

By: Bettencourt

S. B. No. 542

A BILL TO BE ENTITLED

1 AN ACT

2 relating to an insurance premium tax credit for contributions made
3 to certain educational assistance organizations.

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

5 SECTION 1. Subtitle B, Title 3, Insurance Code, is amended
6 by adding Chapter 230 to read as follows:

CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO
CERTAIN EDUCATIONAL ASSISTANCE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 230.001. DEFINITIONS. In this chapter:

1 this state's compulsory attendance requirements; and
2 (c) that are not in violation of the
3 federal Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.);
4 and

1 notifies the certified educational assistance organization that
2 the entity that made the designated contribution:

3 (1) failed to apply for a credit under Section 230.155
4 on or with the tax report covering the period in which the
5 designated contribution was made; or

6 (2) was denied a credit under Subchapter D for the
7 designated contribution.

8 (c) The comptroller shall promptly notify the certified
9 educational assistance organization of a condition described by
10 Subsection (b).

11 (d) If the comptroller expects that, for a state fiscal
12 year, the amount of designated contributions will exceed the amount
13 of credits available under this chapter, the comptroller may
14 establish a reserve amount for the state fiscal year equal to the
15 estimated amount of designated contributions that will qualify as
16 program funds. If the comptroller establishes a reserve amount for
17 a state fiscal year, the certified educational assistance
18 organization is only required to treat as program funds an amount of
19 designated contributions received in the state fiscal year equal to
20 the reserve amount for that year.

21 (e) The certified educational assistance organization shall
22 use designated contributions treated as program funds under this
23 section for any purpose authorized by Subchapter C for the
24 expenditure of program funds.

25 Sec. 230.003. RULES; PROCEDURES. (a) The comptroller
26 shall adopt rules and procedures to implement, administer, and
27 enforce this chapter.

1 (b) A rule adopted under Subsection (a) is binding on an
2 organization that bids for a contract to serve as the certified
3 educational assistance organization, an entity that applies for a
4 credit, and a state or local governmental entity, including a
5 political subdivision, as necessary to implement, administer, and
6 enforce this chapter.

7 SUBCHAPTER B. CERTIFIED EDUCATIONAL ASSISTANCE ORGANIZATION

8 Sec. 230.051. CERTIFIED EDUCATIONAL ASSISTANCE
9 ORGANIZATION; AWARD OF CONTRACT. (a) An organization may submit a
10 bid to the comptroller for a contract to serve as the certified
11 educational assistance organization during a bidding period
12 provided by the comptroller.

13 (b) To be eligible for a contract awarded under this
14 section, an organization:

15 (1) must:

16 (A) be exempt from federal tax under Section
17 501(a) of the Internal Revenue Code of 1986 by being listed as an
18 exempt organization in Section 501(c)(3) of that code;

19 (B) be in good standing with the state;

20 (C) be located in the state;

21 (D) agree to allocate at least 90 percent of
22 program funds in the manner provided by Section 230.106;

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

26 (F) agree to give each donor a receipt for money
27 contributed to the organization that includes the name of the

1 donor, the amount of the contribution, the information required by
2 Section 230.152(c), and any other information required by the
3 comptroller;

4 (G) demonstrate experience and technical
5 expertise in:

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

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

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

13 (I) agree to disburse program funds within two
14 academic years of receipt; and

15 (2) may not:

16 (A) establish eligibility requirements, other
17 than the requirements under Section 230.102, for scholarships or
18 educational expense assistance paid from program funds;

19 (B) provide to a student a scholarship in an
20 annual amount that exceeds the amount provided under Section
21 230.104(a) or (b) unless the money used to provide the portion of
22 the scholarship in excess of that amount is not program funds; or

23 (C) provide to a student educational expense
24 assistance in excess of the amount provided under Section
25 230.104(c), unless the money used to provide the portion of the
26 assistance in excess of that amount is not program funds.

