

Senate Bill 370

By: Senators Cowsert of the 46th, Hufstetler of the 52nd, Payne of the 54th, Jones II of the 22nd, Parent of the 42nd and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
2 income taxes, so as to enact the "Fostering Success Act"; to provide for tax credits for certain
3 contributions made by taxpayers to certain foster child support organizations; to provide for
4 definitions; to provide for an aggregate annual limit; to provide for terms and conditions; to
5 provide for applications and certifications; to provide for the revocation of qualified status;
6 to provide for audits; to provide for certain penalties; to require annual reporting; to provide
7 for the discretion to refer certain acts to the Attorney General for investigation and
8 prosecution; to provide for rules and regulations; to provide for a short title; to provide for
9 legislative findings; to provide for related matters; to provide for an effective date and
10 applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 This Act shall be known and may be cited as the "Fostering Success Act."

14 **SECTION 2.**

15 The General Assembly finds that:

S. B. 370

- 16 (1) It is the policy of the General Assembly that resources of this state should be
17 committed to support benefits and positive outcomes for youth who age out of foster care.
18 (2) Empowering those Georgians who have aged out of foster care to achieve success in
19 their careers and postsecondary education is both a responsibility and opportunity for
20 Georgia; and
21 (3) Georgia taxpayers would welcome the opportunity to participate in such a virtuous
22 pursuit through their direct contributions to the state's postsecondary institutions and other
23 nonprofit partners.

24

SECTION 3.

25 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
26 is amended by adding a new Code section to read as follows:

27 "48-7-29.24.

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

29 (1) 'Aging foster children' means:

30 (A) Foster children aged 16 through 18 that would benefit based on projected status at
31 age 18, as determined by the division; and

32 (B) Former foster children up to and including age 21, or age 25 if legally possible,
33 who have not been adopted or reunited with families.

34 (2) 'Aging-out program' means a program with the primary function of supporting aging
35 foster children.

36 (3) 'Division' means the Division of Family and Children Services of the Department of
37 Human Services.

38 (4) 'Foster child support organization' means:

39 (A) The aging-out program of the Technical College System of Georgia Foundation;

- 40 (B) The aging-out program of the University System of Georgia Foundation, provided
41 that such program is certified by the Governor's Office of Planning and Budget as an
42 aging-out program; or
- 43 (C) Any domestic nonprofit corporation which maintains nonprofit status under
44 Section 501(c)(3) of the Internal Revenue Code and tax exempt status under Code
45 Section 48-7-25, that has the primary function of:
- 46 (i) Operating an aging-out program or supporting a Georgia licensed child-placing
47 agency; or
- 48 (ii) Disbursing funds directly to one or more of the entities identified in
49 subparagraphs (A) or (B) or division (C)(i) of this paragraph.
- 50 (5) 'Qualified contributions' means the preapproved contribution of funds by a taxpayer
51 to a qualified organization under the terms and conditions of this Code section.
- 52 (6) 'Qualified expenditures' means expenditures made by a qualified organization for:
- 53 (A) The costs associated with tuition waivers granted pursuant to Code Section
54 20-3-660;
- 55 (B) Wraparound services for individuals attending a public postsecondary educational
56 institution under a waiver granted pursuant to Code Section 20-3-660; or
- 57 (C) Mentorship services provided to aging foster children, provided that no mentor
58 shall be compensated in excess of \$100.00 per month for an aging foster child or
59 \$500.00 per year for any aging foster child.
- 60 (7) 'Qualified organization' means a foster child support organization that has been
61 certified and listed by the division pursuant to subsection (d) of this Code section.
- 62 (8) 'Wraparound services' means services provided directly to aging foster children to
63 support their education through postsecondary education services, housing services,
64 vocation services, medical services, counseling services, mentorship services, nutrition
65 services, transportation services, or up to \$150.00 per month in direct cash payments for
66 use on personal necessities.

67 (b)(1) The aggregate amount of tax credits allowed under this Code section shall not
68 exceed \$20 million per calendar year.

69 (2) Subject to the aggregate limit provided in paragraph (1) of this subsection and the
70 limitations of subsection (b.1) of this Code section, each taxpayer shall be allowed a
71 credit against the tax imposed by this chapter for qualified contributions made by the
72 taxpayer on or after January 1, 2023, as follows:

73 (A) In the case of a single individual or a head of household, the actual amount of
74 qualified contributions made;

75 (B) In the case of a married couple filing a joint return, the actual amount of qualified
76 contributions made;

77 (C) Anything to the contrary contained in subparagraph (A) or (B) of this paragraph
78 notwithstanding, in the case of an individual taxpayer who is a member of a limited
79 liability company duly formed under state law, a shareholder of a Subchapter 'S'
80 corporation, or a partner in a partnership, the actual amount of qualified contributions
81 it made; provided, however, that tax credits pursuant to this paragraph shall only be
82 allowed for the portion of the income on which such tax was actually paid by such
83 member of the limited liability company, shareholder of a Subchapter 'S' corporation,
84 or partner in a partnership; or

85 (D) A corporation or other entity not provided for in subparagraphs (A) through (C)
86 of this paragraph shall be allowed a credit against the tax imposed by this chapter, for
87 qualified contributions in an amount not to exceed the actual amount of qualified
88 contributions made.

