



April 10, 2009

**ENGROSSED  
HOUSE BILL No. 1036**

DIGEST OF HB 1036 (Updated April 7, 2009 12:38 pm - DI 73)

**Citations Affected:** IC 5-20; IC 6-3.1; IC 20-51; noncode.

**Synopsis:** Education issues. Requires the Indiana housing and community development authority (authority) to establish and administer a lifelong learning account pilot program. Provides that the annual household income of a participating individual may not exceed 300% of the federal income poverty level. Specifies that a lifelong learning account established for a participating individual must: (1) be an account in a financial institution; and (2) allow a participating individual to deposit, from the individual's earned income, money that may be matched by the participating individual's employer, a financial institution, the state, or any other entity, and that will be used by the participating individual for education and training costs at a postsecondary educational institution, a vocational school, or a training program that may lead to employment for the individual. Requires the authority to seek grants and other funding for the pilot program from public and private entities. Provides that money withdrawn from a participating individual's lifelong learning account is not subject to state income taxation if the money is used by the participating (Continued next page)

**Effective:** Upon passage; July 1, 2009.

**Klinker, Thompson, VanDenburgh,  
Behning**

(SENATE SPONSORS — LAWSON C, TALLIAN, WALTZ, ERRINGTON,  
WALKER, DEIG)

January 7, 2009, read first time and referred to Committee on Education.  
February 2, 2009, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.  
February 19, 2009, amended, reported — Do Pass.  
February 23, 2009, read second time, ordered engrossed. Engrossed.  
February 24, 2009, read third time, passed. Yeas 94, nays 0.  
SENATE ACTION  
February 25, 2009, read first time and referred to Committee on Tax and Fiscal Policy.  
April 9, 2009, amended, reported favorably — Do Pass.

EH 1036—LS 6129/DI 73+



**C  
O  
P  
Y**

individual for specified education and training costs. Provides a state tax credit for contributions to a lifelong learning account. Specifies that money in a participating individual's lifelong learning account may not be considered: (1) an asset of the participating individual when determining the individual's eligibility for the Temporary Assistance for Needy Families program; or (2) a countable asset for purposes of township assistance. Provides that a taxpayer is entitled to a state tax credit for a contribution to a scholarship granting organization. Provides that the contribution must be used by the scholarship granting organization in a scholarship program to provide scholarships to eligible students. Specifies that the amount of a taxpayer's credit is equal to 50% of the amount of the contribution made to the scholarship granting organization for a school scholarship program. Limits the total amount of tax credits that may be awarded to \$5,000,000 in any state fiscal year. Defines "eligible student" as an individual who: (1) has legal settlement in Indiana; (2) is between five and 22 years of age; (3) either has been or is currently enrolled in a participating school; (4) either is a member of a household with an annual income of not more than 200% of the amount required for the individual to qualify for the federal free or reduced price lunch program or the individual received a scholarship in the immediately preceding school year or school term and qualified under the income requirements in the first year that the individual received a scholarship; and (5) meets at least one of the following conditions: (A) The individual is enrolling in kindergarten. (B) The individual was enrolled in a public school during the school year preceding the first school year for which a scholarship granting organization provides a scholarship. (C) The individual received a scholarship in the previous year from a nonprofit scholarship granting organization that qualifies for certification as a school scholarship program. (D) The individual received a school scholarship for the previous school year. Sets forth a process for the department of state revenue (department) to certify a scholarship program administered by a scholarship granting organization. Specifies that a participating school may be a public or nonpublic school that an eligible student is required to pay tuition or transfer tuition to attend. Provides that a scholarship granting organization must: (1) distribute at least 90% of the total amount of contributions as school scholarships to eligible students; and (2) distribute 100% of any income earned on contributions as school scholarships to eligible students. Provides that the scholarships are used for tuition (including transfer tuition) and fees that would otherwise be charged by a participating school to eligible students or parents of eligible students. Requires a participating school to either administer the ISTEP tests or administer another nationally recognized and norm referenced assessment of the school's students. Provides that a program may not be certified as a school scholarship program if the program: (1) limits a recipient of a school scholarship to attending specific participating schools; or (2) limits the ability of a recipient of a school scholarship to change attendance from one participating school to another participating school. (The introduced version of this bill was prepared by the interim study committee on adult education issues.)

**C  
O  
P  
Y**



April 10, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1036

---

A BILL FOR AN ACT to amend the Indiana Code concerning education.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-3.1-18-6 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) Subject to the  
3 limitations provided in subsection (b) and sections 7, 8, 9, 10, and 11  
4 of this chapter, the department shall grant a tax credit against any state  
5 tax liability due equal to **the following**:

6 (1) Fifty percent (50%) of the amount contributed by a person or  
7 an individual to a fund if the contribution is not less than one  
8 hundred dollars (\$100) and not more than fifty thousand dollars  
9 (\$50,000).

