

House Bill 369

By: Representatives Austin of the 10th, Jacobs of the 80th, Sims of the 169th, and Braddock of the 19th

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 "20-2A-1.

12 As used in this chapter, the term:

13 (1) 'Eligible student' means a student who is a Georgia resident enrolled for a period of
14 not less than one grading period in a Georgia secondary or primary public school or
15 eligible to enroll in first grade, a qualified kindergarten program, or a pre-kindergarten
16 program; provided, however, that if a student is deemed an eligible student pursuant to
17 this paragraph, he or she shall continue to qualify as such until he or she graduates,
18 reaches the age of 20, or returns to a public school.

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.

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

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

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

32 20-2A-2.

33 Each student scholarship organization:

34 (1) Must obligate for scholarships or tuition grants at least 90 percent of its annual
 35 revenue received from donations for scholarships or tuition grants; however, up to 25
 36 percent of this amount may be carried forward for the next fiscal year. Revenue received
 37 by the organization for which no tax credit was received by the donor pursuant to Code
 38 Section 48-7-29.16 is not required to be used for scholarships or tuition grants;

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

40 (3) Must have an independent board of directors of which board members are not
 41 compensated for board service;

42 ~~(3)~~(4) May transfer funds to another student scholarship organization;

43 ~~(4)~~(5) Must conduct an audit of its accounts by an independent certified public
 44 accountant within 120 days after the completion of the student scholarship organization's
 45 fiscal year and provide such audit to the Department of Revenue in accordance with Code
 46 Section 20-2A-3; and

47 ~~(5)~~(6) Must annually submit notice to the Department of Education in accordance with
 48 department guidelines of its participation as a student scholarship organization under this
 49 chapter.

50 20-2A-3.

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

54 (1) The total number and dollar value of individual contributions and tax credits
 55 approved. Individual contributions shall include contributions made by those filing
 56 income tax returns as a single individual or head of household and those filing joint
 57 returns; and

58 (2) The total number and dollar value of corporate contributions and tax credits
 59 approved;

60 (3) The total number and dollar value of scholarships awarded to eligible students;

61 (4) Of the scholarships awarded, the number of eligible students whose family income
 62 is at or below the federal poverty level and the number of eligible students whose family
 63 income does not exceed 200 percent of the federal poverty level; and

64 ~~(2)~~(5) A list of donors, including the dollar value of each donation and the dollar value
 65 of each approved tax credit.

66 Such report shall also include a copy of the audit conducted pursuant to paragraph ~~(4)~~(5)
 67 of Code Section 20-2A-2. The Department of Revenue shall post on its website the
 68 information received by each student scholarship organization pursuant to paragraphs (1)
 69 through (4) of this subsection.

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

72 20-2A-4.

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

76 20-2A-5.

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

83 20-2A-6.

84 The Department of Education shall maintain on its website a current list of all student
 85 scholarship organizations which have provided notice pursuant to paragraph ~~(5)~~(6) of Code
 86 Section 20-2A-2.

87 20-2A-7.

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

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

- 93 (A) Be immediately removed from the Department of Education list provided for in
 94 Code Section 20-2A-6;
 95 (B) Be required to cease all operations as a student scholarship organization and
 96 transfer all scholarship account funds to a properly operating student scholarship
 97 organization within 30 calendar days of receipt of notice from the Department of
 98 Revenue; and
 99 (C) Have all applications for preapproval of tax credits under Code Section 48-7-29.16
 100 rejected by the Department of Revenue on or after the date the Department of
 101 Education removes the student scholarship organization from its list provided for in
 102 Code Section 20-2A-6.
- 103 (b) Any student scholarship organization that:
- 104 (1) Awards or restricts the award of a scholarship to a specific eligible student at the
 105 request of a donor; or
- 106 (2) Encourages or facilitates taxpayers to engage in actions that are prohibited by law
 107 shall be subject to paragraph (2) of subsection (a) of this Code section.
- 108 (c) Any officer or director of a student scholarship organization found to have actively
 109 participated in a student scholarship organization's intentional violation of its obligations
 110 under this chapter shall be guilty of a misdemeanor."

111 SECTION 2.

112 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
 113 imposition, rate, and computation of income taxes, is amended by revising Code Section
 114 48-7-29.16, relating to qualified education tax credits, as follows:

115 "48-7-29.16.

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

- 117 (1) 'Qualified education expense' means the expenditure of funds by the taxpayer during
 118 the tax year for which a credit under this Code section is claimed and allowed to a student
 119 scholarship organization operating pursuant to Chapter 2A of Title 20 which are used for
 120 tuition and fees for a qualified school or program.
- 121 (2) 'Qualified school or program' shall have the same meaning as in paragraph (2) of
 122 Code Section 20-2A-1.
- 123 (3) 'Student scholarship organization' shall have the same meaning as in paragraph (3)
 124 of Code Section 20-2A-1.

125 (b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter
 126 for qualified education expenses of up to 75 percent of such taxpayer's state income tax
 127 liability as follows:

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

130 ~~(2) In the case of a married couple filing a joint return, the actual amount expended or~~
131 ~~\$2,500.00 per tax year, whichever is less.~~

132 (c) A corporation or other entity shall be allowed a credit against the tax imposed by this
133 chapter for qualified education expenses in an amount not to exceed the actual amount
134 expended or 75 percent of the corporation's income tax liability, whichever is less;
135 provided, however, that if a corporation is not subject to income tax liability, such amount
136 shall be calculated on the tax liability applicable to such corporation, such as tax liability
137 for the sale of alcoholic beverages or on insurance premiums. Such income tax liability
138 shall only apply to the portion remitted to the state and shall not include any local tax
139 portion.

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

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

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

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

149 (3) For the purposes of paragraph (1) of this subsection, a student scholarship
150 organization shall notify a potential donor of the requirements of this Code section.
151 Before making a contribution to a student scholarship organization, the taxpayer shall
152 notify the department of the total amount of contributions that the taxpayer intends to
153 make to the student scholarship organization. The commissioner shall preapprove or
154 deny the requested amount within ~~30~~ 15 days after receiving the request from the
155 taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make
156 the contribution to the student scholarship organization within ~~30~~ 120 days after receiving
157 notice from the department that the requested amount was preapproved. If the taxpayer
158 does not comply with this paragraph, the commissioner shall not include this preapproved
159 contribution amount when calculating the limit prescribed in paragraph (1) of this
160 subsection. The department shall establish a web-based donation approval process to
161 implement this subsection.

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

164 paragraph (1) of this subsection. The department shall maintain an ongoing, current list
 165 on its website of the amount of tax credits available under this Code section.

166 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse
 167 action against donors to student scholarship organizations if the commissioner
 168 preapproved a donation for a tax credit prior to the date the student scholarship
 169 organization is removed from the Department of Education list pursuant to Code Section
 170 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to
 171 the donor's compliance with paragraph (3) of this subsection.

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

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

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

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

193 **SECTION 3.**

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

195 **SECTION 4.**

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