

House Bill 517 (AS PASSED HOUSE AND SENATE)

By: Representatives Carson of the 46th, Knight of the 130th, Blackmon of the 146th, Newton of the 123rd, Belton of the 112th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to
2 student scholarship organizations, so as to provide for the inclusion of earned interest in the
3 calculation of minimum revenue obligations for scholarships and tuition grants; to require
4 that student scholarship organization audits are conducted in accordance with generally
5 accepted auditing standards; to provide for the expansion of the scope of such audits; to
6 provide for a deadline by which such audits shall be reported to the Department of Revenue;
7 to require that student scholarship organizations immediately notify the Department of
8 Education if the Department of Revenue ceases preapproving contributions to student
9 scholarship organizations; to require student scholarship organizations to annually submit
10 copies of Form 990s to the Department of Revenue; to provide that student scholarship
11 organizations are solely responsible for verifying student eligibility; to provide for expansion
12 of public reporting requirements; to amend Article 2 of Chapter 7 of Title 48 of the Official
13 Code of Georgia Annotated, relating to imposition, rate, computation, and exemptions from
14 state income taxes, so as to provide for qualified education tax credits to be used by certain
15 insurance companies against certain tax liability; to provide for conditions and limitations;
16 to increase the limit available to individuals, heads of household, married couples filing joint
17 returns, and individuals who are members of certain limited liability companies, shareholders
18 of Subchapter "S" corporations, or partners in a partnership; to revise the aggregate annual

19 limits of the tax credit and provide for increases contingent on the Governor's revenue
20 estimates; to provide for annual determinations by the Office of Planning and Budget; to
21 provide for related matters; to provide for effective dates and applicability; to repeal
22 conflicting laws; and for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

24 **PART I**
25 **SECTION 1-1.**

26 Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student
27 scholarship organizations, is amended by revising Code Section 20-2A-2, relating to
28 requirements for student scholarship organizations, as follows:

29 "20-2A-2.

30 Each student scholarship organization:

31 (1) With respect to the first \$1.5 million of its annual revenue received from donations
32 for scholarships or tuition grants, ~~must~~ including interest earned on deposits and
33 investments of scholarship funds or tuition grants, shall obligate at least 92 percent of
34 such revenue for scholarships or tuition grants; with respect to its annual revenue
35 received from donations for scholarships or tuition grants in excess of \$1.5 million and
36 up to and including \$10 million, ~~must~~ including interest earned on deposits and
37 investments of scholarship funds or tuition grants, shall obligate at least 94 percent of
38 such revenue for scholarships ~~and~~ or tuition grants; with respect to its annual revenue
39 received from donations for scholarships or tuition grants in excess of \$10 million and
40 up to and including \$20 million, ~~must~~ including interest earned on deposits and
41 investments of scholarship funds or tuition grants, shall obligate at least 95 percent of
42 such revenue for scholarships ~~and~~ or tuition grants; and, with respect to its annual

43 revenue received from donations for scholarships or tuition grants in excess of \$20
44 million, must including interest earned on deposits and investments of scholarship funds
45 or tuition grants, shall obligate at least 96 percent of such revenue for scholarships and
46 or tuition grants. On or before the end of the calendar year following the calendar year
47 in which a student scholarship organization receives revenues from donations and
48 obligates them for the awarding of scholarships or tuition grants, the student scholarship
49 organization shall designate the obligated revenues for specific student recipients. Once
50 the student scholarship organization designates obligated revenues for specific student
51 recipients, in the case of multiyear scholarships or tuition grants, the student scholarship
52 organization may distribute the entire obligated and designated revenues to a qualified
53 school or program to be held in accordance with Department of Revenue rules for
54 distribution to the specified recipients during the years in which the recipients are
55 projected in writing by the private school to be enrolled at the qualified school or
56 program. In making a multiyear distribution to a qualified school or program, the student
57 scholarship organization shall require that if the designated student becomes ineligible
58 or for any other reason the qualified school or program elects not to continue
59 disbursement of the multiyear scholarship or tuition grant to the designated student for
60 all the projected years, then the qualified school or program shall immediately return the
61 remaining funds to the student scholarship organization. Once the student scholarship
62 organization designates obligated revenues for specific student recipients, in the case of
63 multiyear scholarships or tuition grants for which the student scholarship organization
64 distributes the obligated and designated revenues to a qualified school or program
65 annually rather than the entire amount, if the designated student becomes ineligible or for
66 any other reason the student scholarship organization elects not to continue disbursement
67 for all years, then the student scholarship organization shall designate any remaining
68 previously obligated revenues for a new specific student recipient on or before the end
69 of the following calendar year. The maximum scholarship amount given by the student

