

House Bill 1133

By: Representatives Casas of the 103<sup>rd</sup>, Ehrhart of the 36<sup>th</sup>, Lindsey of the 54<sup>th</sup>, Lewis of the 15<sup>th</sup>, Stephens of the 164<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 20 and 48 of the Official Code of Georgia Annotated, relating, respectively,  
2 to education and revenue and taxation, so as to provide for a program of educational  
3 improvement; to provide for definitions; to provide for student scholarship organizations; to  
4 provide for procedures; to provide for an income tax credit with respect to qualified  
5 education expenses; to provide for conditions and limitations; to provide for powers, duties,  
6 and authority of the state revenue commissioner with respect to the foregoing; to provide for  
7 related matters; to provide an effective date; to provide for applicability; to repeal conflicting  
8 laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by  
12 adding a new chapter to read as follows:

13 style="text-align:center">"CHAPTER 2A

14 20-2A-1.

15 As used in this chapter, the term:

16 (1) 'Eligible student' means a student who is a Georgia resident enrolled in a Georgia  
17 secondary or primary school or eligible to enroll in a qualified kindergarten program or  
18 pre-kindergarten program.

19 (2) 'Qualified school or program' means a nonpublic primary school or secondary school  
20 that:

21 (A) Is accredited or in the process of becoming accredited by one or more entities  
22 listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519; and

23 (B) Is located in this state, adheres to the provisions of the federal Civil Rights Act of  
24 1964, and satisfies the requirements prescribed by law for private schools in this state.

1 (3) 'Student scholarship organization' means a charitable organization in this state that:

2 (A) Is exempt from federal income taxation under Section 501(c)(3) of the Internal  
3 Revenue Code and allocates 90 percent of its annual revenue for scholarships or tuition  
4 grants to allow students to attend any qualified school of their parents' choice; and

5 (B) Provides educational scholarships or tuition grants to eligible students without  
6 limiting availability to only students of one school.

7 20-2A-2.

8 Each student scholarship organization:

9 (1) Must obligate 90 percent of its annual revenue for scholarships or tuition grants;  
10 however, up to 25 percent of this amount may be carried forward for the next fiscal year;

11 (2) Must maintain separate accounts for scholarship funds and operating funds;

12 (3) May transfer funds to another student scholarship organization;

13 (4) Must conduct an audit of its accounts by an independent certified public accountant  
14 within 120 days after the completion of the student scholarship organization's fiscal year  
15 and provide such audit to the Department of Revenue in accordance with Code Section  
16 20-2A-3; and

17 (5) Must annually submit notice to the Department of Education in accordance with  
18 department guidelines of its participation as a student scholarship organization under this  
19 chapter.

20 20-2A-3.

21 (a) Each student scholarship organization must report to the Department of Revenue, on  
22 a form provided by the Department of Revenue, by January 12 of each tax year the  
23 following:

24 (1) The total number and dollar value of contributions and tax credits approved; and

25 (2) A list of donors, including the dollar value of each donation and the dollar value of  
26 each approved tax credit.

27 Such report shall also include a copy of the audit conducted pursuant to paragraph (4) of  
28 Code Section 20-2A-2.

29 (b) The Department of Revenue shall not require any other information from student  
30 scholarship organizations, except as expressly authorized in this chapter.

31 20-2A-4.

32 The Department of Revenue shall provide a list of all student scholarship organizations  
33 receiving contributions from businesses and individuals granted a tax credit under Code  
34 Section 48-7-29.13 to the General Assembly by January 30 of each year.

1 20-2A-5.

2 The parent or guardian to whom a scholarship award is granted must restrictively endorse  
3 the scholarship award to the private school for deposit into the account of the private  
4 school. The parent or guardian may not designate any entity or individual associated with  
5 the participating private school as the parent's attorney in fact to endorse a scholarship  
6 warrant. A participant who fails to comply with this Code section forfeits the scholarship.

