

Senate Bill 29

By: Senators Cagle of the 49<sup>th</sup>, Hill of the 4<sup>th</sup> and Williams of the 6<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 3 of Title 20 of the Official Code of Georgia Annotated, relating to  
2 postsecondary education, so as to enact "The Georgia Prepaid Education Program"; to  
3 provide for comprehensive provisions establishing a method of saving money for the  
4 payment of qualified higher education expenses; to provide for a short title; to provide for  
5 definitions; to provide for purposes of such program; to provide for the powers, duties, and  
6 authority of the Georgia Student Finance Commission; to provide for procedures, conditions,  
7 and limitations with respect to such program; to provide that certain limited contributions and  
8 qualified withdrawals used solely for qualified higher education expenses shall not be subject  
9 to state income tax; to provide for related matters; to repeal conflicting laws; and for other  
10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 3 of Title 20 of the Official Code of Georgia Annotated, relating to postsecondary  
14 education, is amended by adding a new article at the end thereof, to be designated Article 11,  
15 to read as follows:

16 style="text-align:center">"ARTICLE 11

17 20-3-630.

18 This article shall be known and may be cited as 'The Georgia Prepaid Education Program.'

19 20-3-631.

20 As used in this article, the term:

21 (1) 'Account' or 'family tuition account' means an individual savings account established  
22 in accordance with the provisions of this article.

1 (2) 'Account owner' means the individual who enters into a tuition savings agreement  
2 pursuant to the provisions of this article. The account owner may also be the designated  
3 beneficiary of the account.

4 (3) 'Commission' means the Georgia Student Finance Commission created by Part 1 of  
5 Article 7 of this chapter.

6 (4) 'Designated beneficiary' means, with respect to an account or accounts, the individual  
7 designated as the individual whose higher education expenses are expected to be paid  
8 from the account or accounts.

9 (5) 'Financial organization' means any financial institution, savings bank, national bank,  
10 or state or federal credit union or savings and loan association organization authorized  
11 to do business in the State of Georgia. Such term also means, without limitation, an  
12 organization authorized to do business in this state which is:

13 (A) A fiduciary authorized to act as a trustee pursuant to the provisions of an act of  
14 Congress entitled the Employee Retirement Income Security Act of 1974, as such  
15 provisions may be amended from time to time, or an insurance company and is:

16 (i) Licensed or chartered by the Insurance Department;

17 (ii) Licensed or chartered by the Department of Banking and Finance;

18 (iii) Chartered by an agency of the federal government; or

19 (iv) Subject to the jurisdiction and regulation of the federal Securities and Exchange  
20 Commission;

21 (B) Any other entity otherwise authorized to act in this state as a trustee pursuant to the  
22 provisions of an act of Congress entitled the Employee Retirement Income Security Act  
23 of 1974 as such provisions may be amended from time to time; or

24 (C) A registered investment company.

25 (6) 'Institution of higher education' means:

26 (A) Any institution of higher education, recognized and approved by the board of  
27 regents or accredited by a nationally recognized accrediting agency or association  
28 accepted as such by the board of regents, which provides a course of study leading to  
29 the granting of a postsecondary degree, certificate, or diploma; or

30 (B) A business, trade, technical, or other occupational school approved as such by the  
31 State Board of Technical and Adult Education or accredited by a nationally recognized  
32 accrediting agency or association accepted as such by the State Board of Technical and  
33 Adult Education.

34 (7) 'Management contract' means the contract executed by the commission and a  
35 financial organization selected to act as a depository and manager of the program.

36 (8) 'Member of the family' means a family member as defined in Section 529 of the  
37 Internal Revenue Code of 1986, as amended.

1 (9) 'Nonqualified withdrawal' means a withdrawal from an account but shall not mean  
2 a:

3 (A) Qualified withdrawal;

4 (B) Withdrawal made as the result of the death or disability of the designated  
5 beneficiary of an account; or

6 (C) Withdrawal made on the account of a scholarship.

7 (10) 'Program' means 'The Georgia Prepaid Education Program' established pursuant to  
8 this article.

9 (11) 'Program manager' means a financial organization selected by the commission to act  
10 as a depository and manager of the program.

