vendor, or other provider of education services under this subchapter from in any manner refunding to, crediting to, sharing with, or rebating to a program participant, or any person on behalf of a participant, any program funds paid or owed by the participant to the school, institution, tutor, vendor, or provider.

Sec. 29.365. REFERRAL TO THE ATTORNEY GENERAL. Authorizes the commissioner, if TEA obtains evidence of fraudulent use of an account, to refer the case to the attorney general for investigation and prosecution.

Sec. 29.366. SCHOOL ADMISSIONS. (a) Prohibits a participating private school from refusing to enroll a child participating in the program on the basis of the child's residence, race, national origin, ethnic background, religion, disability, or academic achievement.

(b) Authorizes a participating private school to refuse to enroll a child participating in the program if the child:

(1) has been expelled from a public or private school at any time; or

(2) has a criminal record.

(c) Prohibits a participating private school from considering the athletic ability of a child participating in the program in any admissions process relating to the child.

(d) Authorizes a participating private school to give admissions preference to a currently enrolled child participating in the program to achieve continuity and to siblings of a currently enrolled child or children residing in the same household as a currently enrolled child for the convenience of the parents of those children.

Sec. 29.367. PROVIDER ACCOUNTABILITY. (a) Requires a participating private school to:

(1) comply with all applicable state or federal health and safety laws;

(2) hold a valid occupancy permit, if required by the political subdivision in which the school is located; and

(3) certify to TEA that the school has complied with the conditions imposed by Section 29.366 and this section.

(b) Requires a participating private school to conduct a criminal background check on each school employee or prospective employee. Requires the school to terminate or exclude from employment any person:

(1) ineligible under state law to work at the school; and

(2) who, in the judgment of the school's management, may pose a threat to the safety of students at the school.

(c) Authorizes TEA to declare a participating private school, institution of higher education, private tutor, vendor, or other provider of education services ineligible for the program if, after notice and hearing, TEA finds that the school, institution, tutor, vendor, or provider has:

(1) failed to comply with applicable law or the requirements of the program; or

(2) failed to provide a child participating in the program with promised educational services.

(d) Requires TEA, if TEA makes a declaration of ineligibility under Subsection (c), to:

(1) immediately notify program participants of the declaration of ineligibility; and

(2) disapprove any account expenditure made to the school, institution, tutor, vendor, or provider after the date of the declaration of ineligibility.

(e) Provides that the establishment of the program does not expand the regulatory authority of TEA or any school district to impose additional regulation on a private school, private tutor, or other provider of private education services under the program beyond what is necessary to enforce the requirements of the program. Provides that neither TEA nor any school district may in any way regulate the educational program of a private school, private tutor, or other provider of private education services under the program.

Sec. 29.368. BOND REQUIRED. (a) Requires a participating private school that anticipates receiving \$50,000 or more in tuition and fees from students participating in the program during the school year, except as provided by Subsection (c), prior to the start of each school year, to file a corporate surety bond with the commissioner in an amount equal to the total amount of the anticipated tuition and fees.

(b) Requires that a bond issued under Subsection (a) be:

- (1) issued in a form approved by the commissioner;
- (2) issued by a company authorized to do business in this state;
- (3) payable to the state to be used only for repayment of any funds received by the school under the program;
- (4) conditioned on the compliance of the school and its officers, agents, and employees with this subchapter and rules adopted under this subchapter; and
- (5) issued for a period corresponding to the school year.

(c) Authorizes the commissioner to waive the bond filing requirement under Subsection (a) for any participating private school that provides to TEA financial information demonstrating, to the commissioner's satisfaction, that the school has the ability to repay the total amount of tuition and fees the school anticipates receiving from students participating in the program during the school year.

Sec. 29.369. STUDENT RECORDS. Requires the school district that a child participating in the program would otherwise attend to provide to the child's parent or, if applicable, to a participating private school the child attends, a complete copy of the child's school records. Provides that this subsection does not require or authorize the release of information except in conformity with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

Sec. 29.370. ANNUAL SURVEY. Requires TEA to annually request that a parent of each child participating in the program complete a written survey that solicits the parent's:

- (1) overall level of satisfaction with the program; and
- (2) opinion on specified topics and issues relevant to the effectiveness of the program.

SECTION 2. Provides that this Act applies beginning with the 2015-2016 school year.

SECTION 3. Requires the commissioner, the State Board of Education, the commissioner of higher education, and the comptroller of public accounts of the State of Texas, not later than 45 days after the effective date of this Act, to adopt rules, procedures, and forms necessary to implement the program under Subchapter J, Chapter 29, Education Code, as added by this Act, and to:

- (1) calculate annually the savings to the state from the implementation of the program;
and
- (2) prevent fraud in financial transactions under the program, including measures to permit anonymous fraud reporting by telephone hotline or online communication.

SECTION 4. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2015.

(b) Effective date, Section 29.358(c), Education Code, as added by this Act: September 1, 2018.