10 (2) **Fifty percent (50%) of the amount contributed by a person**  
11 **or an individual to a lifelong learning account established**  
12 **under IC 5-20-7, if the contribution is not less than one**  
13 **hundred dollars (\$100) and not more than two thousand**  
14 **dollars (\$2,000).**

15 (b) The credit provided by this chapter shall only be applied against  
16 any state tax liability owed by the taxpayer after the application of any  
17 credits that under IC 6-3.1-1-2 must be applied before the credit

EH 1036—LS 6129/DI 73+



C  
O  
P  
Y

1 provided by this chapter.

2 SECTION 2. IC 6-3.1-18-10 IS AMENDED TO READ AS

3 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) The amount of

4 tax credits allowed under this chapter may not exceed **for all**

5 **taxpayers:**

6 (1) two hundred thousand dollars (\$200,000) **for contributions**

7 **to a fund; and**

8 (2) **two hundred thousand dollars (\$200,000) for contributions**

9 **to a lifelong learning account established under IC 5-20-7;**

10 in any state fiscal year.

11 (b) The department shall:

12 (1) record the time of filing of each application for allowance of

13 a credit required under section 9 of this chapter; and

14 (2) approve the applications, if they otherwise qualify for a tax

15 credit under this chapter, in the chronological order in which the

16 applications are filed in the state fiscal year.

17 (c) When the total credits approved under this section equal the

18 maximum amount allowable in any state fiscal year, an application

19 filed after that time for the same fiscal year may not be approved.

20 However, if an applicant for whom a credit has been approved fails to

21 file the statement of proof of payment required under section 9 of this

22 chapter, an amount equal to the credit previously allowed or set aside

23 for the applicant may be allowed to any subsequent applicant in the

24 year. In addition, the department may, if the applicant so requests,

25 approve a credit application, in whole or in part, with respect to the

26 next succeeding state fiscal year.

27 SECTION 3. IC 6-3.1-30.5 IS ADDED TO THE INDIANA CODE

28 AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE

29 UPON PASSAGE]:

30 **Chapter 30.5. School Scholarship Tax Credit**

31 **Sec. 1. As used in this chapter, "credit" refers to a credit**

32 **granted under this chapter.**

33 **Sec. 2. As used in this chapter, "pass through entity" means:**

34 (1) **a corporation that is exempt from the adjusted gross**

35 **income tax under IC 6-3-2-2.8(2);**

36 (2) **a partnership;**

37 (3) **a trust;**

38 (4) **a limited liability company; or**

39 (5) **a limited liability partnership.**

40 **Sec. 3. As used in this chapter, "scholarship granting**

41 **organization" refers to an organization that:**

42 (1) **is exempt from federal income taxation under Section**

COPY



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

501(c)(3) of the Internal Revenue Code; and  
 (2) conducts a school scholarship program.

Sec. 4. As used in this chapter, "school scholarship program" refers to a scholarship program certified by the department under IC 20-51.

Sec. 5. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:  
 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);  
 (2) IC 6-5.5 (the financial institutions tax); and  
 (3) IC 27-1-18-2 (the insurance premiums tax);  
 as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 6. As used in this chapter, "taxpayer" means an individual or entity that has any state tax liability.

Sec. 7. A taxpayer that makes a contribution to a scholarship granting organization for use by the scholarship granting organization in a school scholarship program is entitled to a credit against the taxpayer's state tax liability in the taxable year in which the taxpayer makes the contribution.

Sec. 8. The amount of a taxpayer's credit is equal to fifty percent (50%) of the amount of the contribution made to the scholarship granting organization for a school scholarship program.

Sec. 9. A taxpayer is not entitled to a carryover, carryback, or refund of an unused credit.

Sec. 10. If a pass through entity is entitled to a credit under section 7 of this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:  
 (1) the tax credit determined for the pass through entity for the taxable year; multiplied by  
 (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 11. To apply a credit against the taxpayer's state tax liability, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department the information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the credit.

