

1 HB558  
2 159508-1  
3 By Representatives Fincher and McClurkin  
4 RFD: Ways and Means Education  
5 First Read: 27-FEB-14

SYNOPSIS: This bill would amend the Alabama Accountability Act of 2013 to remove the current \$7,500 annual limitation on contributions made to scholarship granting organizations by individual taxpayers.

This bill would allow certain pass-through entities, such as subchapter S corporations and limited liability companies, to make contributions to scholarship granting organizations and to allow the credit earned by the entity to pass through to and be claimed by its owners, and to likewise expand the definition of individual taxpayer to include the individual owners of these pass-through entities.

This bill would amend the release date for unaccounted scholarship funds from September 15 to May 15 of each year.

This bill would also amend the reporting period for scholarship granting organizations from a calendar year to a school year.

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT  
5

6 To amend Section 16-6D-9, Code of Alabama 1975, as  
7 added by Act 2013-64 and amended by Act 2013-265, 2013 Regular  
8 Session, relating to the Alabama Accountability Act of 2013;  
9 to remove the current \$7,500 annual limitation on  
10 contributions made by individual taxpayers to scholarship  
11 granting organizations; to allow certain pass-through entities  
12 to make contributions to scholarship granting organizations,  
13 and to allow the credit earned by those entities to pass  
14 through to and be claimed by their owners, and to likewise  
15 expand the definition of individual taxpayer to include the  
16 individual owners of these pass-through entities; to amend the  
17 release date for unaccounted scholarship funds from September  
18 15 to May 15 of each school year; to amend the reporting  
19 period for scholarship granting organizations from a calendar  
20 year to a school year; and to provide a retroactive effective  
21 date.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Section 16-6D-9 of the Code of Alabama  
24 1975, as added by Act 2013-64 and amended by Act 2013-265,  
25 2013 Regular Session, is amended to read as follows:

26 "§16-6D-9.

1           "(a) (1) ~~A~~ An individual taxpayer who files a state  
2 income tax return and is not a dependent of another taxpayer,  
3 a taxpayer subject to the corporate income tax levied by  
4 Chapter 18 of Title 40, an Alabama S corporation as defined in  
5 Section 40-18-160, or a Subchapter K entity as defined in  
6 Section 40-18-1, may claim a credit for a contribution made to  
7 a scholarship granting organization. If the credit is claimed  
8 by an Alabama S corporation or Subchapter K entity, the credit  
9 shall pass through to and may be claimed by any taxpayer  
10 eligible to claim a credit under this subsection who is a  
11 shareholder, partner, or member thereof, based on the  
12 taxpayer's pro rata or distributive share, respectively, of  
13 the credit.

14           "(2) The tax credit may be claimed by an individual  
15 taxpayer or a married couple filing jointly in an amount equal  
16 to the total contributions made to a scholarship granting  
17 organization for educational scholarships during the taxable  
18 year for which the credit is claimed up to 50 percent of the  
19 tax liability of the taxpayer, ~~not to exceed seven thousand~~  
20 ~~five hundred dollars (\$7,500) per taxpayer or married couple~~  
21 ~~filing jointly. For the purposes of this section, the term~~  
22 individual taxpayer includes an individual who is a  
23 shareholder of an Alabama S corporation or a partner or member  
24 of a Subchapter K entity that made a contribution to a  
25 scholarship granting organization.

26           "(3) The tax credit may be claimed by a corporate  
27 taxpayer subject to the Alabama corporate income tax in an

1 amount equal to 100 percent of the total contributions the  
2 corporate taxpayer made to a scholarship granting organization  
3 for educational scholarships during the taxable year for which  
4 the credit is claimed, up to 50 percent of the income tax  
5 liability of the taxpayer. The cumulative amount of tax  
6 credits issued pursuant to subdivision (2) and this  
7 subdivision shall not exceed twenty-five million dollars  
8 (\$25,000,000) annually, based on the calendar year. The  
9 Department of Revenue shall develop a procedure to ensure that  
10 this cap is not exceeded and shall also prescribe the various  
11 methods by which these credits are to be issued.

12 "(4) A ~~corporate~~ taxpayer subject to the Alabama  
13 corporate income tax, an individual taxpayer, or a married  
14 couple filing jointly may carry forward a tax credit under the  
15 tax credit scholarship program for up to three taxable years.

16 "(b) (1) Administrative accountability standards. All  
17 scholarship granting organizations shall do all of the  
18 following:

19 "a. Notify the Department of Revenue of their intent  
20 to provide educational scholarships.

21 "b. Demonstrate to the Department of Revenue that  
22 they have been granted exemption from the federal income tax  
23 as an organization described in Section 501(c) (3) of the  
24 Internal Revenue Code.