11 (12) 'Qualified higher education expenses' means any qualified higher education expense  
12 included in Section 529 of the Internal Revenue Code of 1986, as amended.

13 (13) 'Qualified withdrawal' means a withdrawal from an account to pay the qualified  
14 higher education expenses of the designated beneficiary of the account.

15 (14) 'Tuition savings agreement' means an agreement between the commission or a  
16 financial organization and the account owner.

17 20-3-632.

18 The purposes of the tuition savings program shall be to authorize the establishment of  
19 family tuition accounts and to provide guidelines for the maintenance of such accounts to:

20 (1) Enable residents of this state and other states to benefit from the tax incentive  
21 provided for qualified state tuition programs under the Internal Revenue Code of 1986,  
22 as amended; and

23 (2) Attract students to institutions of higher education within the state.

24 20-3-633.

25 (a) The commission, with the advice and consent of the director of the Office of Treasury  
26 and Fiscal Services, shall implement the program under the terms and conditions  
27 established by this article and a memorandum of understanding relating to any terms or  
28 conditions not otherwise expressly provided for in this article.

29 (b) In furtherance of such implementation, the memorandum of understanding shall  
30 address the authority and responsibility of the commission to:

31 (1) Develop and implement the program in a manner consistent with the provisions of  
32 this article through rules and regulations established in accordance with Chapter 13 of  
33 Title 50, the 'Georgia Administrative Procedure Act';

- 1 (2) Engage the services of consultants on a contract basis for rendering professional and  
2 technical assistance and advice;
- 3 (3) Seek rulings and other guidance from the United States Department of the Treasury  
4 and the Internal Revenue Service relating to the program;
- 5 (4) Make changes to the program required for the participants in the program to obtain  
6 the federal income tax benefits or treatment provided by Section 529 of the Internal  
7 Revenue Code of 1986, as amended;
- 8 (5) Charge, impose, and collect administrative fees and service charges in connection  
9 with any agreement, contract, or transaction relating to the program;
- 10 (6) Develop marketing plans and promotion material;
- 11 (7) Establish the methods by which the funds held in such accounts be dispersed;
- 12 (8) Establish the method by which funds shall be allocated to pay for administrative  
13 costs; and
- 14 (9) Do all things necessary and proper to carry out the purposes of this article.

15 20-3-634.

16 (a) The commission may implement the program through use of financial organizations  
17 as account depositories and managers. Under the program, individuals may establish  
18 accounts directly with an account depository.

19 (b) The commission may solicit proposals from financial organizations to act as  
20 depositories and managers of the program. Financial organizations submitting proposals  
21 shall describe the investment instrument which will be held in accounts. The commission  
22 shall select as program depositories and managers the financial organization, from among  
23 the bidding financial organizations, that demonstrates the most advantageous combination,  
24 both to potential program participants and this state, of the following factors:

- 25 (1) Financial stability and integrity of the financial organization;
- 26 (2) The safety of the investment instrument being offered;
- 27 (3) The ability of the investment instrument to track increasing costs of higher education;
- 28 (4) The ability of the financial organization to satisfy record-keeping and reporting  
29 requirements;
- 30 (5) The financial organization's plan for promoting the program and the investment such  
31 organization is willing to make to promote the program;
- 32 (6) The fees, if any, proposed to be charged to persons for opening accounts;
- 33 (7) The minimum initial deposit and minimum contributions that the financial  
34 organization will require;
- 35 (8) The ability of the financial organization to accept electronic withdrawals, including  
36 payroll deduction plans; and

1 (9) Other benefits to the state or its residents included in the proposal, including fees  
2 payable to the state to cover expenses of operation of the program.

3 (c) The commission may enter into a contract with a financial organization for the  
4 program.

5 (d) The commission may select more than one financial organization and investment  
6 instrument for the program when the Internal Revenue Service has provided guidance that  
7 giving a contributor the choice of two or more investment instruments under a state  
8 program will not cause the program to fail to qualify for favorable tax treatment under  
9 Section 529 of the Internal Revenue Code of 1986, as amended.

