

Providing Academic Choice in Education (P.A.C.E.)

The exact words of the bill are shown in regular type. Plain language explanations are printed in italic type within the double rules above the section to which they refer.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY AMENDING SECTION 12-6-3790 SO AS TO ALLOW AN INCOME TAX CREDIT FOR CONTRIBUTIONS TO A SCHOLARSHIP FUNDING ORGANIZATIONS THAT PROVIDES GRANTS FOR STUDENTS TO ATTEND CERTAIN INDEPENDENT AND HOME SCHOOLS, TO SPECIFY THE MANNER IN WHICH THE CREDIT IS CLAIMED, TO SPECIFY THE PROCESS BY WHICH CERTAIN ORGANIZATIONS AND SCHOOLS BECOME ELIGIBLE, TO SPECIFY CERTAIN INFORMATION WHICH MUST BE MADE PUBLIC, AND TO ALLOW THE STATE TREASURER AND DEPARTMENT OF REVENUE TO ENFORCE THE PROVISIONS OF THE CREDIT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

This first Subsection (A) provides the basic definitions of various terms used in the bill.

“Section 12-6-3790. (A) As used in this section:

Subsection (A)(1)(a) – (f) outlines which schools are eligible to participate. Generally, these are K-12 independent schools that do not discriminate, are physically located in SC, have a curriculum that satisfies the SC diploma requirements, have facilities that comply with federal, state and local laws, and are members or accredited by certain statewide and national organizations.

- (1) **‘Eligible School’** means an independent school including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met, that:
- (a) offers a general education to primary or secondary school students;
 - (b) does not discriminate on the basis of race, color, or national origin;
 - (c) is located in this State;
 - (d) has an educational curriculum that includes courses set forth in the State’s diploma requirements;
 - (e) has school facilities that are subject to applicable federal, state, and local laws; and

Subsection (A)(1)(f) has been corrected to reflect the correct name of the Southern Association of Colleges and Schools (fka AdvancED, now Cognia) and to add other non-SCISA and non-SCACS independent school organizations. This is necessary because not all independent schools are religiously affiliated or participate in statewide organized sports leagues. There are also constitutional establishment clause concerns with limiting the eligible schools to a relatively small subset of the pool of independent schools in SC.

(f) is a member in good standing of the South Carolina Association of Christian Schools, the South Carolina Independent Schools Association, the Palmetto Association of Independent Schools, the American Montessori Society, the International Montessori Council, or the National Association of Private Schools or alternatively accredited by Cognia or the National Council for Private School Accreditation.

Subsection (A)(2) defines ‘Exceptional needs child’ or children with special needs. There is no change in definition from prior years. Children generally have to have a public school Individualized Education Plan (IEP), Individualized Service Plan (ISP) or other public school designation of eligibility. Since 2014, children can also be designated as eligible by certain medical professionals within the past three years. Added permanent eligibility for children with permanent disabilities so they do not have to update their eligibility paperwork every three years.

(2) **‘Exceptional needs child’** means a child:

(a)(i) who has been evaluated in accordance with this state’s evaluation criteria, as set forth in S.C. Code Ann. Regs. 43-243.1, and determined eligible as a child with a disability who needs special education and related services, in accordance with the requirements of Section 300.8 of the Individuals with Disabilities Education Act; or

(ii) who has been diagnosed as either permanently or within the last three years by a licensed speech-language pathologist, psychiatrist, or medical, mental health, psychoeducational, or other comparable licensed health care provider as having a neurodevelopmental disorder, a substantial sensory or physical impairment such as deaf, blind, or orthopedic disability, or some other disability or acute or chronic condition that significantly impedes the student’s ability to learn and succeed in school without specialized instructional and associated supports and services tailored to the child’s unique needs; and

(b) the child’s parents or legal guardian believes that the services provided by the school district of legal residence do not sufficiently meet the needs of the child.

Subsection (A)(3) defines ‘Disadvantaged child’ or low-income children. Generally, families must meet the qualifications for federal Medicaid benefits.

(3) **‘Disadvantaged child’** means a child who is eligible for the federal free or reduced lunch program and whose family meets the qualifications for federal Medicaid benefits.

Subsection (A)(4) defines ‘PACE Scholarship child’ or children moving from a public to an independent school. These children are already being paid for by the State and thus there should be no revenue cost to the State. All children are eligible and scholarship grants are only limited by available funds and space in independent schools. Additionally, children in state designated low performing schools (bottom 10%) or subject to documented bullying are eligible without any public school residency requirement.