27 (c) The comptroller may contract with only one certified

1 educational assistance organization at any time. The comptroller
2 shall select a successful bidder from among the organizations that
3 submit a bid under Subsection (a) and meet the requirements of
4 Subsection (b) and award to that bidder a contract to serve as the
5 certified educational assistance organization. The comptroller
6 has broad discretion in awarding the certified educational
7 assistance organization contract.

8 (d) The comptroller shall notify all organizations that
9 submit a bid under Subsection (a) of the comptroller's selection
10 under Subsection (c).

11 (e) The comptroller shall attempt to maintain one certified
12 educational assistance organization at all times. The comptroller
13 shall provide a bidding period under Subsection (a) as soon as
14 practicable after the comptroller learns there is, or is likely to
15 be, a vacancy for the certified educational assistance
16 organization.

17 (f) The comptroller's selection under Subsection (c) is
18 final and is not appealable.

19 Sec. 230.052. TERMINATION OF CONTRACT. (a) A contract
20 between the comptroller and a certified educational assistance
21 organization entered into under Section 230.051 must include
22 provisions regarding termination of the contract that are
23 consistent with the requirements of this section.

24 (b) The comptroller shall terminate a contract under
25 Section 230.051 if the comptroller finds that the certified
26 educational assistance organization:

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

1 (2) intentionally and substantially violates this
2 chapter.

3 (c) The comptroller has broad discretion in determining
4 whether to terminate a contract under Subsection (b).

5 (d) The comptroller shall notify the certified educational
6 assistance organization in writing of the comptroller's decision to
7 terminate the organization's contract. The comptroller shall
8 include in the notice of termination the reasons for the proposed
9 termination.

10 (e) If the comptroller notifies the certified educational
11 assistance organization of the proposed termination of the
12 organization's contract, the organization may request in writing a
13 reconsideration of the proposed termination not later than the 10th
14 day after the date the notice under Subsection (d) is received. If
15 the organization does not request a reconsideration of the proposed
16 termination on or before that date, the termination is final.

17 (f) An organization that requests a reconsideration under
18 Subsection (e) may submit to the comptroller, not later than the
19 30th day after the date the request for reconsideration is
20 submitted, additional information and documents to support the
21 organization's request for reconsideration.

22 (g) The comptroller's reconsideration of a proposed
23 termination under this section is not a contested case under
24 Chapter 2001, Government Code. The comptroller's decision on a
25 request for reconsideration of a proposed termination is final and
26 is not appealable.

27 (h) Termination of a contract under this section does not

1 affect the validity of a tax credit relating to a designated
2 contribution made before the date of termination.

3 SUBCHAPTER C. SCHOLARSHIP AND EDUCATIONAL EXPENSE ASSISTANCE

4 PROGRAM

5 Sec. 230.101. ELIGIBILITY OF NONPUBLIC SCHOOLS. The
6 certified educational assistance organization may award
7 scholarships to or pay educational expenses for eligible students
8 enrolled in a nonpublic school if the nonpublic school executes a
9 notarized affidavit, with supporting documents, concerning the
10 school's qualification for scholarships and educational expense
11 assistance for eligible students who receive assistance from the
12 certified educational assistance organization, including evidence
13 of:

14 (1) accreditation by the Texas Education Agency or by
15 an organization recognized by the Texas Private School
16 Accreditation Commission;

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

21 (3) valid certificate of occupancy; and

22 (4) policy statements regarding:

23 (A) admissions;

24 (B) curriculum;

25 (C) safety;

26 (D) food service inspection; and

27 (E) student to teacher ratios.

1 Sec. 230.102. ELIGIBILITY OF STUDENTS. (a) A student is
2 eligible to apply to the certified educational assistance
3 organization for a scholarship or educational expense assistance
4 paid from program funds if the student was enrolled in a public
5 school during the entire preceding school year or is enrolling in
6 school in this state for the first time and the student:

7 (1) is in foster care;
8 (2) is in institutional care;
9 (3) has a parent who is on active duty in the military;
10 (4) resides in a household with income not greater
11 than 200 percent of the income guidelines necessary to qualify for
12 the national free or reduced-price lunch program established under
13 42 U.S.C. Section 1751 et seq.;

14 (5) is the sibling of a child who is eligible to apply
15 under this section;

16 (6) previously qualified to apply under this section;

17 or

18 (7) is in kindergarten through grade 12, is eligible
19 under Section 29.003, Education Code, to participate in a school
20 district's special education program, and has an individualized
21 education program under Section 29.005, Education Code.

