

HOUSE BILL 2234

By Behn

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 51; Title 49 and Title 67, relative to the
"Universal Pre-K Funding Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

WHEREAS, the Committee for Economic Development began issuing its "Child Care in State Economies" report in 2015; and

WHEREAS, as detailed in these reports, the Committee for Economic Development has found that access to affordable child care increases labor force participation and supports state and local economic growth; and

WHEREAS, the Committee for Economic Development also determined that access to affordable child care supports parents seeking additional education and training, which contributes to higher earnings over an individual's lifetime; and

WHEREAS, according to the 2022 Brookings Institute's article "What Does the Tennessee Pre-K Study Really Tell Us About Public Preschool Programs?", on average, children who attended preschool enter kindergarten with stronger school readiness skills than if they had stayed home; and

WHEREAS, the Brookings Institute also determined that benefits from preschool are greater for children from families with low incomes, dual-language learners, and children of color; and

WHEREAS, the Brookings Institute found that without public programs, both economically marginalized and middle-class families often have trouble affording preschool and are left with lower-quality options than they would like; and

WHEREAS, pre-kindergarten programs in this State have been voluntary and dependent on federal and other funding; and

WHEREAS, in order to establish a universal pre-kindergarten program throughout Tennessee, it is necessary to develop a dedicated source of funding; and

WHEREAS, the taxation of digital advertising can provide a stable and dedicated source of funds to support a universal pre-kindergarten program; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Universal Pre-K Funding Act."

SECTION 2. Tennessee Code Annotated, Section 49-6-103, is amended by deleting the language "on a voluntary basis" in subsection (a); by deleting the language ", nor shall anything in this section and §§ 49-6-104 – 49-6-110 be construed to be an entitlement to any service or program authorized by §§ 49-6-104 – 49-6-110" in subsection (b); and by deleting subsection (c) and substituting instead the following:

(c) Each LEA shall provide a pre-kindergarten program that provides the number of classrooms necessary to serve all eligible children, as defined in § 49-6-104.

SECTION 3. Tennessee Code Annotated, Section 49-6-104, is amended by deleting the section and substituting instead the following:

(a) As used in this section, "eligible child" means a child who is four (4) years of age on or before August 15 and who resides in the geographic area served by the LEA.

(b) Each LEA shall establish a pre-kindergarten program that enrolls eligible children. Each pre-kindergarten program must be designed to comprehensively address the educational needs of the children enrolled in the program, including, but not limited to, the child's cognitive, physical, social, and emotional needs.

(c) Each LEA shall establish an initial enrollment deadline for eligible children to enroll in the pre-kindergarten program. If, in the application period for a school year, the

number of program applications received by the LEA exceeds the number of students the LEA is able to serve, then the LEA shall select students for participation in the pre-kindergarten program through an enrollment lottery process.

(d) A pre-kindergarten program established pursuant to this section must:

(1) Consist of a maximum class size of twenty (20);

(2) Have at least one (1) licensed teacher per classroom who is certified in early childhood education;

(3) Have at least one (1) educational assistant per classroom who holds a child development associate credential or associate degree in early childhood education, or who is actively working toward acquiring such credentials; provided, however, that if a person with such credentials is unavailable, then educational assistants who hold a high school diploma and who have relevant experience working with children in pre-kindergarten or other early childhood programs may be employed to satisfy this requirement;

(4) Provide a minimum of five and one-half (5.5) hours of quality instructional time per day;

(5) Use an educational, age-appropriate curriculum that is aligned with the early learning standards approved by the department of education and that includes, at a minimum, literacy, writing, math, and science skills;

(6) Have a developmental learning program that addresses the cognitive, physical, emotional, social, and communication areas of child development;

(7) Meet the criteria for a "high-quality pre-kindergarten program," as identified by the department of education; and

(8) Comply with the state board of education's rules and policies related to early childhood education and pre-kindergarten programs.

(e) Enrollment in a pre-kindergarten program is voluntary.

SECTION 4. Tennessee Code Annotated, Section 49-6-105, is amended by deleting the section and substituting instead the following:

(a) An LEA may contract and enter into collaborative agreements for the operation of a pre-kindergarten program with non-school system entities in the geographical area served by the LEA, including, but not limited to, nonprofit and for-profit child care providers and Head Start programs. An LEA shall not contract or collaborate with a child care provider licensed by the department of human services, unless the provider has attained the highest designation under the rated licensing system administered by the department, pursuant to title 71, chapter 3, part 5.

(b) LEAs shall use the pre-k/kindergarten growth portfolio model approved by the state board of education, or a comparable alternative measure of student growth approved by the state board of education and adopted by the LEA, in the evaluation of pre-kindergarten and kindergarten teachers pursuant to § 49-1-302.

(c) LEAs shall notify teachers evaluated using a growth portfolio model of any training or professional development opportunities available on growth portfolio models.

SECTION 5. Tennessee Code Annotated, Section 49-6-106, is amended by deleting the section.