70 scholarship organization in any given year shall not exceed the average state and local
71 expenditures per student in fall enrollment in public elementary and secondary education
72 for this state. The Department of Education shall determine and publish such amount
73 annually, no later than January 1;

74 (1.1) In awarding scholarships or tuition grants, shall consider financial needs of students
75 based on all sources, including the federal adjusted gross income from the federal income
76 tax return most recently filed by the parents or guardians of such students, as adjusted for
77 family size. If the parents or guardians of a student have not filed a federal income tax
78 return in either of the two calendar years immediately preceding the year of application,
79 the student scholarship organization shall consider the financial need of the student based
80 on proof of employment income of the parents or guardians from the 30 consecutive days
81 closest to when the applicant submitted the scholarship application and on any other
82 sources of income, including, but not limited to, unemployment benefits, social security
83 benefits, and child support benefits;

84 (2) ~~Shall~~ ~~Must~~ maintain separate accounts for scholarship funds and operating funds.
85 Until obligated revenues are designated for specific student recipients, the student
86 scholarship organization shall hold the obligated revenues in a bank or investment
87 account owned by the student scholarship organization and over which it has complete
88 control; provided, however, that interest earned on deposits and investments of
89 scholarship funds and tuition grants shall be included in the calculation of the minimum
90 obligations provided for in paragraph (1) of this Code section;

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

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

93 (5) Within 120 days after the completion of the student scholarship organization's fiscal
94 year, shall ~~Must~~ conduct an audit of its accounts by an independent certified public
95 accountant ~~within 120 days after the completion of the student scholarship organization's~~
96 ~~fiscal year~~ in accordance with generally accepted auditing standards verifying that ~~it~~ the

97 student scholarship organization has complied with all requirements of this ~~Code section~~
98 chapter, including, but not limited to, scholarship fund management requirements,
99 operational fund management requirements, other financial requirements, student
100 eligibility requirements, school qualification requirements, and other scholarship
101 management requirements. Each student scholarship organization shall also submit with
102 each such audit a signed declaration certifying that it has complied and is in compliance
103 with all legal and regulatory requirements imposed by state or federal law. Within 60
104 days of completion of such audit, each ~~Each~~ student scholarship organization shall
105 provide a copy of such audit to the Department of Revenue in accordance with Code
106 Section 20-2A-3. Notwithstanding Code Sections 20-2A-7, 48-2-15, 48-7-60, and
107 48-7-61, if the copy of the audit submitted fails to verify that the student scholarship
108 organization obligated its annual revenue received from donations for scholarships or
109 tuition grants, including interest earned on deposits and investments of such funds, as
110 required under paragraph (1) of this Code section; that obligated revenues were
111 designated for specific student recipients within the time frame required by paragraph (1)
112 of this Code section; and that all obligated and designated revenue distributed to a
113 qualified school or program for the funding of multiyear scholarships or tuition grants
114 complied with all applicable Department of Revenue rules, then the Department of
115 Revenue shall post on its website the details of such failure to verify. Until any such
116 noncompliant student scholarship organization submits an amended audit, which, to the
117 satisfaction of the Department of Revenue, contains the verifications required under this
118 Code section, the Department of Revenue shall not preapprove any contributions to the
119 noncompliant student scholarship organization;

120 (5.1) In addition to the audit required by paragraph (5) of this Code section, in 2023, the
121 state auditor shall issue an economic analysis report on the performance of this tax credit
122 to the chairpersons of the House Committee on Ways and Means and the Senate Finance