(4) **‘PACE Scholarship child’** means a child who is a South Carolina resident who, immediately prior to receiving a scholarship or tuition grant under this section and enrolling in an Eligible school or program, was enrolled in a South Carolina secondary or primary public school or who is eligible to enroll in a qualified first grade, kindergarten or pre-kindergarten program; provided, however, that if a student is deemed an eligible student pursuant to this paragraph, he or she shall continue to qualify as such until he or she graduates, reaches the age of 20, or returns to a public school, whichever occurs first; and provided, further, that the enrollment requirement shall be waived in the case of a student who, based on the school attendance zone of his or her primary residence, is or would be assigned to a public school that the South Carolina Department of Education determines to be a low-performing Priority School, or who is the subject of an officially documented case of school based physical or psychological violence or student related verbal abuse threatening physical harm immediately prior to receiving a scholarship or tuition grant under this section.

Subsection (A)(5) defines what is required to be an independent nonprofit scholarship funding organization (SFO). This section returns the program to the management of independent and mission-based nonprofits as is constitutionally protected and how these programs are run in all other states with similar K-12 tax credit programs. Other sections herein provide for the necessary and substantial oversight from the Department of Revenue and the government appointed board of Exceptional SC.

(5) **‘Nonprofit scholarship funding organization’** means a charitable organization that:
(a) is exempt from federal tax pursuant to Section 501(a) of the Internal Revenue Code by being listed as an exempt organization in Section 501(c)(3) of the tax code;

Subsection (A)(5)(b) caps administrative fees for nonprofit scholarship funding organizations to 5% of tax credit donations. Generally, fees range from 5% on the low-end to over 10% in other states. The 5% cap would be the lowest allowed administrative fee of any comparable legislatively authorized program in SC. No change from the ECENC proviso as originally passed in 2013.

(b) allocates at least ninety-five percent of its annual contributions received during a particular year to provide grants for tuition to children enrolled in an eligible school meeting the criteria of this section and grants for home school curriculum fees, and incurs administrative expenses annually of not more than five percent of its annual contributions for a particular year to cover operational costs;

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(c) allocates all of its funds used for grants on an annual basis to children who are exceptional needs, disadvantaged, PACE Scholarship children or for home school curriculum fees;

(d) does not provide grants only for the benefit of one school, and if the Treasurer determines that the nonprofit scholarship funding organization is providing grants to one particular school, the tax credit allowed by this section may be disallowed;

(e) does not have as a volunteer, contractor, consultant, fundraiser, or member of its governing board any parent, legal guardian, or member of their immediate family who has a child or ward who is currently receiving or has received a scholarship grant authorized by this section from the organization within one year of the date the parent, legal guardian, or member of their immediate family became a board member;

(f) does not have as a member of its governing board or an employee, volunteer, contractor, consultant, or fundraiser who has been convicted of a felony;

(g) does not release personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain; and

(h) does not place conditions on schools enrolling students receiving scholarships to limit the ability of the schools to enroll students accepting grants from other nonprofit scholarship funding organizations.

(6) **‘Parent’** means the natural or adoptive parent or legal guardian of a child.

(7) **‘Person’** means an individual, partnership, corporation, or other similar entity.

(8) **‘Qualifying student’** means a student who is either (i) an exceptional needs child, (ii) a disadvantaged child, or (iii) a PACE Scholarship child, a South Carolina resident, and who is eligible to be enrolled in a South Carolina secondary or elementary public school at the pre-kindergarten or later-year level for the applicable school year.

(9) **‘Resident public school district’** means the public school district in which a student resides.

(10) **‘Transportation’** means transportation to and from school only.

(11) **‘Tuition’** means the total amount of money charged for the cost of a qualifying student to attend an eligible school including, but not limited to, fees for attending the school, textbook fees, and school-related transportation.

(12) **‘Department’** means the Department of Revenue.

Subsection (A)(13) adds a clarifying definition for ‘school year’. There has been some confusion in the past related to the annual proviso, but this should prevent any confusion in the future.

(13) **‘School year’** means July first through June thirtieth each year.

Subsection (A)(14) defines ‘home school’ to mean one of the three State approved home school options. There are approximately 22 thousand home school children in SC saving the State and estimated \$214 million per year according to recent reports. <http://www.intellectualtakeout.org/article/how-much-money-each-state-saves-thanks-homeschooling> (July 20, 2017)

(14) **‘Home school’** means a home, residence, or location where a parent or legal guardian teaches one or more children as authorized pursuant to Section 59-65-40, 59-65-45, or 59-65-47. No provision of this section subjects any home school to additional facility requirements.

