

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
90th General Assembly  
Regular Session, 2015

As Engrossed: H3/17/15 H3/27/15  
**A Bill**

HOUSE BILL 1745

By: Representative Sorvillo

### **For An Act To Be Entitled**

AN ACT TO ESTABLISH AN INDIVIDUAL INCOME TAX CREDIT OPPORTUNITY SCHOLARSHIP PROGRAM; TO CREATE AN INCOME TAX CREDIT FOR TUITION PAYMENTS FOR DEPENDENTS WITH CERTAIN DISABILITIES; AND FOR OTHER PURPOSES.

### **Subtitle**

TO ESTABLISH AN INDIVIDUAL INCOME TAX CREDIT OPPORTUNITY SCHOLARSHIP PROGRAM; AND TO CREATE AN INCOME TAX CREDIT FOR TUITION PAYMENTS FOR DEPENDENTS WITH CERTAIN DISABILITIES.

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

*SECTION 1. Arkansas Code Title 26, Chapter 51, is amended to add an additional subchapter to read as follows:*

*Subchapter 26 – Individual Income Tax Credit Opportunity Scholarship Program*

*26-51-2601. Title.*

*This subchapter shall be known and may be cited as the "Individual Income Tax Credit Opportunity Scholarship Program".*

*26-51-2602. Definitions.*

*As used in this subchapter:*

*(1) "Allocate" means reserving money for an award of a multiyear educational scholarship or tuition grant for a specific student;*

*(2)(A) "Qualified school" means a:*



(i) Preschool that offers services to students with disabilities; and

(ii) Nongovernmental primary school or secondary school that:

(a) Is located in this state and does not discriminate on the basis of race, color, disability, familial status, or national origin; and

(b) Requires all teaching staff and personnel who have unsupervised contact with students to be fingerprinted.

(B) "Qualified school" does not include a charter school or programs operated by a charter school; and

(3) "Student with a disability" means a student who has one (1) or more of the following conditions:

(A) Hearing impairment;

(B) Visual impairment;

(C) Developmental delay;

(D) Preschool severe delay; or

(E) Speech or language impairment.

26-51-2603. Certification as a school tuition organization – Notice of violation.

(a)(1) A nonprofit organization in this state that is exempt or has applied for exemption from federal taxation under 26 U.S.C. § 501(c)(3) may apply to the Department of Finance and Administration for certification as a school tuition organization.

(2) The department shall certify a school tuition organization that applies under subdivision (a)(1) of this section if it meets the requirements prescribed under this subchapter.

(3) A nonprofit organization shall apply for certification under this subsection on the form prescribed and furnished on request by the department.

(b) The department shall:

(1) Maintain a public registry of currently certified school tuition organizations;

(2) Make the registry available to the public on request; and

(3) Post the registry on the department's official website.

(c) The department shall send written notice by certified mail to a school tuition organization if the department determines that the school tuition organization has engaged in any of the following activities:

(1) Failing or refusing to allocate at least ninety percent (90%) of annual revenues from contributions made for the purposes of § 26-51-2607 for educational scholarships or tuition grants;

(2) Failing or refusing to file the annual reports required under § 26-51-2605;

(3) Limiting the availability of scholarships to students of only one (1) school;

(4) Encouraging, facilitating, or knowingly permitting taxpayers to engage in actions prohibited under this subchapter; and

(5) Awarding, restricting, or reserving educational scholarships or tuition grants for use by a particular student based solely on the recommendation of the donor.

(d)(1) A school tuition organization that receives notice from the department under subsection (c) of this section has ninety (90) days to correct the violation identified by the department in the notice.

(2) If a school tuition organization fails or refuses to comply after ninety (90) days, the department:

(A) May remove the school tuition organization from the list of certified school tuition organizations; and

(B) Shall make available to the public notice of the removal as soon as possible.

(3) A school tuition organization that is removed from the list of certified school tuition organizations under this section shall notify any taxpayer who attempts to make a contribution that the contribution is not eligible for a tax credit and offer to refund all donations received after the date of the notice of termination of certification.

(e)(1) A school tuition organization may request an administrative hearing on the revocation of its certification.