10 (e) A management contract shall include, at a minimum, terms requiring the financial  
11 organization to:

12 (1) Take any action required to keep the program in compliance with requirements of  
13 Code Section 20-3-635 and any actions not contrary to its contract to manage the program  
14 to qualify as a qualified state tuition plan under Section 529 of the Internal Revenue Code  
15 of 1986, as amended;

16 (2) Keep adequate records of each account, keep each account segregated from each  
17 other account, and provide the commission with the information necessary to prepare the  
18 statements required by Code Section 20-3-635;

19 (3) Compile and total information contained in statements required to be prepared under  
20 Code Section 20-3-635 and provide such compilations to the commission;

21 (4) If there is more than one program manager, provide the commission with such  
22 information necessary to determine compliance with Code Section 20-3-635;

23 (5) Provide the commission or the commission's designee access to the books and  
24 records of the program manager to the extent needed to determine compliance with the  
25 contract;

26 (6) Hold all accounts for the benefit of the account owner;

27 (7) Be audited at least annually by a firm of certified public accountants selected by the  
28 program manager and provide the results of such audit to the commission;

29 (8) Provide the commission with copies of all regulatory filings and reports made by  
30 such financial organization during the term of the management contract or while such  
31 financial organization is holding any accounts, other than confidential filings or reports  
32 that will not become part of the program. The program manager shall make available for  
33 review by the commission the results of any periodic examination of such manager by  
34 any state or federal banking, insurance, or securities commission, except to the extent that  
35 such report or reports may not be disclosed under applicable law or the rules of such  
36 commission; and

1 (9) Ensure that any description of the program, whether in writing or through the use of  
2 any media, is consistent with the marketing plan developed in the memorandum of  
3 understanding pursuant to Code Section 20-3-633.

4 (f) The commission may provide that an audit shall be conducted of the operations and  
5 financial position of the program depository and manager at any time if the commission has  
6 any reason to be concerned about the financial position, the record-keeping practices, or  
7 the status of accounts of such program depository and manager.

8 (g) During the term of any contract with a program manager, the commission shall conduct  
9 an examination of such manager and such manager's handling of accounts. Such  
10 examination shall be conducted at least biennially if such manager is not otherwise subject  
11 to periodic examination by the commissioner of banking and finance or the Federal Deposit  
12 Insurance Corporation or other similar entity.

13 (h) If selection of a financial organization as a program manager or depository is not  
14 renewed, after the end of such manager's term:

15 (1) Accounts previously established and held in investment instruments at such financial  
16 organization may be terminated;

17 (2) No additional contributions may be made to such accounts;

18 (3) No new accounts may be placed with such financial organization; and

19 (4) Existing accounts held by such depository shall remain subject to all oversight and  
20 reporting requirements established by the commission.

21 (i) If the commission terminates a financial organization as a program manager or  
22 depository, the commission shall take custody of accounts held by such financial  
23 organization and shall seek to promptly transfer such accounts to another financial  
24 organization that is selected as a program manager or depository and into investment  
25 instruments as similar to the original instruments as possible.

26 (j) The commission may enter into such contracts as it deems necessary and proper for the  
27 implementation of the program.

28 20-3-635.

29 (a) Family tuition accounts established pursuant to this article shall be governed by the  
30 provisions of this Code section.

31 (b) A family tuition account may be opened by any person who desires to save money for  
32 the payment of the qualified higher education expenses of the designated beneficiary. Such  
33 person shall be considered the account owner.

34 (c) An application for such account shall be in the form prescribed by the program and  
35 contain the following:

- 1 (1) The name, address, and social security number or employer identification number of  
2 the account owner;
- 3 (2) The designation of a designated beneficiary;
- 4 (3) The name, address, and social security number of the designated beneficiary;
- 5 (4) The certification relating to no excess contributions; and
- 6 (5) Such other information as the program may require.
- 7 (d) The commission shall establish a nominal fee for such application.
- 8 (e) Contributions to an account shall be made only in money, which shall include  
9 electronic transfers and negotiable instruments.
- 10 (f) An account owner may withdraw all or part of the balance from an account on 60 days´  
11 notice or such shorter period as may be authorized under rules governing the program.  
12 Such rules shall include provisions that will generally enable the determination as to  
13 whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal. Such rules  
14 may require one or more of the following:
- 15 (1) An account owner seeking to make a qualified withdrawal must provide certification  
16 of qualified higher education expenses in a form and manner consistent with Code  
17 Section 20-3-633;
- 18 (2) Qualified withdrawals must be made pursuant to the methods established in the  
19 memorandum of understanding pursuant to the provisions of Code Section 20-3-633; and
- 20 (3) Withdrawals not meeting the requirements of this article shall be treated as  
21 nonqualified withdrawals by the program manager and if such withdrawals are  
22 subsequently deemed qualified withdrawals, the account owner must seek any refund of  
23 penalties directly from the program.
- 24 (g)(1) An account owner may change the designated beneficiary of an account to an  
25 individual who is a member of the family of the prior designated beneficiary in  
26 accordance with procedures established by the memorandum of understanding pursuant  
27 to Code Section 20-3-633.
- 28 (2) An account owner may transfer all or a portion of an account to another family  
29 tuition account, the subsequent designated beneficiary of which is a member of the  
30 family.
- 31 (3) Changes in designated beneficiaries and transfers under this subsection shall not be  
32 permitted to the extent that they would constitute excess contributions or unauthorized  
33 investment choices.
- 34 (h) In the case of any nonqualified withdrawal from an account, an amount equal to 5  
35 percent of the portion of the withdrawal constituting income as determined in accordance  
36 with the principles of Section 529 of the Internal Revenue Code of 1986, as amended, shall  
37 be withheld as a penalty and paid to the program.

1 (i) The percentage of the penalty described in subsection (h) of this Code section may be  
2 increased if the commission determines that the amount of such penalty must be increased  
3 to constitute a greater than de minimis penalty for purposes of qualifying the program as  
4 a qualified state tuition program under Section 529 of the Internal Revenue Code of 1986,  
5 as amended.

6 (j) The percentage of the penalty described in subsection (h) of this Code section may be  
7 decreased by rule or regulation if it is determined that:

8 (1) Such penalty is greater than is required to constitute a greater than de minimis penalty  
9 for purposes of qualifying the program as a qualified state tuition program under Section  
10 529 of the Internal Revenue Code of 1986, as amended; and

11 (2) Such penalty when combined with other revenue generated under this article is  
12 producing more revenue than is required to cover the costs of operating the program and  
13 recover any prior costs not previously recovered.

14 (k) If an account owner makes a nonqualified withdrawal and no penalty amount is  
15 withheld pursuant to subsection (h) of this Code section or the amount withheld was less  
16 than the amount required to be withheld under subsection (h) of this Code section for  
17 nonqualified withdrawals, the account owner shall pay the unpaid portion of the penalty  
18 to the program at the same time that the account owner files the earlier of the account  
19 owner's state or federal income tax return for the taxable year of the withdrawal or, if such  
20 account owner does not file such return, the due date for such returns but in any event on  
21 or before the due date for such return taking into account any authorized extensions.

22 (l) The program shall provide separate accounting for each designated beneficiary.

23 (m) No account owner or designated beneficiary of any account shall be permitted to direct  
24 the investment of any contributions to an account or the earnings thereon.

25 (n) Neither an account owner nor a designated beneficiary may use an interest in an  
26 account as security for a loan. Any pledge of an interest in an account shall be of no force  
27 and effect.

28 (o)(1) The commission shall promulgate rules and regulations to prevent contributions  
29 on behalf of a designated beneficiary in excess of \$100,000.00.

30 (2) Such rules and regulations shall include requirements that any excess balances with  
31 respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal  
32 or transferred to another account.

33 (p)(1) If there is any distribution from an account to any individual or for the benefit of  
34 any individual during a calendar year, such distribution shall be reported to the Internal  
35 Revenue Service and the account owner, the designated beneficiary, or the distributee to  
36 the extent required by federal law or regulation.