89 (b.1) For the period beginning on January 1 and ending on June 30 of each year, an
90 individual taxpayer shall not be allowed credit for contributions, and the commissioner
91 shall not preapprove any contributions, that exceed the following limits:

92 (1) In the case of a single individual or a head of household, \$2,500.00;

93 (2) In the case of a married couple filing a joint return, \$5,000.00;

94 (3) In the case of an individual who is a member of a limited liability company duly
95 formed under state law, a shareholder of a Subchapter 'S' corporation, or a partner in a
96 partnership, \$5,000.00; or

97 (4) In the case of a corporation or other entity not provided for in paragraphs (1) through
98 (3) of this subsection, 10 percent of such entity's income tax liability.

99 (c) The commissioner shall establish a page on the department's website for the purpose
100 of implementing this Code section. Such page shall contain, at a minimum:

101 (1) A link to the division's web based application for certification as a qualified
102 organization as provided for in subsection (d) of this Code section;

103 (2) The current list of all qualified organizations;

104 (3) The total amount of tax credits remaining and available for preapproval for each year;

105 (4) A web based method for taxpayers seeking the preapproval status for contributions;
106 and

107 (5) The information received by the department from each qualified organization
108 pursuant to paragraph (1) of subsection (g) except for division (g)(1)(B)(iv) of this Code
109 section.

110 (d)(1) The division shall establish and maintain a web based application process for the
111 purpose of certifying foster child support organizations as qualified organizations. At a
112 minimum such application created by the division shall include an agreement submitted
113 by the applicant to fully comply with the terms and conditions of this Code section. The
114 division shall certify any valid foster child support organization as a qualified
115 organization upon successful completion of such application process.

116 (2) The division shall accept a first round of applications for certification as qualified
117 organizations by November 1, 2022, and shall certify and notify such applicants of the
118 division's decision on or before December 31, 2022. Thereafter the division shall
119 establish a process for rolling applications and certifications.

120 (e)(1) Prior to making a contribution to any qualified organization, the taxpayer shall
121 electronically notify the department, in a manner specified by the commissioner, of the
122 total amount of contribution that such taxpayer intends to make to such qualified
123 organization.

124 (2) Within 30 days after receiving a request for preapproval of contributions, the
125 commissioner shall preapprove, deny, or prorate requested amounts on a first come, first
126 served basis and shall provide notice to such taxpayer and the qualified organization of
127 such preapproval, denial, or proration. Such notices shall not require any signed release
128 or notarized approval by the taxpayer. The preapproval of contributions by the
129 commissioner shall be based solely on the availability of tax credits subject to the
130 aggregate total limit established under paragraph (1) of subsection (b) of this Code
131 section.

132 (3) Within 60 days after receiving the preapproval notice issued by the commissioner
133 pursuant to paragraph (2) of this subsection, the taxpayer shall contribute the preapproved
134 amount to the qualified organization or such preapproved contribution amount shall
135 expire. The commissioner shall not include such expired amounts in determining the
136 remaining amount available under the aggregate limit for the respective calendar year.

137 (f)(1) Each qualified organization shall issue to each contributor a letter of confirmation
138 of contribution, which shall include the taxpayer's name, address, tax identification
139 number, the amount of the qualified contribution, the date of the qualified contribution,
140 and the total amount of the credit allowed to the taxpayer.

141 (2) In order for a taxpayer to claim the tax credit allowed under this Code section, all
142 such applicable letters as provided for in paragraph (1) of this subsection shall be attached
143 to the taxpayer's tax return. When the taxpayer files an electronic return such
144 confirmation shall only be required to be electronically attached to the return if the
145 Internal Revenue Service allows such attachments to be affixed and transmitted to the

146 department. In any such event, the taxpayer shall maintain such confirmation and such
147 confirmation shall only be made available to the commissioner upon request.

148 (3) The commissioner shall allow tax credits for any preapproved contributions made to
149 a qualified organization at the time the contributions were made if such organization was
150 a qualified organization at the time of the commissioner's preapproval of the contributions
151 and the taxpayer has otherwise complied with this Code section.