123 Committee. An economic analysis shall include, but not be limited to, a good faith
 124 estimate, on both a direct and indirect basis, as to the:

125 (A) Net change in state revenue;

126 (B) Net change in state expenditures, which shall include, but not be limited to, costs
 127 of administering the tax credit;

128 (C) Net change in economic activity; and

129 (D) Net change in public benefit; ~~and~~

130 (6) ~~Shall~~ Must annually submit notice to the Department of Education in accordance with
 131 department guidelines of its participation as a student scholarship organization under this
 132 chapter; provided, however, that the student scholarship organization shall immediately
 133 notify the Department of Education if the Department of Revenue has temporarily or
 134 permanently ceased preapproving contributions to the student scholarship organization
 135 in accordance with the provisions of paragraph (5) of this Code section;

136 (7) Shall annually submit to the Department of Revenue a copy of its most recent Form
 137 990 filed with the United States Internal Revenue Service; and

138 (8) Shall be solely responsible for verifying the eligibility of students for participation
 139 in the program provided for in this chapter."

140 **SECTION 1-2.**

141 Said chapter is amended further by revising Code Section 20-2A-3, relating to taxation
 142 reporting requirements for student scholarship organizations, as follows:

143 "20-2A-3.

144 (a) Each student scholarship organization ~~must~~ shall report annually to the Department of
 145 Revenue, on a date determined by the Department of Revenue, subject to the time limits
 146 provided for in paragraph (5) of Code Section 20-2A-2, and on a form provided by the
 147 Department of Revenue, the following information:

- 148 (1) The total number and dollar value of individual contributions and tax credits
149 approved. Individual contributions shall include contributions made by those filing
150 income tax returns as a single individual or head of household and those filing joint
151 returns;
- 152 (2) The total number and dollar value of corporate contributions and tax credits
153 approved;
- 154 (3) The total number and dollar value of scholarships awarded to eligible students;
- 155 (4) The total number of scholarship recipients whose family's adjusted gross income
156 falls:
- 157 (A) Under 125 percent of the federal poverty level;
- 158 (B) Between 125 and 250 percent of the federal poverty level;
- 159 (C) Between 250 and 400 percent of the federal poverty level; and
- 160 (D) Above 400 percent of the federal poverty level;
- 161 (4.1) The total number of scholarship recipients and the average scholarship dollar
162 amount by each county within which any scholarship recipient resides;
- 163 (5) The average scholarship dollar amount by adjusted gross income category as
164 provided in paragraph (4) of this subsection; and
- 165 (6) A list of donors, including the dollar value of each donation and the dollar value of
166 each approved tax credit.
- 167 Such report shall also include a copy of the audit conducted pursuant to paragraph (5) of
168 Code Section 20-2A-2. The Department of Revenue shall post on its website the
169 information received from each student scholarship organization pursuant to paragraphs
170 (1) through (5) of this subsection and the report of the student scholarship organization's
171 most recent audit conducted pursuant to paragraph (5) of Code Section 20-2A-2 , except
172 that no information of confidential taxpayer information contained in such audit report
173 shall be posted or otherwise disclosed to the public by the Department of Revenue.

174 (b) Except for the allowable information included in the report of the audit conducted
 175 pursuant to paragraph (5) of Code Section 20-2A-2 and the information reported pursuant
 176 to paragraphs (1) through (5) of subsection (a) of this Code section, all information or
 177 reports provided by student scholarship organizations to the Department of Revenue shall
 178 be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and
 179 48-7-61, whether it relates to the donor or the student scholarship organization."

180 **PART II**

181 **SECTION 2-1.**

182 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
 183 imposition, rate, computation, and exemptions from state income taxes, is amended by
 184 revising Code Section 48-7-29.16, relating to a qualified education tax credit, as follows:

185 "48-7-29.16.

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

187 (1) 'Business enterprise' means any insurance company or the headquarters of any
 188 insurance company required to pay the tax provided for in Code Section 33-8-4.

