

House Bill 100

By: Representatives Ehrhart of the 36th, Casas of the 103rd, Lunsford of the 110th, and Lindsey of the 54th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 20 and Title 48 of the Official Code of Georgia Annotated, relating,
2 respectively, to education and revenue and taxation, so as to revise and change certain
3 provisions regarding educational improvement and student scholarship organizations; to
4 change certain definitions; to change certain requirements regarding operation and taxation
5 of student scholarship organizations; to provide for criminal penalties regarding student
6 scholarship organization requirements; to revise and change certain provisions regarding the
7 qualified education income tax credit; to provide an effective date; to provide for
8 applicability; to repeal conflicting 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 revising Code Section 20-2A-1, relating to definitions regarding student scholarship
13 organizations, as follows:

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 public school or eligible to enroll in a qualified kindergarten
18 program or pre-kindergarten program. A student who was an eligible student at the time
19 he or she first received an educational scholarship or tuition grant shall remain an eligible
20 student so long as the student receives an educational scholarship or tuition grant from
21 a student scholarship organization.

22 (2) 'Qualified school or program' means a nonpublic pre-kindergarten program, primary
23 school, or secondary school that:

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

26 (B) Is located in this state, adheres to the provisions of the federal Civil Rights Act of
27 1964, and satisfies the requirements prescribed by law for private schools in this state.
28 The Department of Education shall not require any information from a qualified school
29 or program other than that information which nonpublic pre-kindergarten programs or
30 primary and secondary schools are required to provide to the Department of Education
31 under this chapter.

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

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

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

39 (4) 'Obligate' means to provide funds for scholarships or tuition grants in one or more of
40 the following ways:

41 (A) The student scholarship organization actually transfers funds to a recipient within
42 the fiscal year;

43 (B) The student scholarship organization awards a full or partial single-year or
44 multi-year scholarship to a recipient during the fiscal year, although payment may not
45 be scheduled until a subsequent period, provided that any funds associated with such
46 award are kept in a scholarship fund account or investment account rather than in the
47 student scholarship organization's operating bank account;

48 (C) The student scholarship organization transfers funds from its operating account to
49 a scholarship fund account or investment account to fund future obligations under a
50 multi-year scholarship that is awarded in the current or a previous fiscal year;

51 (D) The student scholarship organization transfers funds from its operating account to
52 a scholarship fund account or investment account to fund scholarships at a specific
53 school or a group of schools in the following fiscal year, regardless of whether any
54 specific recipients have been determined or named in the current calendar year;

55 (E) The student scholarship organization transfers funds from its operating account to
56 a scholarship fund account or investment account that the board of directors of the
57 student scholarship organization has irrevocable dedicated to the provision of
58 scholarships or tuition grants to eligible students yet to be identified; or

59 (F) The student scholarship organization transfers funds to another student scholarship
60 organization.

61 Notwithstanding the provisions of this paragraph, a transfer that is obligated pursuant to
 62 this chapter shall not be counted as contributions or scholarship awards in any other fiscal
 63 year."

64 **SECTION 2.**

65 Said title is further amended by revising Code Section 20-2A-2, relating to requirements
 66 regarding student scholarship organizations; as follows:

67 "20-2A-2.

68 Each student scholarship organization:

- 69 (1) Must obligate 90 percent of its annual revenue for scholarships or tuition grants;
 70 however, up to 25 percent of this amount may be carried forward for the next fiscal year;
 71 (2) Must maintain separate accounts for scholarship funds and operating funds;
 72 (3) May transfer funds to another student scholarship organization;
 73 (4) Must conduct an audit of its accounts by an independent certified public accountant
 74 within 120 days after the completion of the student scholarship organization's fiscal year
 75 verifying that it obligated 90 percent of its annual revenue for scholarships or tuition
 76 grants and provide such audit to the Department of Revenue in accordance with Code
 77 Section 20-2A-3; and
 78 (5) Must annually submit notice to the Department of Education in accordance with
 79 department guidelines of its participation as a student scholarship organization under this
 80 chapter."

81 **SECTION 3.**

82 Said title is further amended by revising Code Section 20-2A-3, relating to taxation
 83 requirements for student scholarship organizations, as follows:

84 "20-2A-3.

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

- 88 (1) The total number and dollar value of contributions and tax credits approved; and
 89 (2) A list of donors, including the dollar value of each donation and the dollar value of
 90 each approved tax credit.

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

93 (b) The Department of Revenue shall not require any other information from student
 94 scholarship organizations, except as expressly authorized in this chapter. All information
 95 or reports provided by student scholarship organizations to the Department of Revenue

96 shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60,
 97 and 48-7-61, whether it relates to the donor or the student scholarship organization.

98 (c) Any student scholarship organization that fails to comply with its obligations under
 99 Code Section 20-2A-2 shall:

100 (1) Be immediately removed from the Department of Education list provided for in Code
 101 Section 20-2A-6;

102 (2) Be required to cease all operations as a student scholarship organization and transfer
 103 all scholarship account funds to a properly operating student scholarship organization
 104 within 30 calendar days of receipt of notice from the Department of Revenue;

105 (3) Have all applications for preapproval of tax credits under Code Section 48-7-29.13
 106 rejected by the Department of Revenue on or after the date the Department of Education
 107 removes the student scholarship organization from its list provided for in Code Section
 108 20-2A-6; and

109 (4) Notwithstanding any laws to the contrary, the Department of Revenue shall not take
 110 any adverse action against donors to such student scholarship organizations if the
 111 Department of Revenue preapproved a donation for a tax credit prior to the date the
 112 student scholarship organization is removed from the Department of Education list, and
 113 all such donations shall remain as preapproved tax credits subject only to the donor's
 114 compliance with paragraph (3) of subsection (d) of Code Section 48-7-29.16.