(2) A final decision of the department under this section is subject to judicial review.

26-51-2604. Operational requirements for school tuition organizations – Notice – Qualified schools.

(a) A certified school tuition organization shall be established to:

(1) Receive contributions from taxpayers for the purposes of income tax credits under this subchapter; and

(2) Pay educational scholarships or tuition grants to allow students to attend a qualified school of their parents' or guardians' choice.

(b) To be eligible for certification and to retain certification, a school tuition organization:

(1) Shall allocate at least ninety percent (90%) of its annual revenue from contributions made for the purposes of § 26-51-2607 for educational scholarships or tuition grants;

(2) Shall not limit the availability of educational scholarships or tuition grants to only students of one (1) school;

(3) May allow donors to recommend student beneficiaries, but shall not award, designate, or reserve scholarships solely on the basis of donor recommendations;

(4) Shall not allow donors to designate student beneficiaries as a condition of a contribution to the organization; and

(5) Shall not facilitate, encourage, or knowingly permit the exchange of beneficiary student designations in violation of § 26-51-2607(f).

(c) A school tuition organization shall include the following notice in any printed materials soliciting donations, in applications for scholarships, and on its website:

"Notice

A school tuition organization cannot award, restrict, or reserve scholarships solely on the basis of a donor's recommendation.

A taxpayer may not claim a tax credit if the taxpayer agrees to swap donations with another taxpayer to benefit either taxpayer's own dependent."

(d) In evaluating applications and awarding, designating, or reserving scholarships, a school tuition organization:

(1) Shall not award, designate, or reserve a scholarship solely on the recommendation of a person contributing money to the organization, but may consider the recommendation among other factors; and

(2) Shall consider the financial need of applicants.

(e) A school tuition organization shall use at least ninety percent (90%) of contributions made under § 26-51-2607 for educational scholarships or tuition grants for students who:

(1) Both:

(A) Attended a public primary or secondary school as a full-time student or attended a preschool program that offers services to students with disabilities at a public school for at least ninety (90) days of the prior fiscal year; and

(B) Transferred from a public school to a qualified school;

(2) Enroll in a qualified school in a kindergarten program or a preschool program that offers services to students with disabilities;

(3) Are dependents of a member of the United States Armed Forces who is stationed in this state pursuant to military orders; or

(4) Received an educational scholarship or tuition grant under subdivisions (e)(1)–(3) of this section if the student continues to attend a qualified school in a subsequent year.

(f) In awarding educational scholarships or tuition grants from contributions made under § 26-51-2607, a school tuition organization shall give priority to students and siblings of students on a waiting list for scholarships if the school tuition organization maintains a waiting list.

(g)(1) If an individual educational scholarship or tuition grant exceeds the school's tuition, the amount in excess shall be returned to the school tuition organization that made the award or grant.

(2) The school tuition organization may allocate the returned moneys:

(A) As a multiyear award for the student and report the award under § 26-51-2605; or

(B) For educational scholarships or tuition grants for other students.

26-51-2605. Annual report.

On or before September 30 of each year, each school tuition organization shall report electronically to the Department of Finance and Administration, in a form prescribed by the department, the following information, separately compiled and identified for the purposes of § 26-51-2607:

(1) The name, address, and contact person of the school tuition organization;

(2) The total number of contributions received during the previous fiscal year;

(3) The total dollar amount of contributions received during the previous fiscal year;

(4) The total number of children awarded educational scholarships or tuition grants during the previous fiscal year;

(5) The total dollar amount of:

(A) Educational scholarships and tuition grants distributed during the previous fiscal year; and

(B) Money being held for identified students' scholarships and tuition grants in future years;

(6) The cost of audits under § 26-51-2606 paid during the fiscal year;

(7) The total dollar amount of educational scholarships and tuition grants awarded during the previous fiscal year to:

(A) Students whose family income meets the economic eligibility requirements established under the federal school lunch and child nutrition acts for free or reduced price lunches, 42 U.S.C. §§ 1751 – 1785; and

(B) Students whose family income exceeds the threshold prescribed by subdivision (7)(A) of this section but does not exceed one hundred eighty-five percent (185%) of the economic eligibility requirements established under the federal school lunch and child nutrition acts for free or reduced price lunches, 42 U.S.C. §§ 1751 – 1785;

(8) For each school to which educational scholarships or tuition grants were awarded:

(A) The name and address of the school;

(B) The number of educational scholarships and tuition grants awarded during the previous fiscal year; and

(C) The total dollar amount of educational scholarships and tuition grants awarded during the previous fiscal year; and

(9) The names, job titles, and annual salaries of the three (3) employees who receive the highest annual salaries from the school tuition organization.

