

House Bill 397

By: Representatives Scheid of the 17th, Westmoreland of the 104th, Epps of the 131st, Parrish of the 144th, Royal of the 164th and others

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition, rate, and computation of income tax, so as to provide for income
3 exclusions and tax credits with respect to individual development accounts; to provide for
4 procedures, conditions, and limitations; to provide for authority of the state revenue
5 commissioner with respect to the foregoing; to amend Chapter 8 of Title 50 of the Official
6 Code of Georgia Annotated, relating to the Department of Community Affairs, so as to
7 provide for the comprehensive regulation of individual development accounts; to provide for
8 definitions; to provide for procedures, conditions, and limitations with respect to the creation
9 and operation of such accounts; to provide for powers, duties, and authority of the
10 department; to provide for powers, duties, and authority of certain fiduciary organizations;
11 to provide for related matters; to provide an effective date; to repeal conflicting laws; and for
12 other purposes.

13 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14 **SECTION 1.**

15 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
16 imposition, rate, and computation of income tax, is amended by adding a new Code section
17 immediately following Code Section 48-7-29.7 to be designated Code Section 48-7-29.8 to
18 read as follows:

19 "48-7-29.8.

20 (a)(1) A taxpayer shall be authorized to make deposits of not more than \$1,200.00
21 annually which shall be excluded from the tax imposed under this chapter.

22 (2) Matching deposits made by the taxpayer's employer or by a bank, community bank,
23 credit union, or fiduciary organization to an individual development account, not to
24 exceed deposits of \$2,000.00 annually, and interest accruing on account holder deposits
25 and matching deposits are excluded from the tax imposed under this chapter unless
26 otherwise made taxable under paragraph (3) of this subsection.

(3) Moneys withdrawn by the taxpayer from an individual development account for an approved purpose, as described in Code Section 50-8-172, are excluded from the tax imposed under this chapter. A withdrawal by a taxpayer for a purpose other than such an approved purpose shall not be allowed the exclusion under this subsection.

(b)(1) A credit against the tax imposed under this chapter shall be allowed for deposits made by an employer to an individual development account of an employee established under Code Section 50-8-172. The credit shall not exceed the lesser of \$50,000.00 or 50 percent of the taxpayer's income tax liability.

(2) Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's next three succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(3) In no event shall the aggregate amount of credits claimed and allowed in any taxable year exceed \$2 million. The commissioner shall, in that event, provide for a pro rata reduction in the amount of credits allowed.

(c) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section."

SECTION 2.

18 Chapter 8 of Title 50 of the Official Code of Georgia Annotated, relating to the Department
19 of Community Affairs, is amended by striking Article 7 which is reserved and inserting in
20 its place a new Article 7 to read as follows:

"ARTICLE 7

22 50-8-170.

23 As used in this article, the term;

24 (1) 'Account holder' means a member of a lower income household who is the named
25 depositor of an individual development account.

26 (2) 'Emergency' includes making payments for necessary medical expenses, to avoid
27 eviction of the account holder from the account holder's residence, and for necessary
28 living expenses following a loss of employment.

29 (3) 'Fiduciary organization' means a nonprofit, fundraising organization that is exempt
30 from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended, or a
31 community development financial institution or community development credit union.
32 Nothing in this paragraph shall be construed as preventing a fiduciary organization from
33 cooperating with a financial institutional or for profit entity to carry out the purposes of
34 this article.

1 (4) 'Financial institution' means a bank, trust company, savings bank, building and loan
2 association, savings and loan company or association, or credit union authorized to do
3 business in this state.

4 (5) 'Individual development account' means a contract between an account holder and
5 a fiduciary organization for the deposit of savings by an account holder at a financial
6 institution and the deposit by the fiduciary organization of matching funds into a separate
7 reserve account at a financial institution to allow the account holder to accumulate assets
8 for use toward achieving any of the specific purposes enumerated in Code Section
9 50-8-172.

10 (6) 'Lower income household' means a household having an income equal to or less than
11 80 percent of the median household income for the area as determined by the department.
12 In making the determination, the department shall give consideration to any data on area
13 household income published by the United States Department of Housing and Urban
14 Development.

15 50-8-171.

16 (a) A person who qualifies to become an account holder may enter into an agreement with
17 a fiduciary organization for the establishment of an individual development account.

18 (b) A person applying to establish an account must enter into an individual agreement
19 developed by the person and the fiduciary organization. The agreement must provide for
20 the amount of regular savings deposits, the match rate, the asset goal, and the financial
21 education training classes, training for home ownership, business development, or career
22 planning, and financial counseling the individual will attend as well as other services
23 designed to increase the independence of the person's household through achievement of
24 the account's approved purpose.

25 (c) Notwithstanding subsection (a) of this Code section, a fiduciary organization shall
26 refuse to allow a qualified person to establish an account if establishment of the account
27 would result in the members of a lower income household having more than one account.

28 50-8-172.

29 (a) A person may establish an individual development account only for one or more of the
30 following purposes:

31 (1) The acquisition of postsecondary education or job training;
32 (2) The purchase of a primary residence. In addition to payment on the purchase price
33 of the residence, account moneys may be used to pay any usual or reasonable settlement,
34 financing, or other closing costs. The account holder must not have owned or held any
35 interest in a residence during the three years prior to making the purchase. However, this

1 three-year period shall not apply to displaced homemakers or other individuals who have
2 lost home ownership as a result of divorce;

3 (3) Costs for major repairs or improvement to a primary residence; and

4 (4) The capitalization of a small business. Account moneys may be used for capital,
5 plant, equipment, and inventory expenses or for working capital pursuant to a business
6 plan. The business plan must have been approved by a financial institution, nonprofit
7 microenterprise program, or other qualified agent demonstrating business expertise and
8 have been approved by the fiduciary organization. The business plan, must include a
9 description of the services or goods to be sold, a marketing plan, and projected financial
10 statements.