152 (g)(1) Each qualified organization shall annually submit to the department no later than
153 April 1 of each year:

154 (A) A complete copy of its IRS Form 990 including schedule H and other applicable
155 attachments, or for any qualified organization that is not required by federal law to file
156 an IRS Form 990, such organization shall submit to the commissioner equivalent
157 information on a form prescribed by the commissioner; and

158 (B) A report detailing the contributions received during the calendar year pursuant to
159 this Code section on a date determined by, and on a form provided by, the
160 commissioner which shall include:

161 (i) The total number and dollar value of individual contributions and tax credits
162 approved. Individual contributions shall include contributions made by those filing
163 income tax returns as a single individual or head of household and those filing joint
164 returns;

165 (ii) The total number and dollar value of corporate contributions and tax credits
166 approved;

167 (iii) The total number and dollar value of all qualified expenditures made; and

168 (iv) A list of contributors, including the dollar value of each contribution and the
169 dollar value of each approved tax credit.

170 (2) Except for the information published in accordance with subsection (h) of this Code
171 section, all information or reports relative to this Code section that were provided by
172 qualified organizations to the department shall be confidential taxpayer information.

173 governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether such information
174 relates to the contributor or the qualified organization.

175 (h) By April 1 of each year each qualified organization shall publicly post on its website
176 in a prominent place a copy of its prior year's annual budget containing the total amount
177 of funds received from all sources relative to the amount of qualified contributions it
178 received and the total amount and a description of how such contributions were utilized.

179 (i)(1) A taxpayer shall not be allowed to designate or direct the taxpayer's qualified
180 contributions to any particular purpose or for the direct benefit of any particular
181 individual.

182 (2) A taxpayer that operates, owns, or is a subsidiary of an association, organization, or
183 other entity that contracts directly with a qualified organization shall not be eligible for
184 tax credits allowed under this Code section for contributions made to such qualified
185 organization.

186 (3) In soliciting contributions, no person shall represent or direct that, in exchange for
187 making qualified contributions to any qualified organization, a taxpayer shall receive any
188 direct or particular benefit. The status as a qualified organization shall be revoked for any
189 qualified organization determined to be in violation of this paragraph and shall not be
190 renewed for at least two years.

191 (j)(1)(A) Each qualified organization shall use at least 90 percent of the funds received
192 by it from qualified contributions to make qualified expenditures. Each qualified
193 organization shall maintain accurate and current records of all expenditures of such
194 funds and provide such records to the commissioner upon his or her request.

195 (B) No foster child support organization that meets only the definition of such term as
196 provided in division (a)(3)(C)(ii) of this Code section shall retain more than 2.5 percent
197 of qualified contributions for itself for any reason and shall only serve to pass all of its
198 qualified contributions to one or more qualified organizations that are foster child

199 support organization as such term is defined in subparagraphs (a)(4)(A), (a)(4)(B), or
200 division (a)(4)(C)(i) of this Code section.

201 (2) A qualified organization that fails to comply with any of the requirements under this
202 Code section shall be given written notice by the department of such failure to comply
203 by certified mail and shall have 90 days from the receipt of such notice to correct all
204 deficiencies.

205 (3) Upon failure to correct all deficiencies within 90 days, the department shall revoke
206 the foster child support organization's status as a qualified organization and such entity
207 shall be immediately removed from the department's list of organizations. All
208 applications for preapproval of tax credits for contributions to such foster child support
209 organization under this Code section made on or after the date of such removal shall be
210 rejected.

211 (4) Each foster child support organization that has had its status revoked and has been
212 delisted pursuant to this Code section, shall immediately cease all expenditures of funds
213 received relative to this Code section, and shall transfer all of such funds that are not yet
214 expended, to a properly operating qualified organization within 30 calendar days of its
215 removal from the department's list of qualified organizations.

216 (k)(1) No credit shall be allowed under this Code section to a taxpayer for any amount
217 of qualified contributions that were utilized as deductions or exemptions from taxable
218 income.

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

223 (l) The chairperson of the House Appropriations Committee and the chairperson of the
224 Senate Committee on Appropriations shall have the authority to request an audit
225 concerning this Code section as a whole or of any one or more qualified organizations. The

226 commissioner, the state auditor, each qualified organization, each aging-out program, and
227 the director of division shall cooperate to the full extent necessary to conduct such audits.
228 (m) At the discretion of the commissioner or the director of the division, any suspected
229 misuse of funds contributed or expended pursuant to this Code section shall be forwarded
230 to the Attorney General for investigation and prosecution.
231 (n) The commissioner shall promulgate rules and regulations necessary to implement and
232 administer the provisions of this Code section."

233 **SECTION 4.**

234 (a) This Act shall become effective on July 1, 2022.

235 (b) This Act shall be applicable to taxable years beginning on or after January 1, 2023.

236 **SECTION 5.**

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