C  
O  
P  
Y



1           **Sec. 12. A contribution shall be treated as having been made for**  
2 **use in a school scholarship program if:**

3           **(1) the contribution is made directly to a scholarship granting**  
4 **organization; and**

5           **(2) either:**

6           **(A) not later than the date of the contribution the taxpayer**  
7 **designates in writing to the scholarship granting**  
8 **organization that the contribution is to be used only for a**  
9 **school scholarship program; or**

10           **(B) the scholarship granting organization provides the**  
11 **taxpayer with written confirmation that the contribution**  
12 **will be dedicated solely for use in a school scholarship**  
13 **program.**

14           **Sec. 13. (a) The total amount of tax credits awarded under this**  
15 **chapter may not exceed five million dollars (\$5,000,000) in any**  
16 **state fiscal year.**

17           **(b) The department shall:**

18           **(1) record the time of filing of each application for a credit**  
19 **under this chapter; and**

20           **(2) approve the applications, if they otherwise qualify for a**  
21 **tax credit under this chapter, in the chronological order in**  
22 **which the applications are filed in the state fiscal year.**

23           **(c) When the total credits approved under this section equal the**  
24 **maximum amount allowable in any state fiscal year, an application**  
25 **filed after that time for the same fiscal year may not be approved.**  
26 **However, if an applicant for whom a credit has been approved fails**  
27 **to file any necessary information required by the department, an**  
28 **amount equal to the credit previously allowed or set aside for the**  
29 **applicant may be allowed to any subsequent applicant in the year.**  
30 **In addition, the department may, if the applicant so requests,**  
31 **approve a credit application, in whole or in part, with respect to**  
32 **the next succeeding state fiscal year.**

33           **Sec. 14. The department, on an Internet web site used by the**  
34 **department to provide information to the public, shall provide the**  
35 **following information:**

36           **(1) The application for the credit provided in this chapter.**

37           **(2) A timeline for receiving the credit provided in this chapter.**

38           **(3) The total amount of credits awarded under this chapter**  
39 **during the current calendar year.**

40           **Sec. 15. The department shall adopt rules under IC 4-22-2 to**  
41 **implement this chapter.**

42           **SECTION 4. IC 20-51 IS ADDED TO THE INDIANA CODE AS**

**C**  
**O**  
**P**  
**Y**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON  
PASSAGE]:

**ARTICLE 51. SCHOOL SCHOLARSHIPS**

**Chapter 1. Definitions**

**Sec. 1. The definitions in this chapter apply throughout this article.**

**Sec. 2. "Agreement" refers to an agreement between the department of state revenue and an applicant that applies for certification of a school scholarship program.**

**Sec. 3. "Contribution" refers to a contribution to a scholarship granting organization for use in a school scholarship program.**

**Sec. 4. (a) "Cost of education" means the tuition and fees that would otherwise be charged by a participating school to:**

- (1) an eligible student; or**
- (2) a parent of an eligible student.**

**(b) In the case of an eligible pupil who attends a public school, the term includes any transfer tuition charged to the eligible student or a parent of the eligible student.**

**Sec. 5. "Eligible student" refers to an individual who:**

- (1) has legal settlement in Indiana;**
- (2) is at least five (5) years of age and less than twenty-two (22) years of age on the date in the school year specified in IC 20-33-2-7;**
- (3) either has been or is currently enrolled in a participating school;**
- (4) either:**
  - (A) is a member of a household with an annual income of not more than two hundred percent (200%) of the amount required for the individual to qualify for the federal free or reduced price lunch program; or**
  - (B) received a scholarship under this article in the immediately preceding school year or the immediately preceding term of the current school year and qualified under clause (A) in the first year that the individual received a scholarship under this article; and**

- (5) meets at least one (1) of the following conditions:**
  - (A) The individual is enrolling in kindergarten.**
  - (B) The individual was enrolled in a public school during the school year preceding the first school year for which a scholarship granting organization provides a scholarship to the individual.**
  - (C) The individual received a scholarship in the previous**

**C**  
**O**  
**P**  
**Y**



1 year from a nonprofit scholarship granting organization  
2 that qualifies for certification as a school scholarship  
3 program.

4 (D) The individual received a school scholarship for the  
5 previous school year.

6 Sec. 6. (a) "Participating school" refers to a public or nonpublic  
7 school that:

8 (1) an eligible student is required to pay tuition or transfer  
9 tuition to attend;

10 (2) voluntarily agrees to enroll an eligible student;

11 (3) is accredited by either the state board or a national or  
12 regional accreditation agency that is recognized by the state  
13 board; and

14 (4) administers the tests under the Indiana statewide testing  
15 for educational progress (ISTEP) program or administers  
16 another nationally recognized and norm referenced  
17 assessment of the school's students.

18 (b) The term does not include a public school in a school  
19 corporation where the eligible student has legal settlement under  
20 IC 20-26-11.