115 (d) Any officer or director of a student scholarship organization found to have actively
 116 participated in a student scholarship organization's intentional violation of its obligations
 117 under Code Section 20-2A-2 shall be guilty of a misdemeanor."

118 **SECTION 4.**

119 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
 120 amended by revising Code Section 48-7-29.16, relating to the qualified education income tax
 121 credit, as follows:

122 "48-7-29.16.

123 (a) As used in this Code section, the term:

124 (1) 'Qualified education expense' means the expenditure of funds by the taxpayer during
 125 the tax year for which a credit under this Code section is claimed and allowed to a student
 126 scholarship organization operating pursuant to Chapter 2A of Title 20 which are used for
 127 tuition and fees for a qualified school or program.

128 (2) 'Qualified school or program' shall have the same meaning as in paragraph (2) of
 129 Code Section 20-2A-1.

130 (3) 'Student scholarship organization' shall have the same meaning as in paragraph (3)
 131 of Code Section 20-2A-1.

132 (b) ~~An individual~~ A taxpayer shall be allowed a credit against the tax imposed by this
 133 chapter for qualified education expenses in the amount actually expended or 75 percent of
 134 the taxpayer's income tax liability, whichever is less. ~~as follows:~~

135 (1) ~~In the case of a single individual or a head of household, the actual amount expended~~
 136 ~~or \$1,000.00 per tax year, whichever is less; or~~

137 (2) ~~In the case of a married couple filing a joint return, the actual amount expended or~~
 138 ~~\$2,500.00 per tax year, whichever is less.~~

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

142 (d)(c) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified
 143 education expense for the direct benefit of any dependent of the taxpayer. The taxpayer
 144 may designate that the student scholarship organization use the qualified education expense
 145 to provide educational scholarships or tuition grants at a specific qualified school or
 146 program.

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

151 (f)(1)(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code
 152 section exceed \$50 million per tax year.

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

154 (3) For the purposes of paragraph (1) of this subsection, a student scholarship
 155 organization shall notify a potential donor of the requirements of this Code section.
 156 Before making a contribution to a student scholarship organization, the taxpayer shall
 157 notify the department of the total amount of contributions that the taxpayer intends to
 158 make to the student scholarship organization. The commissioner shall preapprove or
 159 deny the requested amount within ~~30~~ 15 days after receiving the request from the
 160 taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make
 161 the contribution to the student scholarship organization within 30 business days ~~after~~
 162 ~~receiving notice~~ immediately following seven days from the date on which the
 163 ~~department that the requested amount was preapproved~~ the contribution. If the taxpayer
 164 does not comply with this paragraph, the commissioner shall not include this preapproved
 165 contribution amount when calculating the limit prescribed in paragraph (1) of this
 166 subsection.

167 (4) Preapproval of contributions by the commissioner shall be based solely on the
 168 availability of tax credits subject to the aggregate total limit established under

169 paragraph (1) of this subsection and the designated student scholarship organization being
 170 listed on the Department of Education's website pursuant to Code Section 20-2A-6.

171 ~~(g)~~~~(f)~~~~(1)~~ In order for the taxpayer to claim the student scholarship organization tax credit
 172 under this Code section, a letter of confirmation of donation issued by the student
 173 scholarship organization to which the contribution was made shall be attached to the
 174 taxpayer's tax return. The letter of confirmation of donation shall contain the taxpayer's
 175 name, address, tax identification number, the amount of the contribution, the date of the
 176 contribution, and the amount of the credit.

177 (2) The student scholarship organization shall provide a copy of each letter of
 178 confirmation of donation to the Department of Revenue on a monthly basis. The
 179 Department of Revenue shall then correlate the letters of confirmation with its
 180 preapproved taxpayer request form. In the event a tax credit has been preapproved by the
 181 Department of Revenue but the taxpayer failed to comply with its donation obligations
 182 under paragraph (3) of subsection (e) of this Code section, then the aggregate amount of
 183 tax credits available shall be adjusted accordingly.

184 (3) The Department of Revenue shall list on its website the amount of tax credits
 185 available under this Code section and update the listing quarterly.

186 ~~(h)~~~~(1)~~~~(g)~~~~(1)~~ No credit shall be allowed under this Code section with respect to any
 187 amount deducted from taxable net income by the taxpayer as a charitable contribution to
 188 a bona fide charitable organization qualified under Section 501(c)(3) of the Internal
 189 Revenue Code.

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

193 ~~(i)~~~~(h)~~ The commissioner shall be authorized to promulgate any rules and regulations
 194 necessary to implement and administer the tax provisions of this Code section."

195 **SECTION 5.**

196 This Act shall become effective upon its approval by the Governor or upon its becoming law
 197 without such approval. Section 4 of this Act shall be applicable to all taxable years
 198 beginning on or after January 1, 2009.

199 **SECTION 6.**

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