22 (b) A student who establishes eligibility under Subsection
23 (a)(7) may continue to receive assistance under this chapter until
24 the earlier of the date the student graduates from high school or
25 the student's 22nd birthday.

26 (c) The certified educational assistance organization shall
27 award scholarships and educational expense assistance to eligible

1 students who apply in accordance with this chapter.

2 Sec. 230.103. NOTICE TO CERTAIN PARENTS. A school district
3 shall provide written notice of the availability of assistance
4 under this chapter to the parent of a student who is eligible to
5 apply for assistance under Section 230.102(a)(7). The notice must
6 inform the parent:

7 (1) that an eligible nonpublic school is not subject
8 to laws regarding the provision of education services in the same
9 manner as a public school;

10 (2) that a student with a disability attending an
11 eligible nonpublic school may not receive the services a student
12 with a disability attending a public school is entitled to receive
13 under federal and state law;

14 (3) of the rights provided under the Individuals with
15 Disabilities Education Act (20 U.S.C. Section 1400 et seq.),
16 including:

17 (A) an individualized education program;

18 (B) education services provided in the least
19 restrictive environment;

20 (C) instruction from certified teachers;

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

23 (E) transition and planning services; and

24 (F) supplementary aids and services;

25 (4) of the rights provided under Subchapter A, Chapter
26 29, Education Code; and

27 (5) of any other rights provided under federal or

1 state law to a student with a disability who attends a public
2 school.

3 Sec. 230.104. LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL
4 EXPENSE ASSISTANCE. (a) Except as provided by Subsection (b), the
5 maximum scholarship amount the certified educational assistance
6 organization may award to a student under this chapter paid from
7 program funds may not exceed 75 percent of the state average
8 maintenance and operations expenditures per student in average
9 daily attendance for the preceding state fiscal year.

10 (b) The maximum scholarship amount under Subsection (a) may
11 not exceed 50 percent of the state average maintenance and
12 operations expenditures per student in average daily attendance for
13 the preceding state fiscal year if the student receiving the
14 scholarship resides in a household with income greater than 175
15 percent of the income guidelines necessary to qualify for the
16 national free or reduced-price lunch program established under 42
17 U.S.C. Section 1751 et seq. This subsection does not apply to a
18 student who is eligible for assistance under Section 230.102(a)(7)
19 or (b).

20 (c) The maximum educational expense assistance the
21 certified educational assistance organization may award to a
22 student under this chapter paid from program funds may not exceed
23 \$750 for the 2018 state fiscal year, increased by five percent each
24 subsequent year.

25 Sec. 230.105. QUALIFIED EDUCATIONAL EXPENSES. (a) Except
26 as provided by Subsection (c), the scholarship amount described by
27 Section 230.104(a) or (b) may be used only to pay for the following

1 qualified educational expenses incurred by the student awarded the
2 scholarship who attends an eligible nonpublic school:

- 3 (1) tuition;
- 4 (2) transportation;
- 5 (3) textbooks;
- 6 (4) tutoring;
- 7 (5) academic after-school programs;
- 8 (6) instructional supplies required by the school;
- 9 (7) school or lab fees;
- 10 (8) before-school or after-school child care; and
- 11 (9) uniforms.

12 (b) Except as provided by Subsection (c), the educational
13 expense assistance amount described by Section 230.104(c) may be
14 used only to pay for the following qualified educational expenses
15 incurred by the student awarded the educational expense assistance:

- 16 (1) facility fees;
- 17 (2) transportation expenses, including the cost to
18 transfer from one public school to another;
- 19 (3) textbooks;
- 20 (4) tutoring;
- 21 (5) academic after-school programs;
- 22 (6) instructional supplies required by the school;
- 23 (7) school or lab fees; and
- 24 (8) before-school or after-school child care.