21 Sec. 7. "Scholarship granting organization" refers to an  
22 organization that:

23 (1) is exempt from federal income taxation under Section  
24 501(c)(3) of the Internal Revenue Code; and

25 (2) is organized at least in part to grant school scholarships.

26 Sec. 8. "School scholarship" refers to a grant to pay only the  
27 cost of education for an eligible student as determined for the  
28 school year for which the scholarship will be granted.

29 Chapter 2. Exchange of Information; Rules

30 Sec. 1. The department of state revenue shall maintain a  
31 publicly available list of the school scholarship programs certified  
32 by the department of state revenue. The list must contain names,  
33 addresses, and any other information that the department of state  
34 revenue determines is necessary for the public to determine which  
35 scholarship granting organizations conduct school scholarship  
36 programs. A current list must be posted on an Internet web site  
37 used by the department of state revenue to provide information to  
38 the public.

39 Chapter 3. Scholarship Granting Organizations; Certification;  
40 Administration of Contributions

41 Sec. 1. (a) A program qualifies for certification as a school  
42 scholarship program if:

C  
o  
p  
y



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

- (1) the program:**
    - (A) is administered by a scholarship granting organization; and**
    - (B) has the primary purpose of providing school scholarships to eligible students; and**
  - (2) the scholarship granting organization administering the program:**
    - (A) applies to the department of state revenue on the form and in the manner prescribed by the department of state revenue; and**
    - (B) enters into an agreement with the department of state revenue to comply with this article.**
  - (b) A program may not be certified as a school scholarship program if the program:**
    - (1) limits a recipient of a school scholarship to attending specific participating schools; or**
    - (2) limits the ability of a recipient of a school scholarship to change attendance from one (1) participating school to another participating school.**
- Sec. 2. The department of state revenue shall certify all programs that meet the qualifications under section 1 of this chapter as school scholarship programs.**
- Sec. 3. An agreement entered into under section 1 of this chapter between the department of state revenue and a scholarship granting organization must require the scholarship granting organization to do the following:**
- (1) Provide a receipt to taxpayers for contributions made to the scholarship granting organization that will be used in a school scholarship program. The department of state revenue shall prescribe a standardized form for the receipt issued under this subdivision. The receipt must indicate the value of the contribution and portion of the contribution being designated for use in a school scholarship program.**
  - (2) Distribute at least ninety percent (90%) of the total amount of contributions as school scholarships to eligible students.**
  - (3) Distribute one hundred percent (100%) of any income earned on contributions as school scholarships to eligible students.**
  - (4) Conduct criminal background checks on all the scholarship granting organization's employees and board members and exclude from employment or governance any**

**C  
O  
P  
Y**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

individual who might reasonably pose a risk to the appropriate use of contributed funds.

(5) Make the reports required by this chapter.

Sec. 4. An agreement entered into under section 1 of this chapter may not prohibit a scholarship granting organization from receiving contributions other than contributions described in section 3(1) of this chapter.

Sec. 5. An agreement entered into under section 1 of this chapter must prohibit a scholarship granting organization from distributing school scholarships for use by an eligible student to:

- (1) enroll in a school that has:
  - (A) paid staff or board members; or
  - (B) relatives of paid staff or board members; in common with the scholarship granting support organization;
- (2) enroll in a school that the scholarship granting organization knows does not qualify as a participating school; or
- (3) pay for the cost of education for a public school where the eligible student is entitled to enroll without the payment of tuition.

Sec. 6. (a) A scholarship granting organization certified under this chapter must publicly report to the department of state revenue by August 1 of each year the following information regarding the organization's scholarships awarded in the previous school year:

- (1) The name and address of the scholarship granting organization.
- (2) The total number and total dollar amount of contributions received during the previous school year.
- (3) The:
  - (A) total number and total dollar amount of scholarships awarded during the previous school year; and
  - (B) total number and total dollar amount of school scholarships awarded during the previous school year.

The report must be certified under penalties of perjury by the chief executive officer of the scholarship granting organization.

(b) A scholarship granting organization certified under this chapter shall contract with an independent certified public accountant for an annual financial audit of the scholarship granting organization. The scholarship granting organization must provide a copy of the annual financial audit to the department and

C  
O  
P  
Y



1 must make the annual financial audit available to a member of the  
2 public upon request.

3 Sec. 7. The department of state revenue shall prescribe a  
4 standardized form for scholarship granting organizations to report  
5 information required under this chapter.