SECTION 6. Tennessee Code Annotated, Section 49-6-107, is amended by deleting the section and substituting instead the following:

(a) Subject to appropriations, this state shall fund one hundred percent (100%) of the costs required for an LEA to provide the number of classrooms, and to employ the number of licensed teachers and educational assistants, required for the LEA to comply with the requirements of § 49-6-104(d). Subject to appropriations, the commissioner of

education shall allocate to each LEA an amount sufficient for the LEA to serve all eligible children, as defined in § 49-6-104, in the LEA's pre-kindergarten program.

(b) It is the legislative intent that funds in the universal pre-K fund, established in § 67-4-1307, must be made available for appropriation and expenditure in accordance with this section.

(c) An eligible child, as defined in § 49-6-104, shall not be required to pay tuition or fees to enroll in, or attend, a pre-kindergarten program established by an LEA. This section does not prohibit an LEA from charging fees for child care provided outside the instructional day of the LEA's pre-kindergarten program.

SECTION 7. Tennessee Code Annotated, Section 49-6-108, is amended by deleting subdivision (1) and by deleting subdivisions (5) and (6) and substituting instead the following:

(5) Review existing regulations and standards, and recommend needed changes, to promote a consistent assessment and monitoring process for providers of pre-kindergarten programs established under §§ 49-6-103 — 49-6-110; and

(6) Provide an annual report to the governor and the general assembly on the status of pre-kindergarten programs, which must include, at a minimum, the number, location, and types of providers of pre-kindergarten classrooms and the number of children served. The annual report must be posted on the department of education, office of early learning's website to provide public access to the report.

SECTION 8. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part:

67-4-1301. Findings and intent.

The general assembly finds and declares the following:

(1) The largest internet corporations use their monopolistic control of essential online platforms to extract economic rents from their users in the form

of personal data. This personal data is highly valuable and acquired at a steep discount, as demonstrated by the massive profit these corporations make selling this information to digital advertisers. For the purposes of stability and equity in the tax base, such economic rents are a favorable target for taxation;

(2) Tennessee sales and use tax statutes provide that specified digital products are taxed at the state rate of seven percent (7%) and a standard local tax rate of two and one-half percent (2.5%), instead of the local tax rate in effect in a county or municipality. However, many digital transactions are hard to bring into the digital sales tax base because instead of paying a monetary fee, customers sometimes barter their personal information for access to digital platforms. This personal information is in turn sold for use in targeted advertisements on digital platforms. To tax this consumption, leading tax economists have suggested using the receipts earned from digital data transactions as a proxy for the value of the barter;

(3) As has been noted by many, including the Organisation for Economic Co-operation and Development (OECD), the value of the consumption provided by digital platforms is typically greater as the size of its network is greater. As such, the general assembly finds that the consumption value provided by networks of a small size is negligible, especially when compared to the compliance burden that would be imposed on smaller digital platforms; and

(4) Digital advertising is not substantially similar to traditional print or broadcast advertising, as traditional advertising neither relies on the extraction of valuable personal information from users, nor does it serve as a proxy for currently untaxed consumption.

67-4-1302. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Annual gross revenues" means income or revenue from all sources, before any expenses or taxes, computed according to generally accepted accounting principles;

(2) "Assessable base" means the annual gross revenues derived from data transactions from digital advertising services in this state;

(3) "Commissioner" means the commissioner of revenue;

(4) "Department" means the department of revenue;

(5) "Digital advertising services":

(A) Means data transactions from advertising services on a digital interface; and

(B) Includes advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services that use personal information about the people to whom the ads are being served;

(6) "Digital interface" means any type of software, including a website, part of a website, or application that a user is able to access;

(7) "Person":

(A) Means an individual, firm, partnership, association, corporation, limited liability company, trust, or other legal or business entity;

(B) Includes a receiver, executor, trustee, guardian, or other representative appointed by order of any court; and

(C) Does not include a governmental entity or a unit or instrumentality of a government entity; and

(8) "User" means an individual or other person who accesses a digital interface with a device.

67-4-1303. Tax imposed.

(a) A data transaction privilege tax is imposed on a person's annual gross revenues that are derived from data transactions from digital advertising services in this state.

(b)

(1) The portion of a person's annual gross revenues derived from data transactions from digital advertising services in this state must be determined using an apportionment factor.

(2) The apportionment factor is a fraction, the numerator of which is the person's annual gross revenues derived from data transactions from digital advertising services in this state and the denominator of which is the person's annual gross revenues derived from data transactions from digital advertising services in the United States.

(3) The department shall promulgate rules that specify how to determine the state from which revenues from data transactions from digital advertising services are derived.

67-4-1304. Tax rate.

The data transaction privilege tax imposed pursuant to § 67-4-1303 is levied at the rate of nine and one-half percent (9.5%) of the assessable base and applies only to persons with an assessable base of fifty million dollars (\$50,000,000) or more.

67-4-1305. Returns.

(a) Each person that, in a calendar year, has an assessable base of at least fifty million dollars (\$50,000,000) shall complete and file with the department a return on or before April 15 of the following year.