25 (c) In addition to the expenses described by Subsections (a)
26 and (b), the scholarship or educational expense assistance amount
27 awarded to a student eligible under Section 230.102(a)(7) or (b)

1 may be used to pay for the following qualified educational
2 expenses:

3 (1) educational therapies from a licensed or
4 accredited practitioner or provider;

5 (2) a licensed or accredited paraprofessional or
6 educational aide;

7 (3) tuition for vocational and life skills education;
8 and

9 (4) associated services that include educational and
10 psychological evaluations, assistive technology rentals, and
11 translation services.

12 Sec. 230.106. ALLOCATION OF PROGRAM FUNDS. Of the program
13 funds required to be allocated as provided by Section
14 230.051(b)(1)(D), the certified educational assistance
15 organization shall use:

16 (1) at least 80 percent to award scholarships
17 described by Sections 230.104(a) and (b); and

18 (2) not more than 20 percent to award educational
19 expense assistance as described by Section 230.104(c).

20 Sec. 230.107. REPORT OF NET SAVINGS TO PUBLIC EDUCATION.
21 Not later than December 31 of each even-numbered year, the
22 comptroller shall determine the amount of net savings for the
23 previous state fiscal biennium and make available to the public a
24 report of that amount of savings.

25 SUBCHAPTER D. CREDIT

26 Sec. 230.151. CREDIT. An entity may apply for a credit
27 against the entity's state premium tax liability in the amount and

1 under the conditions and limitations provided by this chapter. The
2 comptroller shall award credits as provided by Section 230.155.

3 Sec. 230.152. CONTRIBUTIONS ELIGIBLE FOR CREDIT. (a) An
4 entity may apply for a credit under this chapter only for designated
5 contributions made by the entity.

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

9 (1) the entity requires that the contribution benefit
10 a particular person or school; or
11 (2) the contribution is directed to provide a
12 scholarship or educational expense assistance for an entity
13 employee or for a spouse or dependent of an entity employee.

14 (c) An entity shall provide written notice to the certified
15 educational assistance organization when the entity makes a
16 contribution if the entity may apply for a tax credit under this
17 chapter for the contribution. An entity may not apply for a credit
18 for the contribution unless the entity provides the notice at the
19 time the contribution is made. The certified educational
20 assistance organization shall indicate on the receipt provided
21 under Section 230.051(b)(1)(F) that the entity provided notice
22 under this subsection.

23 Sec. 230.153. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a)
24 Subject to Subsections (b) and (c), the amount of an entity's credit
25 is equal to the lesser of:

26 (1) the amount of designated contributions made to the
27 certified educational assistance organization during the period

1 covered by the tax report; or

2 (2) 50 percent of the entity's state premium tax
3 liability for the report.

4 (b) For the 2018 state fiscal year, the total amount of tax
5 credits that may be awarded under this chapter may not exceed \$100
6 million. For each subsequent state fiscal year, the total amount of
7 tax credits that may be awarded is an amount equal to 110 percent of
8 the total amount of tax credits that may be awarded in the previous
9 state fiscal year.

10 (c) The comptroller by rule shall prescribe procedures by
11 which the comptroller may allocate credits under this chapter. The
12 procedures must provide that:

13 (1) credits are allocated first to entities that
14 received preliminary approval under Section 230.154 and that apply
15 under Section 230.155; and

16 (2) any credits remaining after the allocation under
17 Subdivision (1) are allocated to entities that apply under Section
18 230.155 on a first-come, first-served basis, based on the date the
19 designated contribution was initially made.

20 (d) The comptroller may require an entity to notify the
21 comptroller of the amount the entity intends or expects to apply for
22 under this chapter before the beginning of a state fiscal year or at
23 any other time required by the comptroller.

