

House Bill 100 (AS PASSED HOUSE AND SENATE)

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

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~~

28 (C) Complies with the antidiscrimination provisions of 42 U.S.C. Section 1981;

29 (D) Complies with all health and safety laws or codes that apply to private schools; and

30 (E) Satisfies the requirements prescribed by law for private schools in this state.

31 The Department of Education shall not require any information from a qualified school  
 32 or program other than that information which nonpublic pre-kindergarten programs or  
 33 primary and secondary schools are required to provide to the Department of Education  
 34 under this chapter.

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

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

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

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

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

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

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

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

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

62 (F) The student scholarship organization transfers funds to another student scholarship  
 63 organization.

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

67 **SECTION 2.**

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

70 "20-2A-2.

71 Each student scholarship organization:

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

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

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

76 (4) Must conduct an audit of its accounts by an independent certified public accountant  
 77 within 120 days after the completion of the student scholarship organization's fiscal year

78 verifying that it obligated 90 percent of its annual revenue for scholarships or tuition  
 79 grants and provide such audit to the Department of Revenue in accordance with Code

80 Section 20-2A-3; and

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

84 **SECTION 3.**

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

87 "20-2A-3.

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

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

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

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

96 (b) The Department of Revenue shall not require any other information from student  
 97 scholarship organizations, except as expressly authorized in this chapter. All information  
 98 or reports provided by student scholarship organizations to the Department of Revenue  
 99 shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60,  
 100 and 48-7-61, whether it relates to the donor or the student scholarship organization.

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

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

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

108 (3) Have all applications for preapproval of tax credits under Code Section 48-7-29.16  
 109 rejected by the Department of Revenue on or after the date the Department of Education  
 110 removes the student scholarship organization from its list provided for in Code Section  
 111 20-2A-6; and

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

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

121 **SECTION 4.**

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

125 "48-7-29.16.

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

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

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

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

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

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

140 ~~(2) In the case of a married couple filing a joint return, the actual amount expended or~~  
141 ~~\$2,500.00 per tax year, whichever is less.~~

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

145 ~~(d)~~(c) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified  
146 education expense for the direct benefit of any dependent of the taxpayer.

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~~ the following exceed \$50 million per tax year:

153 (A) Tax credits allowed under this Code section; and

154 (B) Amounts deducted from taxable net income by taxpayers as charitable  
155 contributions to student scholarship organizations for purposes of Chapter 2A of Title  
156 20 when that taxpayer also claims and is granted a tax credit under this Code section  
157 regarding such amounts.

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

159 (3) For the purposes of paragraph (1) of this subsection, a student scholarship  
160 organization shall notify a potential donor of the requirements of this Code section.  
161 Before making a contribution to a student scholarship organization, the taxpayer shall  
162 notify the department of the total amount of contributions that the taxpayer intends to  
163 make to the student scholarship organization. The commissioner shall preapprove or  
164 deny the requested amount within ~~30~~ 15 days after receiving the request from the  
165 taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make  
166 the contribution to the student scholarship organization within 30 business days ~~after~~  
167 ~~receiving notice~~ immediately following seven days from the date on which the

168 department ~~that the requested amount was preapproved~~ the contribution. If the taxpayer  
 169 does not comply with this paragraph, the commissioner shall not include this preapproved  
 170 contribution amount when calculating the limit prescribed in paragraph (1) of this  
 171 subsection.

172 (4) Preapproval of contributions by the commissioner shall be based solely on the  
 173 availability of tax credits subject to the aggregate total limit established under  
 174 paragraph (1) of this subsection and the designated student scholarship organization being  
 175 listed on the Department of Education's website pursuant to Code Section 20-2A-6.

176 ~~(g)(f)(1)~~ In order for the taxpayer to claim the student scholarship organization tax credit  
 177 under this Code section, a letter of confirmation of donation issued by the student  
 178 scholarship organization to which the contribution was made shall be attached to the  
 179 taxpayer's tax return. However, in the event the taxpayer files an electronic return, such  
 180 confirmation shall only be required to be electronically attached to the return if the  
 181 Internal Revenue Service allows such attachments when the data is transmitted to the  
 182 department. In the event the taxpayer files an electronic return and such confirmation is  
 183 not attached because the Internal Revenue Service does not, at the time of such electronic  
 184 filing, allow electronic attachments to the Georgia return, such confirmation shall be  
 185 maintained by the taxpayer and made available upon request by the commissioner. The  
 186 letter of confirmation of donation shall contain the taxpayer's name, address, tax  
 187 identification number, the amount of the contribution, the date of the contribution, and  
 188 the amount of the credit.

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

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

198 ~~(h)(1)(g)(1)~~ The No credit shall be allowed under this Code section ~~with respect to~~  
 199 without regard to whether any amount was deducted from taxable net income by the  
 200 taxpayer as a charitable contribution to a bona fide charitable organization qualified under  
 201 Section 501(c)(3) of the Internal Revenue Code.

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

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

207 **SECTION 5.**

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

211 **SECTION 6.**

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