189 ~~(1)~~(2) 'Eligible student' shall have the same meaning as in paragraph (1) of Code Section
 190 20-2A-1.

191 ~~(2)~~(3) 'Qualified education expense' means the expenditure of funds by the taxpayer or
 192 business enterprise during the tax year for which a credit under this Code section is
 193 claimed and allowed to a student scholarship organization operating pursuant to Chapter
 194 2A of Title 20 which are used for tuition and fees for a qualified school or program.

195 ~~(3)~~(4) 'Qualified school or program' shall have the same meaning as in paragraph (2) of
 196 Code Section 20-2A-1.

197 ~~(4)~~(5) 'Student scholarship organization' shall have the same meaning as in paragraph (3)
 198 of Code Section 20-2A-1.

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

201 (1) In the case of a single individual or a head of household, the actual amount expended
202 or ~~\$1,000.00~~ \$2,500.00 per tax year, whichever is less;

203 (2) In the case of a married couple filing a joint return, the actual amount expended or
204 ~~\$2,500.00~~ \$5,000.00 per tax year, whichever is less; or

205 (3) Anything to the contrary contained in paragraph (1) or (2) of this subsection
206 notwithstanding, in the case of an individual who is a member of a limited liability
207 company duly formed under state law, a shareholder of a Subchapter 'S' corporation, or
208 a partner in a partnership, the amount expended or ~~\$10,000.00~~ \$25,000.00 per tax year,
209 whichever is less; provided, however, that tax credits pursuant to this paragraph shall
210 only be allowed for the portion of the income on which such tax was actually paid by
211 such member of the limited liability company, shareholder of a Subchapter 'S'
212 corporation, or partner in a partnership.

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

216 (c.1) A business enterprise shall be allowed a credit against the tax imposed by Code
217 Section 33-8-4 in an amount equal to its qualified education expenses or 75 percent of the
218 business enterprise's state insurance premium tax liability owed pursuant to Code
219 Section 33-8-4, whichever is less; provided, however, that the amount of such credit shall
220 not exceed \$1 million.

221 (d)(1) The tax credit shall not be allowed if the taxpayer or business enterprise designates
222 ~~the taxpayer's~~ its qualified education expense for the direct benefit of any particular
223 individual, whether or not such individual is a dependent of the taxpayer or business
224 enterprise.

225 (2) In soliciting contributions, a student scholarship organization shall not represent, or
226 direct a qualified private school to represent, that, in exchange for contributing to the
227 student scholarship organization, a taxpayer or business enterprise shall receive a
228 scholarship for the direct benefit of any particular individual, whether or not such
229 individual is a dependent of the taxpayer or business enterprise. The status as a student
230 scholarship organization shall be revoked for any such organization which violates this
231 paragraph.

232 (e) In no event shall the total amount of the tax credit allowed to any taxpayer or business
233 enterprise under this Code section for a taxable year exceed ~~the such~~ taxpayer's income tax
234 liability or such business enterprise's state insurance premium tax liability owed pursuant
235 to Code Section 33-8-4, provided that any. ~~Any~~ unused tax credit shall be allowed the
236 taxpayer or business enterprise against ~~the up to its~~ succeeding five years' tax liability. No
237 such credit shall be allowed the taxpayer or business enterprise against prior years' tax
238 liability.

239 (f)(1) The aggregate amount of tax credits allowed under this Code section shall not
240 exceed:

241 (A) Fifty-eight million dollars for the tax year ending on December 31, 2018;

242 (B) ~~One hundred million dollars for tax years beginning on January 1, 2019, and~~
243 ~~ending on December 31, 2028~~ For 2019 through 2022, \$100 million per year; and

244 (C) ~~Fifty-eight million dollars for the tax year beginning on January 1, 2029, and for~~
245 ~~all subsequent tax years~~ For 2023 and all subsequent years, \$120 million per year.

246 (1.1) In no event shall the aggregate amount of tax credits allowed under this Code
247 section to all business enterprises for state insurance premium tax liability owed pursuant
248 to Code Section 33-8-4 exceed \$6 million for any year.

