

House Bill 524

By: Representative Stover of the 71st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 37 of the Official Code of Georgia Annotated, relating to
2 administration of mental health, so as to provide for a foundation to fund the Georgia Apex
3 Program; to amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating
4 to state income taxes, so as to provide an income tax credit for donations to the Public School
5 Mental Health Services Foundation; to provide for related matters; to provide for an effective
6 date and applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 2 of Title 37 of the Official Code of Georgia Annotated, relating to administration
10 of mental health, is amended by adding a new Code section as follows:

11 "37-2-6.6.

12 (a) As used in this Code section:

13 (1) 'Georgia Apex Program' means the program administered by the department through
14 the Office of Children, Young Adults, and Families, to provide grants for school-based
15 mental health services.

16 (2) 'Office' means the Office of Children, Young Adults, and Families.

17 (b) The office shall have the power to incorporate a nonprofit corporation that could
18 qualify as a public foundation under Section 501(c)(3) of the Internal Revenue Code to aid
19 the office in funding the Georgia Apex Program. The purpose of the program is to provide
20 early detection of child and adolescent behavioral health needs and to improve access to
21 mental health services for children and youth. Any nonprofit corporation established
22 pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the 'Georgia
23 Nonprofit Corporation Code,' and the Secretary of State shall be authorized to accept such
24 filing.

25 (c) Any nonprofit corporation established pursuant to this Code section shall be subject to
26 the following provisions:

- 27 (1) In accordance with the Constitution of Georgia, no governmental functions or
28 regulatory powers shall be conducted by any such nonprofit corporation;
- 29 (2) Upon dissolution of any such nonprofit corporation incorporated by the office, any
30 assets shall revert to the office or to any successor to the office or, failing such
31 succession, to the State of Georgia;
- 32 (3) As used in this paragraph, the term 'direct employee costs' means salary, benefits, and
33 travel expenses. To avoid the appearance of undue influence on regulatory functions by
34 donors, no donations to any such nonprofit corporation from private sources shall be used
35 for direct employee costs of the office;
- 36 (4) Any such nonprofit corporation shall be subject to all laws relating to open meetings
37 and the inspection of public records;
- 38 (5) The office shall not be liable for the action or omission to act of any such nonprofit
39 corporation;
- 40 (6) No debts, bonds, notes, or other obligations incurred by any such nonprofit
41 corporation shall constitute an indebtedness or obligation of the State of Georgia nor shall
42 any act of any such nonprofit corporation constitute or result in the creation of an
43 indebtedness of the state. No holder or holders of any such bonds, notes, or other
44 obligations shall ever have the right to compel any exercise of the taxing power of the
45 state nor to enforce the payment thereof against the state; and
- 46 (7) Any nonprofit corporation created pursuant to this Code section shall not acquire or
47 hold a fee simple interest in real property by any method, including but not limited to gift,
48 purchase, condemnation, devise, court order, and exchange.
- 49 (d)(1) Pursuant to this Code section, the office may establish a nonprofit corporation to
50 be designated as the Public School Mental Health Services Foundation to promote
51 public-private partnerships between businesses, nonprofit organizations, institutions of
52 higher education, local school systems, and public schools, for the purpose of improving
53 availability of mental health services in public schools. Funds received by the foundation
54 may be awarded through a competitive grant process administered by the office.
- 55 (2)(A) Such foundation shall also be authorized to receive donations from taxpayers
56 pursuant to Code Section 48-7-29.22 for the purpose of awarding grants to public
57 schools for the implementation of the Georgia Apex Program. Funds received by the
58 foundation for such purpose may be awarded through a competitive grant process
59 administered by the office. The criteria for awarding such grants shall include the
60 current level of availability of mental health services and such other criteria which the
61 office may deem appropriate and necessary. The foundation shall not be authorized to
62 withhold any funds to cover costs incurred in administering the grant process.

63 (B) The foundation shall report to the Department of Revenue, on a form provided by
 64 the Department of Revenue, by January 12 of each tax year the following:

65 (i) The total number and dollar value of donations and tax credits approved.
 66 Individual contributions shall include contributions made by those filing income tax
 67 returns as a single individual or head of household and those filing joint returns;

68 (ii) The total number and dollar value of corporate donations and tax credits
 69 approved;

70 (iii) The total number and dollar value of grants awarded to public schools; and

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

73 The Department of Revenue shall post on its website the information received pursuant
 74 to divisions (i) through (iii) of this subparagraph.

75 (C) Except for the information reported pursuant to divisions (i) through (iii) of
 76 subparagraph (B) of this paragraph, all information or reports provided by the
 77 foundation to the Department of Revenue shall be confidential taxpayer information,
 78 governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the
 79 donor or the foundation.

