

The Senate Finance Committee offered the following substitute to HB 325:

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 first grade,
16 kindergarten program, or pre-kindergarten program; provided, however, that if a student
17 is deemed an eligible student pursuant to this paragraph, he or she shall continue to
18 qualify as such until he or she graduates, reaches the age of 20, or returns to a public
19 school, whichever 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. The maximum
 38 scholarship amount given by the student scholarship organization in any given year shall
 39 not exceed the total expenditures per student in fall enrollment in public elementary and
 40 secondary education for this state, which may be determined using the most recently
 41 available Digest of Education Statistics published by the National Center for Education
 42 Statistics. The Department of Education shall determine and publish such amount
 43 annually, no later than January 1. If the Department of Education does not publish such
 44 updated amount by January 1, then the prior year's amount shall be increased by 5
 45 percent;
 46 (2) Must maintain separate accounts for scholarship funds and operating funds;
 47 (3) Must have an independent board of directors with at least three members;
 48 ~~(3)~~(4) May transfer funds to another student scholarship organization;
 49 ~~(4)~~(5) Must conduct an audit of its accounts by an independent certified public
 50 accountant within 120 days after the completion of the student scholarship organization's
 51 fiscal year verifying that it obligated for scholarships or tuition grants at least 90 percent
 52 of its annual revenue received from donations for scholarships or tuition grants and
 53 provide such audit to the Department of Revenue in accordance with Code Section
 54 20-2A-3; and
 55 ~~(5)~~(6) Must annually submit notice to the Department of Education in accordance with
 56 department guidelines of its participation as a student scholarship organization under this
 57 chapter.

58 20-2A-3.

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

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

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

68 (3) The total number and dollar value of scholarships awarded to eligible students; and
69 ~~(2)~~(4) A list of donors, including the dollar value of each donation and the dollar value
70 of each approved tax credit.

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

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

80 20-2A-4.

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

84 20-2A-5.

85 The parent or guardian to whom a scholarship award is granted must restrictively endorse
86 the scholarship award to the private school for deposit into the account of the private
87 school. The parent or guardian may not designate any entity or individual associated with
88 the participating private school as the parent's attorney in fact to endorse a scholarship
89 warrant award. A participant who fails to comply with this Code section forfeits the
90 scholarship.

91 20-2A-6.

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

95 20-2A-7.

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

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

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

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

108 (C) 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
110 Education removes the student scholarship organization from its list provided for in
111 Code Section 20-2A-6.

112 (b) Any student scholarship organization that:

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

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

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

120 **SECTION 2.**

121 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
122 imposition, rate, and computation of income taxes, is amended by revising Code Section
123 48-7-29.16, relating to qualified education tax credits, as follows:

124 "48-7-29.16.

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

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

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

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

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

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

138 (2) In the case of a married couple filing a joint return, the actual amount expended or
139 \$2,500.00 per tax year, whichever is less.

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

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

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

149 (f)(1) In no event shall the aggregate amount of tax credits allowed under this Code
150 section exceed \$50 million per tax year; provided, however, that this maximum amount
151 shall be adjusted annually until January 1, 2017, which adjustment may be based on the
152 most recent annual percentage change in the gross output of state and local governments
153 as defined by the National Income and Product Accounts and determined by the United
154 States Bureau of Economic Analysis.

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

156 (3) For the purposes of paragraph (1) of this subsection, a student scholarship
157 organization shall notify a potential donor of the requirements of this Code section.
158 Before making a contribution to a student scholarship organization, the taxpayer shall
159 notify the department of the total amount of contributions that the taxpayer intends to
160 make to the student scholarship organization. The commissioner shall preapprove or
161 deny the requested amount within 30 days after receiving the request from the taxpayer
162 and shall provide written notice to the taxpayer and the student scholarship organization

163 of such preapproval or denial which shall not require any signed release or notarized
164 approval by the taxpayer. In order to receive a tax credit under this Code section, the
165 taxpayer shall make the contribution to the student scholarship organization within ~~30~~ 60
166 days after receiving notice from the department that the requested amount was
167 preapproved. If the taxpayer does not comply with this paragraph, the commissioner
168 shall not include this preapproved contribution amount when calculating the limit
169 prescribed in paragraph (1) of this subsection. The department shall establish a
170 web-based donation approval process to implement this subsection.

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

175 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse
176 action against donors to student scholarship organizations if the commissioner
177 preapproved a donation for a tax credit prior to the date the student scholarship
178 organization is removed from the Department of Education list pursuant to Code Section
179 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to
180 the donor's compliance with paragraph (3) of this subsection.

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

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

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

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

202 **SECTION 3.**

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

204 **SECTION 4.**

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