1 (2) Statements shall be provided to each account owner at least once each year within 60  
2 days after the end of the 12 month period to which such statements relate. The statement  
3 shall identify the contributions made during a preceding 12 month period, the total  
4 contributions made to the account through the end of such period, the value of the  
5 account at the end of such period, distributions made during such period, and any other  
6 information that the commission shall require to be reported to the account owner.

7 (3) Statements and information relating to accounts shall be prepared and filed to the  
8 extent required by federal and state tax law.

9 (q)(1) A local government or organization described in Section 501(c)(3) of the Internal  
10 Revenue Code of 1986, as amended, may open and become the account owner of an  
11 account to fund scholarships for persons whose identity will be determined upon  
12 disbursement.

13 (2) In the case of any account opened pursuant to paragraph (1) of this subsection, the  
14 requirement set forth in subsection (b) of this Code section that a designated beneficiary  
15 be designated when an account is opened shall not apply and each individual who  
16 receives an interest in such account as a scholarship shall be treated as a designated  
17 beneficiary with respect to such interest.

18 (r) An annual fee may be imposed upon the account owner for the maintenance of the  
19 account.

20 (s) An account must be opened at least three calendar years before a qualified withdrawal  
21 can be made.

22 (t) The program shall disclose the following information in writing to each account owner  
23 and prospective account owner of a family tuition account:

24 (1) The terms and conditions for purchasing a family tuition account;

25 (2) Any restrictions on the substitution of beneficiaries;

26 (3) The person or entity entitled to terminate the tuition savings agreement;

27 (4) The period of time during which a designated beneficiary may receive benefits under  
28 the tuition savings agreement;

29 (5) The terms and conditions under which moneys may be wholly or partially withdrawn  
30 from the program, including, but not limited to, any reasonable charges and fees that may  
31 be imposed for withdrawal;

32 (6) The probable tax consequences associated with contributions to and distributions  
33 from accounts; and

34 (7) All other rights and obligations pursuant to tuition savings agreements and any other  
35 terms, conditions, and provisions deemed necessary and appropriate by the terms of the  
36 memorandum of understanding entered into pursuant to Code Section 20-3-633.

1 (u) Tuition savings agreements shall be subject to applicable banking laws of this state and  
2 regulations promulgated thereunder.

3 (v) Nothing in this article or in any tuition savings agreement entered into pursuant to this  
4 article shall be construed as a guarantee by the institution of higher education that a  
5 beneficiary will be admitted to such institution, or, upon admission to an institution of  
6 higher education will be permitted to continue to attend or will receive a degree from such  
7 institution.

8 20-3-636.

9 (a) Nothing in this article shall be construed to:

10 (1) Give any designated beneficiary any rights or legal interest with respect to an account  
11 unless the designated beneficiary is the account owner;

12 (2) Guarantee that a designated beneficiary will be admitted to an institution of higher  
13 education;

14 (3) Create state residency for an individual merely because the individual is a designated  
15 beneficiary; or

16 (4) Guarantee that amounts saved pursuant to the program will be sufficient to cover the  
17 qualified higher education expenses of a designated beneficiary.

18 (b)(1) Nothing in this article shall create or be construed to create any obligation of the  
19 commission, the state, or any agency or instrumentality of the state to guarantee for the  
20 benefit of any account owner or designated beneficiary:

21 (A) The rate of interest or other return on any account; and

22 (B) The payment of interest or other return on any account.

23 (2) The commission by rule and regulation shall provide that every contract, application,  
24 deposit slip, or other similar document that may be used in connection with a contribution  
25 to an account clearly indicate that the account is not insured by the state and neither the  
26 principal deposited nor the investment return is guaranteed by the state.

27 20-3-637.

28 Moneys in a family tuition account shall not be used toward the calculation of Georgia state  
29 financial aid under a financial aid program administered by the state.

30 20-3-638.

31 (a) Contributions to an account by a contributor shall not be subject to state income tax  
32 pursuant to Chapter 7 of Title 48 to the extent such contributions do not in the aggregate  
33 exceed \$5,000.00 annually.

1 (b) Qualified withdrawals used solely for qualified higher education expenses shall not be  
2 subject to state income tax pursuant to Chapter 7 of Title 48."

3 **SECTION 2.**

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