

House Bill 325

By: Representatives Ehrhart of the 36<sup>th</sup> and Casas of the 103<sup>rd</sup>

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 revise provisions relating to student  
3 scholarship organizations; to revise definitions; to revise requirements on student scholarship  
4 organizations; to provide for penalties; to revise and change certain provisions regarding the  
5 qualified education income tax credit; to provide for related matters; to provide for  
6 applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by  
10 revising Chapter 2A, relating to student scholarship organizations, as follows:

11 "CHAPTER 2A

12 20-2A-1.

13 As used in this chapter, the term:

14 (1) 'Eligible student' means a student who is a Georgia resident enrolled in a Georgia  
15 secondary or primary public school or eligible to enroll in a qualified kindergarten  
16 program or a pre-kindergarten program; provided, however, that if a student is deemed  
17 an eligible student pursuant to this paragraph, he or she shall continue to qualify as such  
18 until he or she graduates, reaches the age of 20, or returns to a public school.

19 (2) 'Obligate' means to provide funds for scholarships or tuition grants in one or more of  
20 the following ways:

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

23 (B) The student scholarship organization awards a full or partial single-year or  
24 multiyear scholarship to a recipient during the fiscal year, although payment may not

25 be scheduled until a subsequent period, provided that any funds associated with such  
 26 award are kept in a scholarship fund account or investment account rather than in the  
 27 student scholarship organization's operating bank account;

28 (C) The student scholarship organization transfers funds from its operating account to  
 29 a scholarship fund account or investment account to fund future obligations under a  
 30 multiyear scholarship that is awarded in the current or a previous fiscal year;

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

35 (E) The student scholarship organization transfers funds from its operating account to  
 36 a scholarship fund account or investment account that the board of directors of the  
 37 student scholarship organization has irrevocably dedicated to the provision of  
 38 scholarships or tuition grants to eligible students yet to be identified; or

39 (F) The student scholarship organization transfers funds to another student scholarship  
 40 organization.

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

44 ~~(2)~~(3) 'Qualified school or program' means a nonpublic pre-kindergarten program,  
 45 primary school, or secondary school that:

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

48 (B) Is located in this state, adheres to the provisions of the federal Civil Rights Act of  
 49 1964, and satisfies the requirements prescribed by law for private schools in this state.

50 ~~(3)~~(4) 'Student scholarship organization' means a charitable organization in this state  
 51 that:

52 (A) Is exempt from federal income taxation under Section 501(c)(3) of the Internal  
 53 Revenue Code and ~~allocates~~ obligates for scholarships or tuition grants at least 90  
 54 percent of its annual revenue received from donations for scholarships or tuition grants  
 55 to allow students to attend any qualified school of their parents' choice; and

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

58 20-2A-2.

59 Each student scholarship organization:

- 60 (1) Must obligate for scholarships or tuition grants at least 90 percent of its annual  
 61 revenue received from donations for scholarships or tuition grants; however, up to 25  
 62 percent of this amount may be carried forward for the next fiscal year. Revenue received  
 63 by the organization for which no tax credit was received by the donor pursuant to Code  
 64 Section 48-7-29.16 is not required to be used for scholarships or tuition grants;  
 65 (2) Must maintain separate accounts for scholarship funds and operating funds;  
 66 (3) May transfer funds to another student scholarship organization;  
 67 (4) Must conduct an audit of its accounts by an independent certified public accountant  
 68 within 120 days after the completion of the student scholarship organization's fiscal year  
 69 verifying that it obligated for scholarships or tuition grants at least 90 percent of its  
 70 annual revenue received from donations for scholarships or tuition grants and provide  
 71 such audit to the Department of Revenue in accordance with Code Section 20-2A-3; and  
 72 (5) Must annually submit notice to the Department of Education in accordance with  
 73 department guidelines of its participation as a student scholarship organization under this  
 74 chapter.

75 20-2A-3.

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

- 79 (1) The total number and dollar value of individual contributions and tax credits  
 80 approved. Individual contributions shall include contributions made by those filing  
 81 income tax returns as a single individual or head of household and those filing joint  
 82 returns; and  
 83 (2) The total number and dollar value of corporate contributions and tax credits  
 84 approved;  
 85 (3) The total number and dollar value of scholarships awarded to eligible students;  
 86 (4) Of the scholarships awarded, the number of eligible students whose family income  
 87 is at or below the federal poverty level and the number of eligible students whose family  
 88 income does not exceed 200 percent of the federal poverty level; and  
 89 ~~(2)~~(5) A list of donors, including the dollar value of each donation and the dollar value  
 90 of 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. The Department of Revenue shall post on its website the  
 93 information received by each student scholarship organization pursuant to paragraphs (1)  
 94 through (4) of this subsection.

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

100 20-2A-4.

101 The Department of Revenue shall provide a list of all student scholarship organizations  
 102 receiving contributions from businesses and individuals granted a tax credit under Code  
 103 Section 48-7-29.16 to the General Assembly by January 30 of each year.

104 20-2A-5.

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

111 20-2A-6.

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

115 20-2A-7.

116 (a)(1) Any student scholarship organization that fails to comply with any requirements  
 117 under this chapter shall be given written notice by the Department of Revenue of such  
 118 failure to comply by certified mail and shall have 90 days from the receipt of such notice  
 119 to correct all deficiencies.

