

Senate Bill 370

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

AS PASSED SENATE

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:

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- 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 operating as or supporting a Georgia licensed
47 child-placing 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 made during
51 the taxable year by a taxpayer to a qualified organization under the terms and conditions
52 of this Code section.
- 53 (6) 'Qualified expenditures' means expenditures made by a qualified organization for:
- 54 (A) The costs associated with tuition waivers granted pursuant to Code Section
55 20-3-660;
- 56 (B) Wraparound services for individuals attending a public postsecondary educational
57 institution under a waiver granted pursuant to Code Section 20-3-660; or
- 58 (C) Mentorship services provided to aging foster children, provided that no mentor
59 shall be compensated in excess of \$100.00 per month for an aging foster child or
60 \$500.00 per year for any aging foster child.
- 61 (7) 'Qualified organization' means a foster child support organization that has been
62 certified and listed by the division pursuant to subsection (d) of this Code section.
- 63 (8) 'Wraparound services' means services provided directly to aging foster children to
64 support their education through postsecondary education services, housing services,
65 vocation services, medical services, counseling services, mentorship services, nutrition

66 services, transportation services, or up to \$150.00 per month in direct cash payments for
67 use on personal necessities.

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

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

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

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

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

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

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

- 93 (1) In the case of a single individual or a head of household, \$2,500.00;
94 (2) In the case of a married couple filing a joint return, \$5,000.00;
95 (3) In the case of an individual who is a member of a limited liability company duly
96 formed under state law, a shareholder of a Subchapter 'S' corporation, or a partner in a
97 partnership, \$5,000.00; or
98 (4) In the case of a corporation or other entity not provided for in paragraphs (1) through
99 (3) of this subsection, 10 percent of such entity's income tax liability.
- 100 (c) Not later than October 1, 2022, the commissioner shall establish a page on the
101 department's website for the purpose of implementing this Code section. Such page shall
102 contain, at a minimum:
- 103 (1) A link to the division's web based application for certification as a qualified
104 organization as provided for in subsection (d) of this Code section;
105 (2) The current list of all qualified organizations;
106 (3) The total amount of tax credits remaining and available for preapproval for each year;
107 (4) A web based method for taxpayers seeking the preapproval status for contributions;
108 and
109 (5) The information received by the department from each qualified organization
110 pursuant to paragraph (1) of subsection (g) except for division (g)(1)(B)(iv) of this Code
111 section.
- 112 (d)(1) The division shall establish and maintain a web based application process for the
113 purpose of certifying foster child support organizations as qualified organizations. At a
114 minimum such application created by the division shall include an agreement submitted
115 by the applicant to fully comply with the terms and conditions of this Code section.
- 116 (2) The division shall certify any valid foster child support organization as a qualified
117 organization upon successful completion of such application process.

118 (3) The division shall certify any foster child support organization operating as a Georgia
119 licensed child-placing agency as a qualified organization within ten days of receipt of a
120 written request or application.

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

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

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

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

142 (f)(1) Each qualified organization shall issue to each contributor a letter of confirmation
143 of contribution, which shall include the taxpayer's name, address, tax identification

144 number, the amount of the qualified contribution, the date of the qualified contribution,
145 and the total amount of the credit allowed to the taxpayer.

146 (2) In order for a taxpayer to claim the tax credit allowed under this Code section, all
147 such applicable letters as provided for in paragraph (1) of this subsection shall be attached
148 to the taxpayer's tax return. When the taxpayer files an electronic return such
149 confirmation shall only be required to be electronically attached to the return if the
150 Internal Revenue Service allows such attachments to be affixed and transmitted to the
151 department. In any such event, the taxpayer shall maintain such confirmation and such
152 confirmation shall only be made available to the commissioner upon request.

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

157 (g)(1) Each qualified organization shall annually submit to the department no later than
158 May 15 of each year:

159 (A) A complete copy of its IRS Form 990 including applicable attachments, or for any
160 qualified organization that is not required by federal law to file an IRS Form 990, such
161 organization shall submit to the commissioner equivalent information on a form
162 prescribed by the commissioner; and

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

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

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

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

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

175 (2) Except for the information published in accordance with subsection (h) of this Code
176 section, all information or reports relative to this Code section that were provided by
177 qualified organizations to the department shall be confidential taxpayer information,
178 governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether such information
179 relates to the contributor or the qualified organization.

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

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

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

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

196 (j)(1)(A) Each qualified organization shall use at least 80 percent of the funds received
197 by it from qualified contributions to make qualified expenditures. Each qualified
198 organization shall maintain accurate and current records of all expenditures of such
199 funds and provide such records to the commissioner upon his or her request.

200 (B) No foster child support organization that meets only the definition of such term as
201 provided in division (a)(4)(C)(ii) of this Code section shall retain more than 2.5 percent
202 of qualified contributions for itself for any reason and shall only serve to pass all of its
203 qualified contributions to one or more qualified organizations that are foster child
204 support organization as such term is defined in subparagraphs (a)(4)(A), (a)(4)(B), or
205 division (a)(4)(C)(i) of this Code section.

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

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

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

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

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

228 (l) The chairperson of the House Appropriations Committee and the chairperson of the
229 Senate Committee on Appropriations shall have the authority to request an audit
230 concerning this Code section as a whole or of any one or more qualified organizations. The
231 commissioner, the state auditor, each qualified organization, each aging-out program, and
232 the director of division shall cooperate to the full extent necessary to conduct such audits.

233 (m) At the discretion of the commissioner or the director of the division, any suspected
234 misuse of funds contributed or expended pursuant to this Code section shall be forwarded
235 to the Attorney General for investigation and prosecution.

236 (n) The commissioner shall promulgate rules and regulations necessary to implement and
237 administer the provisions of this Code section."

238 **SECTION 4.**

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

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

241 **SECTION 5.**

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