

HOUSE BILL 3209

By Casada

AN ACT to amend Tennessee Code Annotated, Title 49
and Title 67, relative to education tax credit
scholarships or tuition grants.

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

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, is amended by adding the following language as a new part 71:

§ 49-6-7101. As used in this part, unless the context otherwise requires:

(1) "Eligible student" means a student who is a Tennessee resident enrolled in a public elementary or secondary school or eligible to enroll in a public kindergarten or pre-kindergarten program;

(2) "Parent" means the parent, guardian, person who has custody of the child or individual who has caregiving authority under § 49-6-3001;

(3) "Qualified school or program" means a nonpublic elementary school or secondary school that:

(A) Is approved by the state board of education as a Category I, II, III or IV elementary or secondary school in accordance with the applicable rules and regulations;

(B) Is located in this state;

(C) Adheres to the provisions of the federal Civil Rights Act of 1964; and

(D) Satisfies all applicable requirements prescribed by law for nonpublic schools in this state; and

(4) "Student scholarship organization" means a charitable organization in this state that:

(A) Is exempt from federal income taxation under § 501(a) of the Internal Revenue Code, codified in 26 U.S.C. § 501(a), as an organization described in § 501(c)(3) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3);

(B) Allocates at least ninety percent (90%) of its annual revenue to educational scholarships or tuition grants that permit students to attend any qualified school of their parent's choice or the student's choice if the student is eighteen (18) years of age or older; and

(C) Does not limit the use of such scholarships or tuition grants to attendance at a specifically designated school.

§ 49-6-7102. Each student scholarship organization:

(1) Shall obligate at least ninety percent (90%) of its annual revenue to scholarships or tuition grants; however, up to twenty-five percent (25%) of the obligated amount may be carried forward for use in the next fiscal year;

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

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

(4) Shall engage an independent certified public accountant to conduct an audit of the organization's accounts to be completed within one hundred twenty (120) days after the end of the student scholarship organization's fiscal year;

(5) Shall provide such audit to the department of revenue in accordance with § 49-6-7103; and

(6) Shall annually submit notice to the department of education in accordance with department guidelines of its participation as a student scholarship organization under this part.

§ 49-6-7103.

(a) Each student scholarship organization shall report to the department of revenue for each tax year, on a form provided by the department and on a date established by the department the following:

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

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

(b) A copy of the audit required under § 49-6-7102 shall be filed with the report required under subsection (a).

(c) The department of revenue shall not require any other information from student scholarship organizations, except as expressly authorized in this part.

§ 49-6-7104. The department of revenue shall provide a list of all student scholarship organizations receiving contributions from taxpayers, as defined in § 67-4-2004(34), who have been granted a tax credit under § 67-4-2020 to the general assembly by January 30 of each year.

§ 49-6-7105.

(a) The parent of an eligible student to whom a scholarship or tuition grant is awarded shall restrictively endorse the scholarship warrant to the qualified school or program for deposit into the account of the qualified school or program. The parent may not designate any entity or individual associated with the qualified school or program as the parent's attorney-in-fact to endorse a scholarship warrant. An eligible student whose parent fails to comply with this section shall forfeit the scholarship.

(b) If an eligible student is eighteen (18) years of age or older, then the eligible student shall be required to restrictively endorse the scholarship warrant to the qualified school or program and to otherwise comply with subsection (a).

§ 49-6-7106. The department of education shall maintain on its web site a current list of all student scholarship organizations that have provided notice pursuant to § 49-6-7102(6).

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following language as a new section:

§ 67-4-2020.

(a) As used in this section, unless the context otherwise requires:

(1) "Qualified education donation" means the donation of funds by a taxpayer during the tax year to a student scholarship organization operating pursuant to title 49, chapter 6, part 71;

(2) "Qualified school or program" has the same meaning as the term is defined in § 49-6-7101;

(3) "Student scholarship organization" has the same meaning as the term is defined in § 49-6-7101; and

(4) "Student scholarship organization tax credit" means the tax credit authorized under this part.

(b) A taxpayer shall be allowed a credit against the taxes imposed by this part and the Franchise Tax Law of 1999, compiled in title 67, chapter 4, part 21 for qualified education donations in an amount not to exceed the actual amount donated or seventy-five percent (75%) of the taxpayer's franchise and excise tax liability for the tax year in which the donation is made, whichever is less.

(c) No student scholarship organization tax credit shall be allowed if the taxpayer designates the taxpayer's qualified education donation for the direct benefit of a specific

eligible student. No student scholarship organization tax credit shall be allowed to a taxpayer if a dependent of an officer, employee or stockholder who has authority to make the donation on behalf of the taxpayer receives a scholarship or tuition grant from the donee student scholarship organization.

(d) The taxpayer shall be allowed to claim any unused student scholarship organization tax credit against the taxpayer's franchise and excise tax liability in the five (5) years following the donation or until such credit is exhausted, whichever occurs first. No such credit shall be allowed the taxpayer against prior years' tax liability. In no event shall the total amount of the student scholarship organization tax credit for a taxable year exceed the taxpayer's tax liability.

(f)

(1) The aggregate amount of student scholarship organization tax credits allowed under this section shall not exceed fifty million dollars (\$50,000,000) in any tax year.

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

(3) Before making a qualified education donation to a student scholarship organization, a taxpayer shall notify the department of the total amount of the donation that the taxpayer intends to make to the student scholarship organization and request a student scholarship organization tax credit preapproval letter from the commissioner. The commissioner shall issue a tax credit preapproval letter in accordance with subdivisions (f)(1) and (2) or deny the request for the tax credit within thirty (30) days after receiving the request from the taxpayer. Such letter shall be sent to the taxpayer's address by United States mail, return receipt requested. In order to receive the tax credit, the

taxpayer shall make the donation to the student scholarship organization within thirty (30) days after receiving the tax credit preapproval letter. If the taxpayer fails to make the donation within thirty (30) days of the receipt of the tax credit preapproval letter, the commissioner shall not include the amount of the taxpayer's preapproved donation when calculating the limit prescribed in subdivision (f)(1) and the taxpayer shall not be allowed the tax credit.

(4) Preapproval of donations by the commissioner shall be based solely on the availability of student scholarship organization tax credits subject to the aggregate total limit established under subdivision (f)(1).

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

(h) No credit shall be allowed under this section with respect to any amount deducted from net earnings and losses by the taxpayer pursuant to § 67-4-2006 as a charitable contribution to a bona fide charitable organization qualified under § 501(c)(3) of the Internal Revenue Code.

SECTION 3. The commissioner of revenue and the commissioner of education are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. This act shall take effect July 1, 2010, the public welfare requiring it, and shall apply to tax years beginning on or after that date.