(b)

(1) A person that reasonably expects that the person's assessable base will be fifty million dollars (\$50,000,000) or more shall complete and file with the department a declaration of estimated tax, on or before April 15 of that year.

(2) A person required under subdivision (b)(1) to file a declaration of estimated tax for a taxable year shall complete and file with the department a quarterly estimated tax return on or before June 15, September 15, and December 15 of that year.

(c) A person required to file a return under this section shall file with the return an attachment that provides any information that the department requires to determine annual gross revenues derived from data transactions from digital advertising services in this state.

(d) A person required to file a return under this section shall maintain records of data transactions from digital advertising services provided in this state and the basis for the calculation of the data transaction privilege tax owed for a minimum of five (5) years.

(e) The chief executive officer, proprietor, owner, or highest-ranking manager shall sign annual and quarterly returns to certify the accuracy of the information contained therein under penalty of perjury.

67-4-1306. Tax payment.

(a) Except as provided in subsection (b), a person who is required to file a return under this part shall pay the data transaction privilege tax with the return that covers the period for which the tax is due.

(b) A person required to file estimated data transaction privilege tax returns under § 67-4-1305(b) shall pay:

(1) At least twenty-five percent (25%) of the estimated data transaction privilege tax shown on the declaration or amended declaration for the taxable year:

(A) With the declaration or amended declaration that covers the year; and

(B) With each quarterly return for that year; and

(2) Any unpaid digital transaction privilege tax for the year shown on the person's return that covers that year with the return.

67-4-1307. Allocation of tax revenue – Universal pre-K fund.

(a) All revenue from the data transaction privilege tax collected under this part, including penalties and interest, must be deposited in a special account in the state treasury to be known as the universal pre-K fund. The fund shall be administered by the department of education and used exclusively to fund, establish, and maintain a universal pre-kindergarten program in each public and public charter elementary school in this state in accordance with §§ 49-6-104 and 49-6-107. Moneys in the fund may be invested by the state treasurer in accordance with § 9-4-603. Notwithstanding another law to the contrary, interest accruing on investments and deposits of the universal pre-K fund must be credited to the fund, shall not revert to the general fund, and must be carried forward into the subsequent fiscal year. Any balance remaining unexpended at the end of a fiscal year in the fund shall not revert to the general fund but must be carried forward into the subsequent fiscal year.

(b) Notwithstanding subsection (a), two percent (2%) of the revenue from the data transaction privilege tax collected under this part, including penalties and interest,

must be paid into the state treasury and earmarked and allocated to the department of revenue for the administration and enforcement of this part.

(c) For purposes of this section, "universal pre-kindergarten" means a program established pursuant to § 49-6-104, and includes a program established under § 49-6-104 that is intended to provide high-quality education before attending kindergarten and has a purpose to:

- (1) Increase access to voluntary high-quality pre-kindergarten programs;
- (2) Provide developmentally appropriate activities for children in this state;
- (3) Expand early childhood community capacity;
- (4) Support linguistically and culturally appropriate curricula; and
- (5) Focus on school readiness.

67-4-1308. Violations and penalties.

(a) If the total amount of the digital transaction privilege tax due for the year is less than three hundred dollars (\$300), then it is a Class E felony for:

- (1) A person subject to this part to knowingly:
 - (A) Fail to file a return;
 - (B) Violate § 67-4-1305 or § 67-4-1306;
 - (C) Fail to keep books and records as required by this part;
 - (D) File a fraudulent return; or
 - (E) Violate a rule promulgated by the department for the administration and enforcement of this part;
- (2) An officer or agent of a corporation or manager, member, or agent of a limited liability company subject to this part to knowingly sign a fraudulent return filed on behalf of such corporation or limited liability company; or

(3) An accountant or other agent to knowingly enter false information on the return of any taxpayer.

(b) If the total amount of the digital transaction privilege tax due for the year is three hundred dollars (\$300) or more, then it is a Class D felony for:

(1) A person subject to this part to knowingly:

(A) Fail to file a return;

(B) Violate § 67-4-1305 or § 67-4-1306;

(C) Fail to keep books and records as required by this part;

(D) File a fraudulent return; or

(E) Violate a rule promulgated by the department for the administration and enforcement of this part;

(2) An officer or agent of a corporation or manager, member, or agent of a limited liability company subject to this part to knowingly sign a fraudulent return filed on behalf of such corporation or limited liability company; or

(3) An accountant or other agent to knowingly enter false information on the return of any taxpayer.

(c) A prosecution for an act in violation of this section must commence within three (3) years of the commission of the act.

67-4-1309. Rulemaking.

The commissioner shall promulgate rules and forms necessary to implement this part. Rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 9. For purposes of rulemaking, this act takes effect upon becoming a law, the public welfare requiring it. Sections 1 through 7 of this act take effect upon becoming a law, the

public welfare requiring it, and apply to the 2025-2026 school year and each school year thereafter. Section 8 of this act takes effect January 1, 2025, the public welfare requiring it.