6 Sec. 8. The department of state revenue may, in a proceeding  
7 under IC 4-21.5, suspend or terminate the certification of an  
8 organization as a scholarship granting organization if the  
9 department of state revenue establishes that the scholarship  
10 granting organization has intentionally and substantially failed to  
11 comply with the requirements of this article or an agreement  
12 entered into under this article.

13 Sec. 9. If the department of state revenue suspends or  
14 terminates the certification of an organization as a scholarship  
15 granting organization, the department of state revenue shall notify  
16 affected eligible students and their parents of the decision as  
17 quickly as possible. An eligible student affected by a suspension or  
18 termination of a scholarship granting organization's certification  
19 shall remain an eligible student under this article until the end of  
20 the school year after the school year in which the scholarship  
21 granting organization's certification is suspended or terminated,  
22 regardless of whether the scholarship student currently meets the  
23 definition of an eligible student.

24 Sec. 10. The department of state revenue may conduct either a  
25 financial review or an audit of a scholarship granting organization  
26 certified under this chapter if the department of state revenue has  
27 evidence of fraud.

28 Sec. 11. The department of state revenue shall adopt rules under  
29 IC 4-22-2 to implement this article.

30 SECTION 5. IC 5-20-7 IS ADDED TO THE INDIANA CODE AS  
31 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
32 1, 2009]:

33 **Chapter 7. Lifelong Learning Account Pilot Program**

34 Sec. 1. As used in this chapter, "lifelong learning account"  
35 means an account established under section 5 of this chapter.

36 Sec. 2. As used in this chapter, "participating individual" means  
37 an individual who has an annual household income of not more  
38 than three hundred percent (300%) of the federal income poverty  
39 level and is participating in the pilot program under guidelines  
40 established by the authority.

41 Sec. 3. As used in this chapter, "pilot program" refers to the  
42 pilot program established under section 4 of this chapter.

C  
o  
p  
y



1           **Sec. 4. (a) The authority shall establish and administer a lifelong**  
2 **learning account pilot program.**

3           **(b) The authority shall establish guidelines for administration**  
4 **of the pilot program, including written guidelines concerning:**

5               **(1) the eligibility of individuals and financial institutions to**  
6 **participate in the pilot program; and**

7               **(2) the permissible uses of money in a lifelong learning**  
8 **account.**

9           **Sec. 5. (a) The pilot program shall be implemented to encourage**  
10 **the establishment of lifelong learning accounts for participating**  
11 **individuals. A lifelong learning account established for a**  
12 **participating individual must:**

13               **(1) be an account in a financial institution participating in the**  
14 **pilot program; and**

15               **(2) allow a participating individual to deposit, from the**  
16 **individual's earned income, money:**

17                   **(A) that may be matched by the participating individual's**  
18 **employer, a financial institution, the state, or any other**  
19 **entity; and**

20                   **(B) that will be used by the participating individual for any**  
21 **tuition, laboratory costs, books, computer costs, and other**  
22 **fees that are incurred at a postsecondary educational**  
23 **institution, a vocational school, or a training program that**  
24 **may lead to employment for the individual.**

25           **(b) Money withdrawn from a participating individual's lifelong**  
26 **learning account is not subject to taxation under IC 6-3-1 through**  
27 **IC 6-3-7 if the money is used by the participating individual for the**  
28 **purposes described in subsection (a)(2)(B).**

29           **Sec. 6. Money in a participating individual's lifelong learning**  
30 **account may not be considered:**

31               **(1) an asset of the participating individual when determining**  
32 **the individual's eligibility for assistance under IC 12-14; or**

33               **(2) a countable asset (as defined in IC 12-7-2-44.6) for**  
34 **purposes of IC 12-20.**

35           **Sec. 7. The authority shall seek grants and other funding for the**  
36 **pilot program from public and private entities.**

37           **Sec. 8. (a) Before November 1 of each year after 2009, the**  
38 **authority shall submit a report to the governor and the general**  
39 **assembly on the pilot program. The report submitted in 2014 must**  
40 **include the following:**

41               **(1) Any conclusions and recommendations made by the**  
42 **authority concerning the pilot program.**

**C**  
**O**  
**P**  
**Y**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(2) Information concerning the cost and feasibility of expanding the pilot program.

(b) A report submitted to the general assembly under this section must be in an electronic format under IC 5-14-6.

**Sec. 9. This chapter expires January 1, 2015.**

SECTION 6. [EFFECTIVE JULY 1, 2009] IC 6-3.1-18-6 and IC 6-3.1-18-10, both as amended by this act, apply to taxable years beginning after December 31, 2008.

