

House Bill 1133 (AS PASSED HOUSE AND SENATE)

By: Representatives Casas of the 103rd, Ehrhart of the 36th, Lindsey of the 54th, Lewis of the 15th, Stephens of the 164th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Titles 20 and 48 of the Official Code of Georgia Annotated, relating, respectively,
 2 to education and revenue and taxation, so as to provide for a program of educational
 3 improvement; to provide for definitions; to provide for student scholarship organizations; to
 4 provide for procedures; to provide for an income tax credit with respect to qualified
 5 education expenses; to provide for an income tax exclusion with respect to certain
 6 scholarship amounts; to provide for conditions and limitations; to provide for powers, duties,
 7 and authority of the state revenue commissioner with respect to the foregoing; to provide for
 8 related matters; to provide an effective date; to provide for applicability; to repeal conflicting
 9 laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by
 13 adding a new chapter to read as follows:

14 "CHAPTER 2A

15 20-2A-1.

16 As used in this chapter, the term:

17 (1) 'Eligible student' means a student who is a Georgia resident enrolled in a Georgia
 18 secondary or primary public school or eligible to enroll in a qualified kindergarten
 19 program or pre-kindergarten program.

20 (2) 'Qualified school or program' means a nonpublic primary school or secondary school
 21 that:

22 (A) Is accredited or in the process of becoming accredited by one or more entities
 23 listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519; and

24 (B) Is located in this state, adheres to the provisions of the federal Civil Rights Act of
 25 1964, and satisfies the requirements prescribed by law for private schools in this state.

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

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

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

7 20-2A-2.

8 Each student scholarship organization:

9 (1) Must obligate 90 percent of its annual revenue for scholarships or tuition grants;
10 however, up to 25 percent of this amount may be carried forward for the next fiscal year;

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

12 (3) May transfer funds to another student scholarship organization;

13 (4) Must conduct an audit of its accounts by an independent certified public accountant
14 within 120 days after the completion of the student scholarship organization's fiscal year
15 and provide such audit to the Department of Revenue in accordance with Code Section
16 20-2A-3; and

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

20 20-2A-3.

21 (a) Each student scholarship organization must report to the Department of Revenue, on
22 a form provided by the Department of Revenue, by January 12 of each tax year the
23 following:

24 (1) The total number and dollar value of contributions and tax credits approved; and

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

27 Such report shall also include a copy of the audit conducted pursuant to paragraph (4) of
28 Code Section 20-2A-2.

29 (b) The Department of Revenue shall not require any other information from student
30 scholarship organizations, except as expressly authorized in this chapter.

31 20-2A-4.

32 The Department of Revenue shall provide a list of all student scholarship organizations
33 receiving contributions from businesses and individuals granted a tax credit under Code
34 Section 48-7-29.13 to the General Assembly by January 30 of each year.

1 20-2A-5.

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

7 20-2A-6.

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

11 **SECTION 2.**

12 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
13 amended by adding a new Code section to read as follows:

14 "48-7-29.13.

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

16 (1) 'Qualified education expense' means the expenditure of funds by the taxpayer during
17 the tax year for which a credit under this Code section is claimed and allowed to a student
18 scholarship organization operating pursuant to Chapter 2A of Title 20 which are used for
19 tuition and fees for a qualified school or program.

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

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

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

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

28 (2) In the case of a married couple filing a joint return, the actual amount expended or
29 \$2,500.00 per tax year, whichever is less.

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

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

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

5 (f)(1) In no event shall the aggregate amount of tax credits allowed under this Code
6 section exceed \$50 million per tax year.

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

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

10 Before making a contribution to a student scholarship organization, the taxpayer shall
11 notify the department of the total amount of contributions that the taxpayer intends to
12 make to the student scholarship organization. The commissioner shall preapprove or
13 deny the requested amount within 30 days after receiving the request from the taxpayer.

14 In order to receive a tax credit under this Code section, the taxpayer shall make the
15 contribution to the student scholarship organization within 30 days after receiving notice
16 from the department that the requested amount was preapproved. If the taxpayer does not
17 comply with this paragraph, the commissioner shall not include this preapproved
18 contribution amount when calculating the limit prescribed in paragraph (1) of this
19 subsection.

20 (4) Preapproval of contributions by the commissioner shall be based solely on the
21 availability of tax credits subject to the aggregate total limit established under
22 paragraph (1) of this subsection.

23 (g) In order for the taxpayer to claim the student scholarship organization tax credit under
24 this Code section, a letter of confirmation of donation issued by the student scholarship
25 organization to which the contribution was made shall be attached to the taxpayer's tax
26 return. The letter of confirmation of donation shall contain the taxpayer's name, address,
27 tax identification number, the amount of the contribution, the date of the contribution, and
28 the amount of the credit.

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

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

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

1 **SECTION 3.**

2 This Act shall become effective upon its approval by the Governor or upon its becoming law
3 without such approval and shall be applicable to all taxable years beginning on or after
4 January 1, 2008.

5 **SECTION 4.**

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