(15) **‘Home school child’** means any child attending an eligible home school.

(16) **‘Treasurer’** means the Office of the State Treasurer.

Subsection (A)(16) defines ‘home school curriculum fees’ as out-of-pocket instructional expenses, which upon information and belief generally cost families \$800 to \$1,000 per year for a child.

(16) **‘Home school curriculum fees’** means the total amount of money charged for instruction-related expenditures of a home school child to attend an eligible home school including, but not limited to, curriculum packages, textbooks, digital education, and testing materials.

This next Subsection (B) is the enabling tax credit language for each of the four pools of credits. The law makes it clear that the donor cannot designate a specific child or school as the beneficiary of the tax credit contribution. No change except for the addition of disadvantaged, PACE Scholarship and homeschool children.

(B)(1) – Exceptional Needs Children.

(B)(2) – Disadvantaged Children.

(B)(3) – PACE Scholarship Children.

(B)(4) – Home School Children.

(B)(1) A person is entitled to a tax credit against income taxes imposed pursuant to this chapter, or bank taxes imposed pursuant to Chapter 11 of this title for the amount of cash and the monetary value of any publicly traded securities the person contributes to a nonprofit scholarship funding organization up to the limits of this section if:

(a) the contribution is used to provide grants for tuition to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this section; and

(b) the person does not designate a specific child or school as the beneficiary of the contribution.

(2) A person is entitled to a tax credit against income taxes imposed pursuant to this chapter, or bank taxes imposed pursuant to Chapter 11 of this title for the amount of cash and the monetary value of any

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publicly traded securities the taxpayer contributes to a nonprofit scholarship funding organization up to the limits of this section if:

- (a) the contribution is used to provide grants for tuition to disadvantaged children enrolled in eligible schools who qualify for these grants under the provisions of this section; and
- (b) the taxpayer does not designate a specific child or school as the beneficiary of the contribution.

(3) A person is entitled to a tax credit against income taxes imposed pursuant to this chapter, or bank taxes imposed pursuant to Chapter 11 of this title for the amount of cash and the monetary value of any publicly traded securities the taxpayer contributes to a nonprofit scholarship funding organization up to the limits of this section if:

- (a) the contribution is used to provide grants for tuition to PACE Scholarship children enrolled in eligible schools who qualify for these grants under the provisions of this section; and
- (b) the taxpayer does not designate a specific child or school as the beneficiary of the contribution.

(4) A person is entitled to a tax credit against income taxes imposed pursuant to this chapter, or bank taxes imposed pursuant to Chapter 11 of this title for the amount of cash and the monetary value of any publicly traded securities the person contributes to a nonprofit scholarship funding organization up to the limits of this section if:

- (a) the contribution is used to provide grants for home school curriculum fees to home school children attending a home school who qualify for these grants under the provisions of this section; and
- (b) the person does not designate a specific child or home school as the beneficiary of the contribution.

This next Subsection (C) sets the annual maximum for an eligible child's scholarship grants.

(C)(1). Exceptional Needs & Disadvantaged Children = lesser of \$11,000 or actual cost per child. The annual maximum has not been increased. Low-income children are allowed up to \$11,000 due to concerns that a lower limit would not provide for the funding necessary for these children to receive 100% scholarships. The concern voiced by public school advocates is that a 50% scholarship is meaningless to a low-income child whose Medicaid eligible family cannot afford the additional 50%. A larger annual maximum should alleviate these concerns. No change except adding disadvantaged children.

(C)(1) Grants may be awarded by a scholarship funding organization for a school year in an amount not exceeding eleven thousand dollars or the total cost of tuition, whichever is less, for qualifying students who are either (i) exceptional needs or (ii) disadvantaged at an eligible school. Before awarding any grant, a scholarship funding organization must receive written documentation from the parent documenting that the qualifying student is an exceptional needs or disadvantaged child. Upon approving the application, the scholarship funding organization shall issue a paper check payable to the parent or guardian of the qualifying student and delivered to the eligible school. If the qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school shall return a prorated amount of the grant to the scholarship funding organization based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student's departure.

