

House Bill 325 (AS PASSED HOUSE AND SENATE)

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 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 average state and local expenditures per student in fall enrollment in
 40 public elementary and secondary education for this state. The Department of Education
 41 shall determine and publish such amount annually, no later than January 1;
 42 (2) Must maintain separate accounts for scholarship funds and operating funds;
 43 (3) Must have an independent board of directors with at least three members;
 44 ~~(3)~~(4) May transfer funds to another student scholarship organization;
 45 ~~(4)~~(5) Must conduct an audit of its accounts by an independent certified public
 46 accountant within 120 days after the completion of the student scholarship organization's
 47 fiscal year verifying that it obligated for scholarships or tuition grants at least 90 percent
 48 of its annual revenue received from donations for scholarships or tuition grants and
 49 provide such audit to the Department of Revenue in accordance with Code Section
 50 20-2A-3; and
 51 ~~(5)~~(6) Must annually submit notice to the Department of Education in accordance with
 52 department guidelines of its participation as a student scholarship organization under this
 53 chapter.

54 20-2A-3.

- 55 (a) Each student scholarship organization must report to the Department of Revenue, on
 56 a form provided by the Department of Revenue, by January 12 of each tax year the
 57 following:

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

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

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

65 ~~(2)~~(4) A list of donors, including the dollar value of each donation and the dollar value
 66 of each approved tax credit.

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

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

76 20-2A-4.

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

80 20-2A-5.

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

87 20-2A-6.

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

91 20-2A-7.

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

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

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

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

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

108 (b) Any student scholarship organization that:

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

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

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

116 **SECTION 2.**

117 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
 118 imposition, rate, and computation of income taxes, is amended by revising Code Section
 119 48-7-29.16, relating to qualified education tax credits, as follows:

120 "48-7-29.16.

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

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

- 126 (2) 'Qualified school or program' shall have the same meaning as in paragraph (2) of
 127 Code Section 20-2A-1.
- 128 (3) 'Student scholarship organization' shall have the same meaning as in paragraph (3)
 129 of Code Section 20-2A-1.
- 130 (b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter
 131 for qualified education expenses as follows:
- 132 (1) In the case of a single individual or a head of household, the actual amount expended
 133 or \$1,000.00 per tax year, whichever is less; or
- 134 (2) In the case of a married couple filing a joint return, the actual amount expended or
 135 \$2,500.00 per tax year, whichever is less.
- 136 (c) A corporation or other entity shall be allowed a credit against the tax imposed by this
 137 chapter for qualified education expenses in an amount not to exceed the actual amount
 138 expended or 75 percent of the corporation's income tax liability, whichever is less.
- 139 (d) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified
 140 education expense for the direct benefit of any dependent of the taxpayer.
- 141 (e) In no event shall the total amount of the tax credit under this Code section for a taxable
 142 year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the
 143 taxpayer against the succeeding five years' tax liability. No such credit shall be allowed
 144 the taxpayer against prior years' tax liability.
- 145 (f)(1) In no event shall the aggregate amount of tax credits allowed under this Code
 146 section exceed \$50 million per tax year; provided, however, that this maximum amount
 147 shall be adjusted annually until January 1, 2018, which adjustment may be based on the
 148 most recent annual percentage change in the Consumer Price Index for All Urban
 149 Consumers, U.S. City Average All Items Index, published by the Bureau of Labor
 150 Statistics of the United States Department of Labor, as determined by the department.
- 151 (2) The commissioner shall allow the tax credits on a first come, first served basis.
- 152 (3) For the purposes of paragraph (1) of this subsection, a student scholarship
 153 organization shall notify a potential donor of the requirements of this Code section.
 154 Before making a contribution to a student scholarship organization, the taxpayer shall
 155 notify the department of the total amount of contributions that the taxpayer intends to
 156 make to the student scholarship organization. The commissioner shall preapprove or
 157 deny the requested amount within 30 days after receiving the request from the taxpayer
 158 and shall provide written notice to the taxpayer and the student scholarship organization
 159 of such preapproval or denial which shall not require any signed release or notarized
 160 approval by the taxpayer. In order to receive a tax credit under this Code section, the
 161 taxpayer shall make the contribution to the student scholarship organization within ~~30~~ 60
 162 days after receiving notice from the department that the requested amount was

163 preapproved. If the taxpayer does not comply with this paragraph, the commissioner
164 shall not include this preapproved contribution amount when calculating the limit
165 prescribed in paragraph (1) of this subsection. The department shall establish a
166 web-based donation approval process to implement this subsection.

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

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

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

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

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

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

198

SECTION 3.

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

200

SECTION 4.

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