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

250 (3) For the purposes of paragraph (1) of this subsection, a student scholarship
251 organization shall notify a potential donor of the requirements of this Code section.

252 Before making a contribution to a student scholarship organization, the taxpayer or
253 business enterprise shall electronically notify the department, in a manner specified by
254 the department, of the total amount of contributions that the taxpayer or business
255 enterprise intends to make to the student scholarship organization. The commissioner
256 shall preapprove, deny, or prorate the requested amount within 30 days after receiving
257 the request from the taxpayer or business enterprise and shall provide notice to the
258 taxpayer or business enterprise and the student scholarship organization of such
259 preapproval, denial, or proration which shall not require any signed release or notarized
260 approval by the taxpayer or business enterprise. In order to receive a tax credit under this
261 Code section, the taxpayer or business enterprise shall make the contribution to the
262 student scholarship organization within 60 days after receiving notice from the
263 department that the requested amount was preapproved. If the taxpayer or business
264 enterprise does not comply with this paragraph, the commissioner shall not include this
265 preapproved contribution amount when calculating the limit prescribed in paragraph (1)
266 of this subsection or the additional limitation specific to business enterprises prescribed
267 in paragraph (1.2) of this subsection. The department shall establish a web based
268 donation approval process to implement this subsection.

269 (4) Preapproval of contributions by the commissioner shall be based solely on the
270 availability of tax credits subject to the aggregate total limit established under
271 paragraph (1) of this subsection or the additional limitation specific to business
272 enterprises prescribed in paragraph (1.2) of this subsection. The department shall
273 maintain an ongoing, current list on its website of the amount of tax credits available
274 under this Code section.

275 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse
276 action against donors to student scholarship organizations if the commissioner
277 preapproved a donation for a tax credit prior to the date the student scholarship
278 organization is removed from the Department of Education list pursuant to Code Section

279 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to
280 the donor's compliance with paragraph (3) of this subsection.

281 (6) In addition to the reporting requirements in Code Section 20-2A-3, each student
282 scholarship organization shall file an annual report with the department showing any fees
283 or assessments retained by the student scholarship organization during the calendar year.

284 (g)(1) In order for the taxpayer to claim the student scholarship organization tax credit
285 under this Code section, a letter of confirmation of donation issued by the student
286 scholarship organization to which the contribution was made shall be attached to the
287 taxpayer's tax return or a business enterprise's tax return provided for in Code Section
288 33-8-6.

289 (2)(A) However, in the event the taxpayer files an electronic return permitted by this
290 chapter, such confirmation shall only be required to be electronically attached to the
291 return if the Internal Revenue Service allows such attachments when the data is
292 transmitted to the department. In the event the taxpayer files an electronic return and
293 such confirmation is not attached because the Internal Revenue Service does not, at the
294 time of such electronic filing, allow electronic attachments to the Georgia return, such
295 confirmation shall be maintained by the taxpayer and made available upon request by
296 the commissioner.

297 (B) With respect to a business enterprise's tax return provided for in Code Section
298 33-8-6, the Commissioner of Insurance is authorized to promulgate rules and
299 regulations regarding the manner in which such letters of confirmation of donations
300 shall be filed in the case of tax returns filed electronically.

301 (3) The letter of confirmation of donation shall contain the taxpayer's or business
302 enterprise's name, address, tax identification number, the amount of the contribution, the
303 date of the contribution, and the amount of the credit.

304 (h)(1) No credit shall be allowed under this Code section with respect to any amount
305 deducted from taxable net income by the taxpayer or business enterprise as a charitable

306 contribution to a bona fide charitable organization qualified under Section 501(c)(3) of
307 the Internal Revenue Code.

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

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

313 **PART III**
314 **SECTION 3-1.**

315 This Act shall become effective on July 1, 2022; provided, however, that Part II of this Act
316 shall become effective on January 1, 2023, and shall be applicable to all taxable years
317 beginning on or after January 1, 2023.

318 **SECTION 3-2.**

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