11 (b)(1) If an emergency occurs, an account holder may withdraw all or part of the account
12 holder's deposits to an individual development account for a purpose not described in
13 subsection (a) of this Code section with the approval of the fiduciary organization.

14 (2) The account holder must reimburse the account for the amount withdrawn under this
15 subsection within 12 months after the date of the withdrawal. Failure of an account
16 holder to make a timely reimbursement to the account is grounds for removing the
17 account holder from the individual development account program. Until the
18 reimbursement has been made in full, an account holder may not withdraw any matching
19 deposits or accrued interest on matching deposits from the account.

20 (c) If an account holder withdraws moneys from an individual development account for
21 other than an approved purpose, the fiduciary organization may remove the account holder
22 from the program.

23 (d) If an account holder moves from the area where the program is conducted or is
24 otherwise unable to continue in the program, the fiduciary organization may remove the
25 account holder from the program.

26 (e) If an account holder is removed from the program under subsection (b), (c), or (d) of
27 the Code section, all matching funds accrued and the interest earned on matching funds
28 shall revert to the fiduciary organization. The fiduciary organization shall use the reverted
29 funds as a source of matching deposits for other accounts.

30 50-8-173.

31 (a) Notwithstanding Code Section 48-7-29.8, a fiduciary organization selected under Code
32 Section 50-8-174 may qualify as the recipient of account contributions that qualify the
33 contributor for a tax credit under Code Section 48-7-29.8 only if the fiduciary organization
34 structures the accounts to have matching deposits that are placed in a savings account that
35 is controlled by the fiduciary organization and is separate from the savings account of the
36 account holder.

1 (b) The total amount paid into an individual development account during its existence,
2 including amounts from deposits, matching deposits, and interest or investment earnings,
3 may not exceed \$60,000.00.

4 50-8-174.

5 The department may select fiduciary organizations through competitive processes. In
6 making the selections, the department shall consider factors including, but not limited to:

7 (1) The ability of the fiduciary organization to implement and administer the individual
8 development account program, including the ability to verify account holder eligibility,
9 certify that matching deposits are used only for approved purposes, and exercise general
10 fiscal accountability;

11 (2) The capacity of the fiduciary organization to provide or raise matching funds for the
12 deposits of account holders;

13 (3) The capacity of the fiduciary organization to provide financial counseling, at least 12
14 hours of economic education and training specific to the assets the individuals will be
15 purchasing, and other related services to account holders;

16 (4) The links that the fiduciary organization has to other activities and programs designed
17 to increase the independence of this state's lower income households through education
18 and training, home ownership, and small business development; and

19 (5) The feasibility of the fiduciary organization's program design, including match rates
20 and regular savings amounts, to lead to asset purchase.

21 50-8-175.

22 (a) Subject to department rules, a fiduciary organization has sole authority over, and
23 responsibility for, the administration of individual development accounts. The
24 responsibility of the fiduciary organization extends to all aspects of the account program,
25 including marketing to participants, soliciting matching contributions, counseling account
26 holders, providing financial literacy education, and conducting required verification and
27 compliance activities. The fiduciary organization may establish program provisions as the
28 organization believes necessary to ensure account holder compliance with this article.
29 Notwithstanding any provisions of this article to the contrary, a fiduciary organization may
30 establish income limitations for account holders that are lower than the income limitations
31 otherwise established by this article.

32 (b) A fiduciary organization may act in partnership with other entities, including
33 businesses, government agencies, nonprofit organizations, community development
34 corporations, community action programs, housing authorities, and congregations to assist
35 in the fulfillment of fiduciary organization responsibilities under this article.

1 (c) A fiduciary organization may use a reasonable portion of moneys allocated to the
2 individual development account program for administration, operation, and evaluation
3 purposes.

4 (d) A fiduciary organization selected to administer moneys directed by the state to
5 individual development account purposes or receiving tax deductible contributions shall
6 provide the department with an annual report of the fiduciary organization's individual
7 development account program activity. The report shall be filed no later than 90 days after
8 the end of the fiscal year of the fiduciary organization. The report shall include, but is not
9 limited to:

- 10 (1) The number of individual development accounts administered by the fiduciary
11 organization;
- 12 (2) The amount of deposits and matching deposits for each account;
- 13 (3) The purpose of each account;
- 14 (4) The number of withdrawals made; and
- 15 (5) Any other information the department may require for the purpose of making a return
16 on investment analysis.

17 (e) The department may make all reasonable and necessary rules to ensure fiduciary
18 organization compliance with this article.

19 50-8-176.

20 Financial institutions holding individual development accounts shall at a minimum:

- 21 (1) Keep the account in the name of the account holder;
- 22 (2) Permit deposits to be made in the account;
- 23 (3) Require the account to earn a market rate of interest; and
- 24 (4) Permit the account holder, after obtaining the written authorization of the fiduciary
25 organization, to withdraw money from the account for any of the permissible uses.

26 50-8-177.

- 27 (a) Individual development accounts shall be subject to the income tax exclusion and
28 income tax credit provisions provided for in Code Section 48-7-29.8.
- 29 (b) Funds deposited in individual development accounts will not be counted as income,
30 assets, or resources of the individual for the purpose of determining financial eligibility for
31 assistance or services pursuant to any federal, federally assisted, state, or municipal
32 program based on need."

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SECTION 3.

2 This Act shall become effective on July 1, 2001.

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SECTION 4.

4 All laws and parts of laws in conflict with this Act are repealed.