26-51-2606. Audits and financial reviews.

(a)(1) On or before September 30 of each year, each school tuition organization that received at least one million dollars (\$1,000,000) in total donations in the previous fiscal year shall provide for a financial audit of the school tuition organization.

(2) The audit required under this subsection shall:

(A) Evaluate the organization's compliance with § 26-51-2604(b)(1); and

(B) Be conducted:

(i) In accordance with generally accepted auditing standards; and

(ii)(a) By an independent certified public accountant licensed in this state.

(b) The certified public accountant conducting the audit under this section and the firm the certified public accountant is affiliated with shall be independent with respect to the school tuition organization, the officers and directors of the school tuition organization, the services performed by the certified public accountant, and all other independent relationships prescribed by generally accepted auditing standards.

(b)(1) On or before September 30 of each year, each school tuition organization that received less than one million dollars (\$1,000,000) in total donations in the previous fiscal year shall provide for a financial review of the organization.

(2) The financial review required under this subsection shall:

(A) Evaluate the school tuition organization's compliance with the fiscal requirements of this subchapter; and

(B) Be conducted:

(i) In accordance with standards for accounting and review services; and

(ii)(a) By an independent certified public accountant licensed in this state.

(b) The certified public accountant conducting the audit under this section and the firm the certified public accountant is affiliated with shall be independent with respect to the school tuition organization, the officers and directors of the school tuition organization, the services performed by the certified public accountant, and all other

independent relationships prescribed by generally accepted auditing standards.

(c) Within five (5) days after receiving the audit or financial review under this section, the school tuition organization shall file a signed copy of the audit or financial review with the Department of Finance and Administration.

(d)(1) A school tuition organization shall pay the fees and costs of a certified public accountant under this section from the school tuition organization's operating monies.

(2) The fees and costs of the certified public accountant shall be excluded from the calculation of total revenues spent on scholarships and tuition grants.

26-51-2607. Credit for contributions to school tuition organization.

(a)(1) An income tax credit of up to four thousand four hundred dollars (\$4,400) is allowed against the taxes imposed under this chapter for the amount of voluntary cash contributions by a taxpayer during the taxable year to a school tuition organization that is certified under this subchapter at the time of donation.

(2) However, the total amount of income tax credits that may be claimed by all taxpayers in a tax year shall not exceed four hundred forty thousand dollars (\$440,000).

(3) The income tax credits allowed under this section shall be awarded on a first-come, first-serve basis.

(b) A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half (1/2) of the income tax credit that would have been allowed for a joint return.

(c) Any unused income tax credit under this section may be carried forward for five (5) consecutive tax years following the tax year in which the income tax credit was earned.

(d) The credit allowed by this section is in lieu of any deduction under 26 U.S.C. § 170 taken for state tax purposes.

(e) The income tax credit under this section is not allowed if the taxpayer:

(1) Designates the taxpayer's contribution to the school tuition organization for the direct benefit of a dependent of the taxpayer or if the

taxpayer designates a student beneficiary as a condition of the taxpayer's contribution to the school tuition organization; or

(2) With the intent to benefit the taxpayer's dependent, agrees with one (1) or more other taxpayers to designate each taxpayer's contribution to the school tuition organization for the direct benefit of the other taxpayer's dependent.

(f) For the purposes of this section, a contribution, for which a credit is claimed, that is made on or before the fifteenth day of the fourth month following the close of the taxable year may be applied to either the current or preceding taxable year and is considered to have been made on the last day of that taxable year.

SECTION 2. EFFECTIVE DATE. Section 1 of this act is effective for tax years beginning on or after January 1, 2015.

/s/Sorvillo