24 Sec. 230.154. PRELIMINARY APPROVAL FOR CREDIT. (a) Before
25 making a contribution to the certified educational assistance
26 organization, an entity may apply to the comptroller for
27 preliminary approval for a credit under this chapter for the

1 contribution.

2 (b) An entity must apply for preliminary approval on a form
3 provided by the comptroller that includes the amount the entity
4 expects to contribute and any other information the comptroller
5 requires.

6 (c) The comptroller shall grant preliminary approval for
7 credits under this chapter on a first-come, first-served basis,
8 based on the date the comptroller receives the application for
9 preliminary approval.

10 (d) The comptroller shall grant preliminary approval for a
11 credit under this chapter for a state fiscal year if the sum of the
12 amount of the credit and the total amount of all other credits
13 preliminarily approved for that state fiscal year does not exceed
14 the amount provided by Section 230.153(b).

15 (e) Final award of a credit preliminarily approved under
16 this section remains subject to the limitations under Section
17 230.153 and all other requirements of this chapter.

18 Sec. 230.155. APPLICATION FOR CREDIT. (a) An entity must
19 apply for a credit under this chapter on or with the tax report
20 covering the period in which the designated contribution was made.

21 (b) The comptroller shall adopt a form for the application
22 for the credit. An entity must use this form in applying for the
23 credit and must include with the application form each receipt
24 issued under Section 230.051(b)(1)(F) that includes the
25 information required by Section 230.152(c).

26 (c) Subject to Section 230.153(c), the comptroller may
27 award a credit to an entity that applies for the credit under

1 Subsection (a) if the entity is eligible for the credit and the
2 credit is available under Section 230.153(b). The comptroller has
3 broad discretion in determining whether to grant or deny an
4 application for a credit.

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

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

16 (f) An entity that requests a reconsideration under
17 Subsection (e) may submit to the comptroller, not later than the
18 30th day after the date the request for reconsideration is
19 submitted, additional information and documents to support the
20 entity's request for reconsideration.

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

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

1 Sec. 230.156. ASSIGNMENT PROHIBITED; EXCEPTION. An entity
2 may not convey, assign, or transfer the credit allowed under this
3 chapter to another entity unless all of the assets of the entity are
4 conveyed, assigned, or transferred in the same transaction.

5 Sec. 230.157. NOTICE OF AVAILABILITY OF CREDIT. The
6 comptroller shall provide notice of the availability of the credit
7 under this chapter on the comptroller's Internet website, in the
8 instructions for insurance premium tax report forms, and in any
9 notice sent to an entity concerning the requirement to file an
10 insurance premium tax report.

11 SECTION 2. (a) The constitutionality and other validity
12 under the state or federal constitution of all or any part of
13 Chapter 230, Insurance Code, as added by this Act, may be determined
14 in an action for declaratory judgment in a district court in Travis
15 County under Chapter 37, Civil Practice and Remedies Code, except
16 that this section does not authorize an award of attorney's fees
17 against this state and Section 37.009, Civil Practice and Remedies
18 Code, does not apply to an action filed under this section. This
19 section does not authorize a taxpayer suit to contest the denial of
20 a tax credit by the comptroller of public accounts.

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

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

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

18 (g) This section exercises the authority granted by Section
19 3-b, Article V, Texas Constitution.

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

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

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9 SECTION 3. An entity may apply for a credit under Chapter
10 230, Insurance Code, as added by this Act, only for an expenditure
11 made on or after the effective date of this Act.

12 SECTION 4. Not later than February 15, 2018, the
13 comptroller of public accounts shall adopt rules as provided by
14 Section 230.003(a), Insurance Code, as added by this Act.

15 SECTION 5. The comptroller of public accounts shall make
16 the initial determination of net savings and report regarding that
17 savings as required by Section 230.107, Insurance Code, as added by
18 this Act, not later than December 31, 2020, based on the state
19 fiscal biennium ending August 31, 2019.

20 SECTION 6. This Act applies only to a report originally due
21 on or after the effective date of this Act.

22 SECTION 7. This Act takes effect January 1, 2018.