SECTION 7. [EFFECTIVE UPON PASSAGE] The department of state revenue may adopt temporary rules in the manner provided in IC 4-22-2-37.1 for the adoption of emergency rules to implement IC 20-51, as added by this act. A temporary rule adopted under this SECTION expires on the earliest of the following:

- (1) The date another temporary rule is adopted under this SECTION that supersedes or repeals the previously adopted temporary rule.
- (2) The date that a permanent rule adopted under IC 4-22-2 supersedes or repeals a temporary rule adopted under this SECTION.
- (3) The date specified in the temporary rule.
- (4) June 30, 2011.

SECTION 8. [EFFECTIVE UPON PASSAGE] IC 6-3.1-30.5, as added by this act, applies to contributions made in taxable years beginning after December 31, 2009.

SECTION 9. An emergency is declared for this act.

**C**  
**O**  
**P**  
**Y**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred House Bill 1036, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

PORTER, Chair

Committee Vote: yeas 12, nays 0.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1036, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 13, delete "fifty" and insert "**two**".

Page 1, line 14, delete "(\$50,000)." and insert "**(\$2,000)**".

Page 2, line 33, after "who" insert "**has an annual household income of not more than three hundred percent (300%) of the federal income poverty level and**".

and when so amended that said bill do pass.

(Reference is to HB 1036 as printed February 3, 2009.)

CRAWFORD, Chair

Committee Vote: yeas 17, nays 0.



COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1036, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 12, delete "IC 21-9-9.5," and insert "**IC 5-20-7**,".

Page 2, line 4, after "exceed" delete ":" and insert "**for all taxpayers**:".

Page 2, line 8, delete "IC 21-9-9.5;" and insert "**IC 5-20-7**;".

Page 2, between lines 25 and 26, begin a new paragraph and insert: "**SECTION 3. IC 6-3.1-30.5 IS ADDED TO THE INDIANA CODE**"

**EH 1036—LS 6129/DI 73+**

C  
o  
p  
y



AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 30.5. School Scholarship Tax Credit**

**Sec. 1.** As used in this chapter, "credit" refers to a credit granted under this chapter.

**Sec. 2.** As used in this chapter, "pass through entity" means:

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a trust;
- (4) a limited liability company; or
- (5) a limited liability partnership.

**Sec. 3.** As used in this chapter, "scholarship granting organization" refers to an organization that:

- (1) is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and
- (2) conducts a school scholarship program.

**Sec. 4.** As used in this chapter, "school scholarship program" refers to a scholarship program certified by the department under IC 20-51.

**Sec. 5.** As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 6-5.5 (the financial institutions tax); and
- (3) IC 27-1-18-2 (the insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

**Sec. 6.** As used in this chapter, "taxpayer" means an individual or entity that has any state tax liability.

**Sec. 7.** A taxpayer that makes a contribution to a scholarship granting organization for use by the scholarship granting organization in a school scholarship program is entitled to a credit against the taxpayer's state tax liability in the taxable year in which the taxpayer makes the contribution.

**Sec. 8.** The amount of a taxpayer's credit is equal to fifty percent (50%) of the amount of the contribution made to the scholarship granting organization for a school scholarship program.

**Sec. 9.** A taxpayer is not entitled to a carryover, carryback, or refund of an unused credit.

**Sec. 10.** If a pass through entity is entitled to a credit under section 7 of this chapter but does not have state tax liability against

C  
O  
P  
Y



which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

**Sec. 11.** To apply a credit against the taxpayer's state tax liability, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department the information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the credit.

**Sec. 12.** A contribution shall be treated as having been made for use in a school scholarship program if:

- (1) the contribution is made directly to a scholarship granting organization; and
- (2) either:
  - (A) not later than the date of the contribution the taxpayer designates in writing to the scholarship granting organization that the contribution is to be used only for a school scholarship program; or
  - (B) the scholarship granting organization provides the taxpayer with written confirmation that the contribution will be dedicated solely for use in a school scholarship program.

**Sec. 13. (a)** The total amount of tax credits awarded under this chapter may not exceed five million dollars (\$5,000,000) in any state fiscal year.

**(b)** The department shall:

- (1) record the time of filing of each application for a credit under this chapter; and
- (2) approve the applications, if they otherwise qualify for a tax credit under this chapter, in the chronological order in which the applications are filed in the state fiscal year.

**(c)** When the total credits approved under this section equal the maximum amount allowable in any state fiscal year, an application filed after that time for the same fiscal year may not be approved. However, if an applicant for whom a credit has been approved fails to file any necessary information required by the department, an

**C  
O  
P  
Y**



amount equal to the credit previously allowed or set aside for the applicant may be allowed to any subsequent applicant in the year. In addition, the department may, if the applicant so requests, approve a credit application, in whole or in part, with respect to the next succeeding state fiscal year.