This next Subsection (C)(2) sets the PACE Scholarship annual maximum at the average state expenditure per student. The Treasurer is directed to determine said amount and publish it annually by January 1. It is expected that by using the average state expenditure per child, and given the PACE Scholarships are for children already being funded by the State, the budget scoring by the SC Revenue and Fiscal Affairs Office (RFA) for this \$40 million tranche of tax credits should be \$0.

(C)(2) Grants may be awarded by a scholarship funding organization for a school year in an amount not exceeding the average state expenditures per student in fall enrollment in public elementary and secondary education for this state or the total cost of tuition, whichever is less, for qualifying students who are PACE Scholarship children at an eligible school. The Treasurer shall determine and publish such amount annually, no later than January 1. Upon approving the application, the scholarship funding organization shall issue a paper check payable to the parent or guardian of the qualifying student and delivered to the eligible school. If the qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school shall return a prorated amount of the grant to the scholarship funding organization based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student's departure.

This next Subsection (C)(3) sets the Home School Curriculum Fees grant at the lesser of \$1,000 or actual cost per child.

(3) Grants may be awarded by a scholarship funding organization for a school year in an amount not exceeding one thousand dollars or the total cost of home school curriculum fees, whichever is less, for a qualifying home school child attending a home school. Before awarding any grant, a scholarship funding organization shall receive written documentation from the parent documenting that the student is a home school child. A scholarship funding organization may reimburse a parent directly for expenditures actually paid for home school curriculum fees, or pay vendors directly for home school curriculum fees on behalf of the home school child.

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The following Subsection (D) sets the annual tax credit caps for each of the four pools of credits.

(D)(1)(a). Exceptional Needs = \$25 million. (Previously \$14 million total.)

(D)(1)(b). Disadvantaged = \$25 million. (New.)

(D)(1)(c). PACE Scholarship = \$40 million. (New.)

(D)(1)(d). Home School Curriculum Fees = \$10 million. (New.)

(D)(1)(f) creates an automatic 25% increase in the individual tax credit limit caps in the succeeding calendar year following the successfully attaining of the specific cap.

(D)(1)(a) The tax credits authorized by subsection (B)(1) may not exceed cumulatively a total of **twenty-five million** dollars each calendar year for contributions made on behalf of exceptional needs students.

(b) The tax credits authorized pursuant to subsection (B)(2) may not exceed cumulatively a total of **twenty-five million** dollars each calendar year for contributions on behalf of disadvantaged children.

(c) The tax credits authorized pursuant to subsection (B)(3) may not exceed cumulatively a total of **forty million** dollars each calendar year for contributions on behalf of PACE Scholarship children.

(d) The tax credits authorized pursuant to subsection (B)(4) may not exceed cumulatively a total of **ten million** dollars each calendar year for contributions on behalf of home school children.

(e) If the department determines that the total of the credits claimed in this subsection by all taxpayers exceeds the limit amount, it shall allow credits only up to those amounts on a first-come, first-served basis.

(f) The tax credits authorized pursuant to subsection (B)(1), (2), (3) or (4) shall automatically and permanently increase by twenty-five percent in the succeeding calendar year whenever the total of the specific individual credit claimed meets the limit amount.

Subsection (D)(1)(g) authorizes the Department of Revenue, in coordination with the Treasurer, to establish donor tax credit application process which is typical in other states and provides for the orderly allocation of credits. Although the Department has had this authority for several years now, they have yet to actually implement an application process which is highly desired by taxpayer donors, their tax advisors, and scholarship funding organizations. This section not only authorizes the Department to create an application process, it specifically instructs the Department to do so in coordination with the Treasurer.

(g) The department, in coordination with the Treasurer, shall establish an application process to determine the amount of credit available to be claimed. The receipt of the application by the department shall determine priority for the credit. The credit must be claimed on the return for the tax year that the contribution is made.

The following Subsection (D)(2) specifies that tax credits are not refundable (no change) and can be applied to 100% of tax liability (previously 75%) consistent with other similar SC tax credits. The subsection also provides for a 10-year carryforward similar to other SC tax credits and available with permanent law, something that was not legally possible with an annual budget proviso.

(2) A taxpayer may not claim more than one hundred percent of his total tax liability for the tax year in contribution toward the tax credits authorized by subsection (B). This credit is not refundable. If the credit exceeds the taxpayer's tax liability for the taxable year, the excess amount may be carried forward for credit against income or bank taxes in the next ten succeeding taxable years.

Subsection (D)(3) provides for an "add back" on the donor taxpayer's SC income tax return so that there is no double-dipping. No change.