120 (2) Upon failure to correct all deficiencies within 90 days, such student scholarship  
 121 organization shall:

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

124 (B) Be required to cease all operations as a student scholarship organization and  
 125 transfer all scholarship account funds to a properly operating student scholarship  
 126 organization within 30 calendar days of receipt of notice from the Department of  
 127 Revenue of removal from the approved list; and

128 (C) Have all applications for preapproval of tax credits under Code Section 48-7-29.16  
 129 rejected by the Department of Revenue on or after the date the Department of  
 130 Education removes the student scholarship organization from its list provided for in  
 131 Code Section 20-2A-6.

132 (b) Any student scholarship organization that:

133 (1) Awards or restricts the award of a scholarship to a specific eligible student at the  
 134 request of a donor; or

135 (2) Encourages or facilitates taxpayers to engage in actions that are prohibited by law  
 136 shall be subject to paragraph (2) of subsection (a) of this Code section.

137 (c) Any officer or director of a student scholarship organization found to have actively  
 138 participated in a student scholarship organization's intentional violation of its obligations  
 139 under this chapter shall be guilty of a misdemeanor."

## 140 SECTION 2.

141 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
 142 imposition, rate, and computation of income taxes, is amended by revising Code Section  
 143 48-7-29.16, relating to qualified education tax credits, as follows:

144 "48-7-29.16.

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

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

150 (2) 'Qualified school or program' shall have the same meaning as in paragraph ~~(2)~~(3) of  
 151 Code Section 20-2A-1.

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

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

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

159 ~~(2) In the case of a married couple filing a joint return, the actual amount expended or~~  
 160 ~~\$2,500.00 per tax year, whichever is less.~~

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

164 provided, however, that if a corporation is not subject to income tax liability, such amount  
165 shall be calculated on the tax liability applicable to such corporation, such as tax liability  
166 for the sale of alcoholic beverages or on insurance premiums. Such income tax liability  
167 shall only apply to the portion remitted to the state and shall not include any local tax  
168 portion.

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

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

175 (f)(1) In no event shall the aggregate amount of tax credits allowed under this Code  
176 section exceed ~~\$50~~ \$62.5 million per calendar tax year; provided, however, that in each  
177 calendar tax year following a calendar tax year in which the aggregate amount of tax  
178 credits allowed under this Code section for that calendar tax year was equal to or greater  
179 than 90 percent of the maximum aggregate amount of tax credits allowed under this Code  
180 section for that calendar tax year, the maximum aggregate amount of tax credits allowed  
181 under this Code section shall increase by 25 percent. The department shall publish on its  
182 website information identifying the calendar tax year credit cap amount when it is  
183 increased pursuant to this paragraph.

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

185 (3) For the purposes of paragraph (1) of this subsection, a student scholarship  
186 organization shall notify a potential donor of the requirements of this Code section.  
187 Before making a contribution to a student scholarship organization, the taxpayer shall  
188 notify the department of the total amount of contributions that the taxpayer intends to  
189 make to the student scholarship organization. The commissioner shall preapprove or  
190 deny the requested amount within ~~30~~ 15 days after receiving the request from the  
191 taxpayer and shall provide written notice to the taxpayer and the student scholarship  
192 organization of such preapproval or denial which shall not require any signed release or  
193 notarized approval by the taxpayer. In order to receive a tax credit under this Code  
194 section, the taxpayer shall make the contribution to the student scholarship organization  
195 within ~~30~~ 120 days after receiving notice from the department that the requested amount  
196 was preapproved. If the taxpayer does not comply with this paragraph, the commissioner  
197 shall not include this preapproved contribution amount when calculating the limit  
198 prescribed in paragraph (1) of this subsection. The department shall establish a  
199 web-based donation approval process to implement this subsection.

200 (4) Preapproval of contributions by the commissioner shall be based solely on the  
 201 availability of tax credits subject to the aggregate total limit established under  
 202 paragraph (1) of this subsection. The department shall maintain an ongoing, current list  
 203 on its website of the amount of tax credits available under this Code section.

204 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse  
 205 action against donors to student scholarship organizations if the commissioner  
 206 preapproved a donation for a tax credit prior to the date the student scholarship  
 207 organization is removed from the Department of Education list pursuant to Code Section  
 208 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to  
 209 the donor's compliance with paragraph (3) of this subsection.

210 (g) In order for the taxpayer to claim the student scholarship organization tax credit under  
 211 this Code section, a letter of confirmation of donation issued by the student scholarship  
 212 organization to which the contribution was made shall be attached to the taxpayer's tax  
 213 return. However, in the event the taxpayer files an electronic return, such confirmation  
 214 shall only be required to be electronically attached to the return if the Internal Revenue  
 215 Service allows such attachments when the data is transmitted to the department. In the  
 216 event the taxpayer files an electronic return and such confirmation is not attached because  
 217 the Internal Revenue Service does not, at the time of such electronic filing, allow electronic  
 218 attachments to the Georgia return, such confirmation shall be maintained by the taxpayer  
 219 and made available upon request by the commissioner. The letter of confirmation of  
 220 donation shall contain the taxpayer's name, address, tax identification number, the amount  
 221 of the contribution, the date of the contribution, and the amount of the credit.

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

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

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

231 **SECTION 3.**

232 This Act shall be applicable to all taxable years beginning on or after January 1, 2011.

233 **SECTION 4.**

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