A BILL TO BE ENTITLED
AN ACT

To amend Titles 20 and 48 of the Official Code of Georgia Annotated, relating, respectively, to education and revenue and taxation, so as to revise provisions relating to student scholarship organizations; to revise definitions; to revise requirements on student scholarship organizations; to provide for penalties; to revise and change certain provisions regarding the qualified education income tax credit; to provide for related matters; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

CHAPTER 2A

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

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

(A) Is accredited or in the process of becoming accredited by one or more entities listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519; and
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(B) Is located in this state, adheres to the provisions of the federal Civil Rights Act of 1964, and satisfies the requirements prescribed by law for private schools in this state.

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

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

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


Each student scholarship organization:

(1) Must obligate for scholarships or tuition grants at least 90 percent of its annual revenue received from donations for scholarships or tuition grants; however, up to 25 percent of this amount may be carried forward for the next fiscal year. The maximum scholarship amount given by the student scholarship organization in any given year shall not exceed the average state and local expenditures per student in fall enrollment in public elementary and secondary education for this state. The Department of Education shall determine and publish such amount annually, no later than January 1;

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

(3) Must have an independent board of directors with at least three members;

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

(5) Must conduct an audit of its accounts by an independent certified public accountant within 120 days after the completion of the student scholarship organization's fiscal year verifying that it obligated for scholarships or tuition grants at least 90 percent of its annual revenue received from donations for scholarships or tuition grants and provide such audit to the Department of Revenue in accordance with Code Section 20-2A-3; and

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

20-2A-3.

(a) Each student scholarship organization must report to the Department of Revenue, on a form provided by the Department of Revenue, by January 12 of each tax year the following:
(1) The total number and dollar value of individual contributions and tax credits approved. Individual contributions shall include contributions made by those filing income tax returns as a single individual or head of household and those filing joint returns; and

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

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

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

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

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

20-2A-4.

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

20-2A-5.

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

20-2A-6.

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

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

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

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

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

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

(b) Any student scholarship organization that:

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

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

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

SECTION 2.

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

"48-7-29.16.

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

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

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

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

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

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

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

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

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

(f)(1) In no event shall the aggregate amount of tax credits allowed under this Code section exceed $50 million per tax year; provided, however, that this maximum amount shall be adjusted annually until January 1, 2018, which adjustment may be based on the most recent annual percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average All Items Index, published by the Bureau of Labor Statistics of the United States Department of Labor, as determined by the department.

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

(3) For the purposes of paragraph (1) of this subsection, a student scholarship organization shall notify a potential donor of the requirements of this Code section. Before making a contribution to a student scholarship organization, the taxpayer shall notify the department of the total amount of contributions that the taxpayer intends to make to the student scholarship organization. The commissioner shall preapprove or deny the requested amount within 30 days after receiving the request from the taxpayer and shall provide written notice to the taxpayer and the student scholarship organization of such preapproval or denial which shall not require any signed release or notarized approval by the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make the contribution to the student scholarship organization within 60 days after receiving notice from the department that the requested amount was

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

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

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

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

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

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

(i) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the tax provisions of this Code section.”
SECTION 3.
This Act shall be applicable to all taxable years beginning on or after January 1, 2011.

SECTION 4.
All laws and parts of laws in conflict with this Act are repealed.