(3) If a taxpayer deducts the amount of the contribution on the taxpayer's federal return and claims the credit allowed by this section, then the taxpayer shall add back the amount of the deduction for purposes of South Carolina income or bank taxes.

(4) The department shall prescribe the form and manner of proof required to obtain the credits authorized by subsection (B). Also, the department, in coordination with the Treasurer, shall develop a method of informing taxpayers if the credit limit is met at any time during the year.

Subsection (E) provides that corporate donors cannot "sell" credits to others. No change.

(E) A corporation or entity entitled to a credit under subsection (B) may not convey, assign, or transfer the credit authorized by this section to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

This next Subsection (F) simply addresses a concern some schools have raised. This subsection makes clear that no state agency can regulate the educational programs of an eligible school simply because they accept these scholarship grants. Other laws may however still apply. No change other than to add the Treasurer.

(F) Except as otherwise provided, neither the Department of Education, the Department of Revenue, the Treasurer nor any other state agency may regulate the educational programs of an eligible school that accepts students receiving scholarship grants pursuant to this section.

SC OFFICE OF STATE TREASURER OVERSIGHT PROVISION: *This next Subsection (G) provides for the authorization for the Treasurer's Office to have oversight over the nonprofit scholarship funding organizations and the overall program. This solves the legal and unconstitutional concerns raised due to the Department of Revenue administered structure experiment implemented in July 2016, as well as the practical problems and other issues experienced with fundraising and implementation under the state authorized Exceptional SC non-profit's administration.*

(G)(1) The Treasurer shall approve and oversee the scholarship funding organizations and address any citizen concerns about the programs' administration at eligible schools or with the scholarship funding organizations.

(2) By August first of each year, each nonprofit scholarship funding organization shall apply with the Treasurer to be considered an eligible organization for the succeeding calendar year for which its contributors are allowed the tax credit provided by this section. If a nonprofit scholarship funding organization does not apply, the organization may not be published as an approved organization, and contributions to that organization must not be allowed for purposes of the credit allowed by this section. A nonprofit scholarship funding organization's application must contain:

- (a) the number and total amount of grants issued to eligible schools in the preceding school year;
- (b) for each grant issued to an eligible school in the preceding school year, the identity of the school and the amount of the grant;
- (c) an itemization and detailed explanation of any fees or other revenues obtained from or on behalf of any eligible schools;
- (d) a copy of the organization's Form 990 or other comparable federal submission that indicates the provisions of the Internal Revenue Code under which the organization has been granted exempt status for purposes of federal taxation;
- (e) a copy of a compilation, review, or audit of the organization's financial statements, conducted by a certified public accounting firm;
- (f) the criteria and eligibility requirements for scholarship awards; and
- (g) a certification by the organization that it meets the definition of a nonprofit scholarship funding organization as that term is defined in subsection (A)(5) and that the report is true, accurate, and complete under penalty of perjury in accordance with Section 16-9-10.

(3) The Treasurer shall disclose on its website the names of qualifying nonprofit scholarship funding organizations and eligible schools. The Treasurer also may disclose the names of nonprofit scholarship funding organizations that applied but were not qualified by the Treasurer and those organizations whose eligibility has been revoked in accordance with subsection (H)(2), as well as the reason the application of the organization was not accepted or the reason its qualification was revoked.

(4) By September first of each year, the Treasurer shall publish on its website a list of all qualifying nonprofit scholarship funding organizations for the succeeding calendar year, to include their names, addresses, telephone numbers, and, if available, website addresses. Also, the results of the audit required by item (2)(e) must be published with the list.

Annually the Treasurer shall submit a report to the Legislature and Governor. No change except to add the scholarship funding organizations submitted tax return to the report.

- (5) By January fifteenth of each year, the Treasurer shall report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor:
- (a) the number and total amount of grants issued to eligible schools by each scholarship funding organization in the prior school year;
 - (b) the identity of the school and the amount of the grant for each grant issued to an eligible school in the prior school year by each scholarship funding organization;
 - (c) an itemization and detailed explanation of fees or other revenues obtained from or on behalf of an eligible school by any scholarship funding organization;
 - (d) a copy of the each scholarship funding organization's Form 990 or other comparable federal submission that indicates the provisions of the Internal Revenue Code under which the organization has been granted exempt status for purposes of federal taxation;
 - (e) a copy of a compilation, review, or audit of each scholarship funding organization conducted by a certified public accounting firm as provided to the Treasurer by each scholarship funding organization in their application to participate in the program; and
 - (f) the criteria and eligibility requirements for scholarship awards of each scholarship funding organization as provided to the Treasurer by each scholarship funding organization in their application to participate in the program.
 - (g) Any report required by this section shall specifically not include the name, amount or any other personally identifiable information of scholarship recipients.
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AUDIT AUTHORITY: *This next Subsection (G)(6) provides the Treasurer with the enforcement authority to request an audit by the Department of any scholarship funding organizations the Treasurer has reason to believe are in violation of the law.*