Sec. 14. The department, on an Internet web site used by the department to provide information to the public, shall provide the following information:

- (1) The application for the credit provided in this chapter.
- (2) A timeline for receiving the credit provided in this chapter.
- (3) The total amount of credits awarded under this chapter during the current calendar year.

Sec. 15. The department shall adopt rules under IC 4-22-2 to implement this chapter.

SECTION 4. IC 20-51 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**ARTICLE 51. SCHOOL SCHOLARSHIPS**

**Chapter 1. Definitions**

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Agreement" refers to an agreement between the department of state revenue and an applicant that applies for certification of a school scholarship program.

Sec. 3. "Contribution" refers to a contribution to a scholarship granting organization for use in a school scholarship program.

Sec. 4. (a) "Cost of education" means the tuition and fees that would otherwise be charged by a participating school to:

- (1) an eligible student; or
- (2) a parent of an eligible student.

(b) In the case of an eligible pupil who attends a public school, the term includes any transfer tuition charged to the eligible student or a parent of the eligible student.

Sec. 5. "Eligible student" refers to an individual who:

- (1) has legal settlement in Indiana;
- (2) is at least five (5) years of age and less than twenty-two (22) years of age on the date in the school year specified in IC 20-33-2-7;
- (3) either has been or is currently enrolled in a participating school;
- (4) either:
  - (A) is a member of a household with an annual income of

COPY



not more than two hundred percent (200%) of the amount required for the individual to qualify for the federal free or reduced price lunch program; or

(B) received a scholarship under this article in the immediately preceding school year or the immediately preceding term of the current school year and qualified under clause (A) in the first year that the individual received a scholarship under this article; and

(5) meets at least one (1) of the following conditions:

(A) The individual is enrolling in kindergarten.

(B) The individual was enrolled in a public school during the school year preceding the first school year for which a scholarship granting organization provides a scholarship to the individual.

(C) The individual received a scholarship in the previous year from a nonprofit scholarship granting organization that qualifies for certification as a school scholarship program.

(D) The individual received a school scholarship for the previous school year.

Sec. 6. (a) "Participating school" refers to a public or nonpublic school that:

(1) an eligible student is required to pay tuition or transfer tuition to attend;

(2) voluntarily agrees to enroll an eligible student;

(3) is accredited by either the state board or a national or regional accreditation agency that is recognized by the state board; and

(4) administers the tests under the Indiana statewide testing for educational progress (ISTEP) program or administers another nationally recognized and norm referenced assessment of the school's students.

(b) The term does not include a public school in a school corporation where the eligible student has legal settlement under IC 20-26-11.

Sec. 7. "Scholarship granting organization" refers to an organization that:

(1) is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(2) is organized at least in part to grant school scholarships.

Sec. 8. "School scholarship" refers to a grant to pay only the cost of education for an eligible student as determined for the

C  
O  
P  
Y



school year for which the scholarship will be granted.

**Chapter 2. Exchange of Information; Rules**

**Sec. 1.** The department of state revenue shall maintain a publicly available list of the school scholarship programs certified by the department of state revenue. The list must contain names, addresses, and any other information that the department of state revenue determines is necessary for the public to determine which scholarship granting organizations conduct school scholarship programs. A current list must be posted on an Internet web site used by the department of state revenue to provide information to the public.

**Chapter 3. Scholarship Granting Organizations; Certification; Administration of Contributions**

**Sec. 1. (a)** A program qualifies for certification as a school scholarship program if:

(1) the program:

(A) is administered by a scholarship granting organization; and

(B) has the primary purpose of providing school scholarships to eligible students; and

(2) the scholarship granting organization administering the program:

(A) applies to the department of state revenue on the form and in the manner prescribed by the department of state revenue; and

(B) enters into an agreement with the department of state revenue to comply with this article.

(b) A program may not be certified as a school scholarship program if the program:

(1) limits a recipient of a school scholarship to attending specific participating schools; or

(2) limits the ability of a recipient of a school scholarship to change attendance from one (1) participating school to another participating school.

**Sec. 2.** The department of state revenue shall certify all programs that meet the qualifications under section 1 of this chapter as school scholarship programs.

**Sec. 3.** An agreement entered into under section 1 of this chapter between the department of state revenue and a scholarship granting organization must require the scholarship granting organization to do the following:

(1) Provide a receipt to taxpayers for contributions made to

**C  
O  
P  
Y**



the scholarship granting organization that will be used in a school scholarship program. The department of state revenue shall prescribe a standardized form for the receipt issued under this subdivision. The receipt must indicate the value of the contribution and portion of the contribution being designated for use in a school scholarship program.