7 20-2A-6.

8 The Department of Education shall maintain on its website a current list of all student  
9 scholarship organizations which have provided notice pursuant to paragraph (5) of Code  
10 Section 20-2A-2."

## 11 **SECTION 2.**

12 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
13 amended by adding a new Code section to read as follows:

14 "48-7-29.13.

15 (a) As used in this Code section, the term 'qualified education expense' means the  
16 expenditure of funds by the taxpayer to a student scholarship organization operating  
17 pursuant to Chapter 2A of Title 20 which are used for tuition and fees for qualified schools  
18 or programs, as defined in paragraph (2) of Code Section 20-2A-1.

19 (b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter  
20 for qualified educational expenses as follows:

21 (1) In the case of a single individual or a head of household, \$1,000.00 per tax year; or

22 (2) In the case of a married couple filing a joint return, \$2,500.00 per tax year.

23 (c) A corporation shall be allowed a credit against the tax imposed by this chapter for  
24 qualified education expenses in an amount not to exceed the actual amount expended or 75  
25 percent of the corporation's income tax liability, whichever is less.

26 (d) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified  
27 educational expense for the direct benefit of any dependent of the taxpayer.

28 (e) In no event shall the total amount of the tax credit under this Code section for a taxable  
29 year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the  
30 taxpayer against the succeeding five years' tax liability. No such credit shall be allowed  
31 the taxpayer against prior years' tax liability.

32 (f) In no event shall the aggregate amount of tax credits allowed under this Code section  
33 exceed \$50 million per tax year.

34 (g) The commissioner shall preapprove tax credits subject to subsection (d) of this Code  
35 section.

1 (h) The commissioner shall allow the tax credits on a first come, first served basis.

2 (i) For the purposes of subsection (f) of this Code section, a student scholarship  
3 organization shall notify a potential donor of the requirements of this Code section. Before  
4 making a contribution to a student scholarship organization, the taxpayer shall notify the  
5 Department of Revenue of the total amount of contributions that the taxpayer intends to  
6 make to the student scholarship organization. The commissioner shall preapprove or deny  
7 the requested amount within 30 days after receiving the request from the taxpayer. In order  
8 to receive a tax credit under this Code section, the taxpayer shall make the contribution to  
9 the student scholarship organization within 30 days after receiving notice from the  
10 Department of Revenue that the requested amount was preapproved. If the taxpayer does  
11 not comply with this subsection, the commissioner shall not include this preapproved  
12 contribution amount when calculating the limit prescribed in subsection (f) of this Code  
13 section.

14 (j) Preapproval of contributions by the commissioner shall be based solely on the  
15 availability of tax credits subject to the aggregate total limit established under subsection  
16 (f) of this Code section.

17 (k) In order for the taxpayer to claim the student scholarship organization tax credit under  
18 this Code section, a letter of confirmation of donation issued by the student scholarship  
19 organization to which the contribution was made shall be attached to the taxpayer's tax  
20 return. The letter of confirmation of donation shall contain the taxpayer's name, address,  
21 tax identification number, the amount of the contribution, the date of the contribution, and  
22 the amount of the credit.

23 (l)(1) No credit shall be allowed under this Code section with respect to any amount  
24 deducted from taxable net income by the taxpayer as a charitable contribution to a bona  
25 fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue  
26 Code.

27 (2) The amount of any scholarship received by an eligible student or eligible  
28 pre-kindergarten student shall be excluded from taxable net income for Georgia income  
29 tax purposes.

30 (m) The commissioner shall be authorized to promulgate any rules and regulations  
31 necessary to implement and administer the tax provisions of this Code section."

### 32 SECTION 3.

33 This Act shall become effective upon its approval by the Governor or upon its becoming law  
34 without such approval and shall be applicable to all taxable years beginning on or after  
35 January 1, 2008.

1 **SECTION 4.**

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