- (6) The Treasurer may request an audit of a scholarship funding organization by the department if the Treasurer believes an organization is in violation of the provisions of this section.

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DEPARTMENT OF REVENUE'S AUTHORITY TO AUDIT THE NONPROFIT SFOs: *This next Subsection (H) provides the necessary authority for the Department of Revenue to audit the SFOs. No change.*

(H)(1) The department has authority to examine and audit the nonprofit scholarship funding organizations when requested by the Treasurer, including determining whether the nonprofit scholarship funding organization is being operated in a manner consistent with the requirements for an IRC Section 501(c)(3) organization or is in compliance with any other provision of this section.

(2)(a) If during a requested audit the department acquires evidence that a nonprofit scholarship funding organization is not being operated in a manner consistent with the requirements for operating an IRC Section 501(c)(3) organization or is not in compliance with any other substantial provision of this section, the department immediately may revoke the organization's participation in the program and shall notify the organization and the Treasurer in writing of the revocation.

(b) Actual notice of revocation may be provided to the organization by personal delivery to the organization, by certified return receipt mail to the last known address of the organization, or by other means reasonably designed to provide actual notice to the organization.

(c) Any donations made following the date the actual notice of revocation is received by the organization do not qualify for the credit and the donated funds must be returned to the donor by the organization.

(d)(i) Within thirty days after the day on which the organization is provided actual notice of the revocation, the organization may request a contested hearing before the Administrative Law Court. Within seven days after a request for a contested case hearing is received by the Administrative Law Court, an administrative law judge shall hold the contested case hearing and determine whether the revocation was reasonable under the circumstances. The department has the burden of proof of showing that the revocation was reasonable under the circumstances. The revocation is 'reasonable' if the department has substantial credible evidence that the organization is not being operated in a manner consistent with the requirements for operating an IRC Section 501(c)(3) organization or is not in compliance with other substantial provisions of this section. If the organization does not request a contested case hearing within thirty days of the immediate revocation, the revocation is permanent.

(ii) If the administrative law judge determines that the immediate revocation was reasonable, the administrative law judge shall remand the case to the department to issue a department determination for permanent revocation within the time period determined by the judge. The organization may appeal this department determination in accordance with Section 12-60-460. At the contested case hearing on the department determination, the parties may raise new issues and arguments in addition to those issues and arguments previously presented at the immediate revocation hearing.

(iii) If the administrative law judge determines that immediate revocation is not reasonable, the revocation must be lifted and the organization may resume accepting donations and award scholarships hereunder. The department may still issue a department determination in accordance with Section 12-60-450(E)(2).

(iv) If at any time during the process, the department believes the organization is in compliance, the department may reinstate the organization and notify the Treasurer.

(v) Following the permanent revocation of a nonprofit scholarship funding organization, the department has the authority to oversee the transfer of donated funds of the revoked organization to other nonprofit scholarship funding organizations.

This last Subsection (I) provides for the winding down and transfer of assets among SFOs. The only change is to correct and clarify that fees will only be assessed once by either the transferee or transferor SFO, at their discretion and mutual agreement, but not both. Same as in other states.

(I) A nonprofit scholarship funding organization may transfer funds to another nonprofit scholarship funding organization, especially if the organization cannot distribute the funds in a timely manner or if the organization ceases to exist. The funds that are transferred by one nonprofit scholarship funding organization to another may only be considered by one organization when calculating its administrative expenses.”

SECTION 2. This act takes effect upon approval by the Governor and applies to income tax years beginning after 2021. All tax credits earned as a result of a contribution made to a scholarship funding organization in 2022 apply to the cumulative total of twenty-five million dollars for exceptional needs children, twenty-five million dollars for disadvantaged children, forty million to PACE Scholarship children, and ten million dollars for home school children, regardless of when in 2022 the contribution is made. All necessary reports and forms must be submitted as soon as practicable upon the enactment of this act.

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