(2) Distribute at least ninety percent (90%) of the total amount of contributions as school scholarships to eligible students.

(3) Distribute one hundred percent (100%) of any income earned on contributions as school scholarships to eligible students.

(4) Conduct criminal background checks on all the scholarship granting organization's employees and board members and exclude from employment or governance any individual who might reasonably pose a risk to the appropriate use of contributed funds.

(5) Make the reports required by this chapter.

Sec. 4. An agreement entered into under section 1 of this chapter may not prohibit a scholarship granting organization from receiving contributions other than contributions described in section 3(1) of this chapter.

Sec. 5. An agreement entered into under section 1 of this chapter must prohibit a scholarship granting organization from distributing school scholarships for use by an eligible student to:

- (1) enroll in a school that has:
  - (A) paid staff or board members; or
  - (B) relatives of paid staff or board members;
 in common with the scholarship granting support organization;
- (2) enroll in a school that the scholarship granting organization knows does not qualify as a participating school; or
- (3) pay for the cost of education for a public school where the eligible student is entitled to enroll without the payment of tuition.

Sec. 6. (a) A scholarship granting organization certified under this chapter must publicly report to the department of state revenue by August 1 of each year the following information regarding the organization's scholarships awarded in the previous school year:

- (1) The name and address of the scholarship granting

COPY



organization.

(2) The total number and total dollar amount of contributions received during the previous school year.

(3) The:

(A) total number and total dollar amount of scholarships awarded during the previous school year; and

(B) total number and total dollar amount of school scholarships awarded during the previous school year.

The report must be certified under penalties of perjury by the chief executive officer of the scholarship granting organization.

(b) A scholarship granting organization certified under this chapter shall contract with an independent certified public accountant for an annual financial audit of the scholarship granting organization. The scholarship granting organization must provide a copy of the annual financial audit to the department and must make the annual financial audit available to a member of the public upon request.

Sec. 7. The department of state revenue shall prescribe a standardized form for scholarship granting organizations to report information required under this chapter.

Sec. 8. The department of state revenue may, in a proceeding under IC 4-21.5, suspend or terminate the certification of an organization as a scholarship granting organization if the department of state revenue establishes that the scholarship granting organization has intentionally and substantially failed to comply with the requirements of this article or an agreement entered into under this article.

Sec. 9. If the department of state revenue suspends or terminates the certification of an organization as a scholarship granting organization, the department of state revenue shall notify affected eligible students and their parents of the decision as quickly as possible. An eligible student affected by a suspension or termination of a scholarship granting organization's certification shall remain an eligible student under this article until the end of the school year after the school year in which the scholarship granting organization's certification is suspended or terminated, regardless of whether the scholarship student currently meets the definition of an eligible student.

Sec. 10. The department of state revenue may conduct either a financial review or an audit of a scholarship granting organization certified under this chapter if the department of state revenue has evidence of fraud.

C  
O  
P  
Y



**Sec. 11. The department of state revenue shall adopt rules under IC 4-22-2 to implement this article."**

Page 2, line 26, delete "IC 21-9-9.5" and insert "IC 5-20-7".

Page 2, line 29, delete "9.5." and insert "7."

Page 2, line 41, delete "written".

Page 3, delete lines 34 through 36.

Page 3, line 37, delete "9." and insert "8."

Page 4, line 5, delete "10." and insert "9."

Page 4, after line 8, begin a new paragraph and insert:

**"SECTION 7. [EFFECTIVE UPON PASSAGE] The department of state revenue may adopt temporary rules in the manner provided in IC 4-22-2-37.1 for the adoption of emergency rules to implement IC 20-51, as added by this act. A temporary rule adopted under this SECTION expires on the earliest of the following:**

- (1) The date another temporary rule is adopted under this SECTION that supersedes or repeals the previously adopted temporary rule.**
- (2) The date that a permanent rule adopted under IC 4-22-2 supersedes or repeals a temporary rule adopted under this SECTION.**
- (3) The date specified in the temporary rule.**
- (4) June 30, 2011.**

**SECTION 8. [EFFECTIVE UPON PASSAGE] IC 6-3.1-30.5, as added by this act, applies to contributions made in taxable years beginning after December 31, 2009.**

**SECTION 9. An emergency is declared for this act."**

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1036 as printed February 20, 2009.)

HERSHMAN, Chairperson

Committee Vote: Yeas 9, Nays 2.

**C  
O  
P  
Y**

