

House Bill 325 (COMMITTEE SUBSTITUTE)

By: Representatives Ehrhart of the 36th, Casas of the 103rd, and Dutton of the 166th

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, whichever
19 occurs first.

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

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

- 24 (B) Is located in this state, adheres to the provisions of the federal Civil Rights Act of
 25 1964, and satisfies the requirements prescribed by law for private schools in this state.
 26 (3) 'Student scholarship organization' means a charitable organization in this state that:
 27 (A) Is exempt from federal income taxation under Section 501(c)(3) of the Internal
 28 Revenue Code and ~~allocates~~ obligates for scholarships or tuition grants at least 90
 29 percent of its annual revenue received from donations for scholarships or tuition grants
 30 to allow students to attend any qualified school of their parents' choice; and
 31 (B) Provides educational scholarships or tuition grants to eligible students without
 32 limiting availability to only students of one school.

33 20-2A-2.

34 Each student scholarship organization:

- 35 (1) Must obligate for scholarships or tuition grants at least 90 percent of its annual
 36 revenue received from donations for scholarships or tuition grants; however, up to 25
 37 percent of this amount may be carried forward for the next fiscal year;
 38 (2) Must maintain separate accounts for scholarship funds and operating funds;
 39 (3) May transfer funds to another student scholarship organization;
 40 (4) Must conduct an audit of its accounts by an independent certified public accountant
 41 within 120 days after the completion of the student scholarship organization's fiscal year
 42 verifying that it obligated for scholarships or tuition grants at least 90 percent of its
 43 annual revenue received from donations for scholarships or tuition grants and provide
 44 such audit to the Department of Revenue in accordance with Code Section 20-2A-3; and
 45 (5) Must annually submit notice to the Department of Education in accordance with
 46 department guidelines of its participation as a student scholarship organization under this
 47 chapter.

48 20-2A-3.

- 49 (a) Each student scholarship organization must report to the Department of Revenue, on
 50 a form provided by the Department of Revenue, by January 12 of each tax year the
 51 following:
 52 (1) The total number and dollar value of individual contributions and tax credits
 53 approved. Individual contributions shall include contributions made by those filing
 54 income tax returns as a single individual or head of household and those filing joint
 55 returns; and
 56 (2) The total number and dollar value of corporate contributions and tax credits
 57 approved;
 58 (3) The total number and dollar value of scholarships awarded to eligible students;

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

62 ~~(2)~~(5) A list of donors, including the dollar value of each donation and the dollar value
 63 of each approved tax credit.

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

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

73 20-2A-4.

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

77 20-2A-5.

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

84 20-2A-6.

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

88 20-2A-7.

89 (a)(1) Any student scholarship organization that fails to comply with any requirements
 90 under this chapter shall be given written notice by the Department of Revenue of such

- 91 failure to comply by certified mail and shall have 90 days from the receipt of such notice
 92 to correct all deficiencies.
- 93 (2) Upon failure to correct all deficiencies within 90 days, such student scholarship
 94 organization shall:
- 95 (A) Be immediately removed from the Department of Education list provided for in
 96 Code Section 20-2A-6;
- 97 (B) Be required to cease all operations as a student scholarship organization and
 98 transfer all scholarship account funds to a properly operating student scholarship
 99 organization within 30 calendar days of receipt of notice from the Department of
 100 Revenue of removal from the approved list; and
- 101 (C) Have all applications for preapproval of tax credits under Code Section 48-7-29.16
 102 rejected by the Department of Revenue on or after the date the Department of
 103 Education removes the student scholarship organization from its list provided for in
 104 Code Section 20-2A-6.
- 105 (b) Any student scholarship organization that:
- 106 (1) Awards or restricts the award of a scholarship to a specific eligible student at the
 107 request of a donor; or
- 108 (2) Encourages or facilitates taxpayers to engage in actions that are prohibited by law
 109 shall be subject to paragraph (2) of subsection (a) of this Code section.
- 110 (c) Any officer or director of a student scholarship organization found to have actively
 111 participated in a student scholarship organization's intentional violation of its obligations
 112 under this chapter shall be guilty of a misdemeanor."

113 SECTION 2.

114 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
 115 imposition, rate, and computation of income taxes, is amended by revising Code Section
 116 48-7-29.16, relating to qualified education tax credits, as follows:

117 "48-7-29.16.

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

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

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

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

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

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

131 (2) In the case of a married couple filing a joint return, the actual amount expended or
132 \$2,500.00 per tax year, whichever is less.

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

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

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

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

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

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

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

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

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

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

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

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

191 **SECTION 3.**

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

193 **SECTION 4.**

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