80 (e) Any nonprofit corporation created pursuant to this Code section shall make public and
 81 provide an annual report showing the identity of all donors and the amount each person or
 82 entity donated as well as all expenditures or other disposal of money or property donated,
 83 except as otherwise provided in paragraph (2) of subsection (d) of this Code section. Such
 84 report shall be provided to the Governor, the President of the Senate, the Speaker of the
 85 House of Representatives, and the chairpersons of the House Committee on Education and
 86 the Senate Education and Youth Committee. Any such nonprofit corporation shall also
 87 provide such persons with a copy of all corporate filings with the federal Internal Revenue
 88 Service."

89 **SECTION 2.**

90 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to state income
 91 taxes, is amended by adding a new Code section as follows:

92 "48-7-29.22.

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

94 (1) 'Public School Mental Health Services Foundation' or 'foundation' means the
 95 foundation established pursuant to subsection (d) of Code Section 37-2-6.6.

96 (2) 'Qualified donation' means a donation made by a taxpayer to the Public School
 97 Mental Health Services Foundation for the purpose of awarding grants to public schools
 98 in this state pursuant to paragraph (2) of subsection (d) of Code Section 37-2-6.6.

99 (b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter
100 for qualified donations as follows:

101 (1) In the case of a single individual or a head of household, the actual amount donated
102 or \$2,500.00 per tax year, whichever is less;

103 (2) In the case of a married couple filing a joint return, the actual amount donated or
104 \$5,000.00 per tax year, whichever is less; or

105 (3) Anything to the contrary contained in paragraph (1) or (2) of this subsection
106 notwithstanding, in the case of an individual who is a member of a limited liability
107 company duly formed under state law, a shareholder of a Subchapter 'S' corporation, or
108 a partner in a partnership, the amount donated or \$10,000.00 per tax year, whichever is
109 less; provided, however, that tax credits pursuant to this paragraph shall only be allowed
110 for the portion of the income on which such tax was actually paid by such member of the
111 limited liability company, shareholder of a Subchapter 'S' corporation, or partner in a
112 partnership.

113 (c) A corporation or other entity shall be allowed a credit against the tax imposed by this
114 chapter for qualified donations in an amount not to exceed the actual amount donated or
115 75 percent of the corporation's income tax liability, whichever is less.

116 (d)(1) The tax credit shall not be allowed if the taxpayer designates the taxpayer's
117 qualified donation for the direct benefit of any particular school or program which the
118 taxpayer's child or children attend.

119 (2) In soliciting donations, the foundation shall not represent that, in exchange for
120 donating to the foundation, the school a taxpayer's child or children attend shall receive
121 a grant pursuant to paragraph (2) of subsection (d) of Code Section 37-2-6.6.

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

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

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

129 (3) For the purposes of paragraph (1) of this subsection, the foundation shall notify a
130 potential donor of the requirements of this Code section. Before making a donation to
131 the foundation, the taxpayer shall electronically notify the department, in a manner
132 specified by the department, of the total amount of donations that the taxpayer intends to
133 make to the foundation. The commissioner shall preapprove or deny the requested
134 amount within 30 days after receiving the request from the taxpayer and shall provide
135 notice to the taxpayer and the foundation of such preapproval or denial which shall not

136 require any signed release or notarized approval by the taxpayer. In order to receive a tax
 137 credit under this Code section, the taxpayer shall make the donation to the foundation
 138 within 60 days after receiving notice from the department that the requested amount was
 139 preapproved. If the taxpayer does not comply with this paragraph, the commissioner
 140 shall not include this preapproved donation amount when calculating the limit prescribed
 141 in paragraph (1) of this subsection. The department shall establish a web based donation
 142 approval process to implement this subsection.

143 (4) Preapproval of donations by the commissioner shall be based solely on the
 144 availability of tax credits subject to the aggregate total limit established under paragraph
 145 (1) of this subsection. The department shall maintain an ongoing, current list on its
 146 website of the amount of tax credits available under this Code section.

147 (g) In order for the taxpayer to claim a tax credit under this Code section, a confirmation
 148 of receipt of donation issued by the foundation shall be attached to the taxpayer's income
 149 tax return. However, in the event the taxpayer files an electronic return, such confirmation
 150 shall only be required to be electronically attached to the return if the Internal Revenue
 151 Service allows such attachments when the return is transmitted to the department. In the
 152 event the taxpayer files an electronic return and such confirmation is not attached because
 153 the Internal Revenue Service does not, at the time of such electronic filing, allow electronic
 154 attachments to the Georgia return, such confirmation shall be maintained by the taxpayer
 155 and made available upon request by the commissioner. The confirmation of receipt of
 156 donation shall contain the taxpayer's name, address, tax identification number, the amount
 157 of the donation, the date of the donation, and the amount of the credit.

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

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

164 **SECTION 3.**

165 This Act shall become effective on July 1, 2019, and shall be applicable to all taxable years
 166 beginning on or after January 1, 2020.

167 **SECTION 4.**

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