25 "c. Distribute periodic educational scholarship  
26 payments as checks made out and mailed to the school where the  
27 student is enrolled.

1           "d. Provide a Department of Revenue approved receipt  
2 to taxpayers for contributions made to the scholarship  
3 granting organization.

4           "e. Ensure that at least 95 percent of their revenue  
5 from donations is spent on educational scholarships, and that  
6 all revenue from interest or investments is spent on  
7 educational scholarships.

8           "f. Spend each year a portion of their expenditures  
9 on educational scholarships for low-income eligible students  
10 equal to the percentage of low-income eligible students in the  
11 county where the scholarship granting organization expends the  
12 majority of its educational scholarships.

13           "g. Ensure that at least 75 percent of first-time  
14 recipients of educational scholarships were not continuously  
15 enrolled in a private school during the previous year.

16           "h. Cooperate with the Department of Revenue to  
17 conduct criminal background checks on all of their employees  
18 and board members and exclude from employment or governance  
19 any individual who may reasonably pose a risk to the  
20 appropriate use of contributed funds.

21           "i. Ensure that educational scholarships are  
22 portable during the school year and can be used at any  
23 qualifying school that accepts the eligible student according  
24 to the wishes of the parent. If a student transfers to another  
25 qualifying school during a school year, the educational  
26 scholarship amount may be prorated.

1                "j. Publicly report to the Department of Revenue by  
2                June 1 of each year all of the following information prepared  
3                by a certified public accountant regarding their grants in the  
4                previous calendar year:

5                "1. The name and address of the scholarship granting  
6                organization.

7                "2. The total number and total dollar amount of  
8                contributions received during the previous calendar year.

9                "3. The total number and total dollar amount of  
10               educational scholarships awarded during the previous ~~calendar~~  
11               school year, the total number and total dollar amount of  
12               educational scholarships awarded during the previous school  
13               year for students qualifying for the federal free and  
14               reduced-price lunch program, and the percentage of first-time  
15               recipients of educational scholarships who were enrolled in a  
16               public school during the previous school year.

17               "k. Ensure educational scholarships are not provided  
18               for students to attend a school with paid staff or board  
19               members, or relatives thereof, in common with the scholarship  
20               granting organization.

21               "l. Ensure that scholarships are provided in a  
22               manner that does not discriminate based on the gender, race,  
23               or disability status of the scholarship applicant or his or  
24               her parent.

25               "m. Ensure that educational scholarships are  
26               provided only to students who would otherwise attend a failing  
27               school so that the student can attend a nonpublic school or a

1 nonfailing public school. Provided, however, that any  
2 scholarship funds unaccounted for on ~~September~~ May 15th of  
3 each year may be made available to low-income eligible  
4 students to defray the costs of attending a qualifying school,  
5 whether or not the student is assigned to a failing school.

6 "n. Ensure that no donations are directly made to  
7 benefit specifically designated scholarship recipients.

8 "(2) Financial accountability standards.

9 "a. All scholarship granting organizations shall  
10 demonstrate their financial accountability by doing all of the  
11 following:

12 "1. Annually submitting to the Department of Revenue  
13 a financial information report for the scholarship granting  
14 organization that complies with uniform financial accounting  
15 standards established by the Department of Revenue and  
16 conducted by a certified public accountant.

17 "2. Having the auditor certify that the report is  
18 free of material misstatements.

19 "b. All participating nonpublic schools shall  
20 demonstrate financial viability, if they are to receive  
21 donations of fifty thousand dollars (\$50,000) or more during  
22 the school year, by doing either of the following:

23 "1. Filing with the scholarship granting  
24 organization before the start of the school year a surety bond  
25 payable to the scholarship granting organization in an amount  
26 equal to the aggregate amount of contributions expected to be  
27 received during the school year.



1           "2. Filing with the scholarship granting  
2 organization before the start of the school year financial  
3 information that demonstrates the financial viability of the  
4 participating nonpublic school.

5           "(c) (1) Each scholarship granting organization shall  
6 collect written verification from participating nonpublic  
7 schools that accept its educational scholarship students that  
8 those schools do all of the following:

9           "a. Comply with all health and safety laws or codes  
10 that otherwise apply to nonpublic schools.

11           "b. Hold a valid occupancy permit if required by the  
12 municipality.

13           "c. Certify compliance with nondiscrimination  
14 policies set forth in 42 U.S.C. 1981.

15           "d. Conduct criminal background checks on employees  
16 and then do all of the following:

17           "1. Exclude from employment any person not permitted  
18 by state law to work in a public school.

19           "2. Exclude from employment any person who may  
20 reasonably pose a threat to the safety of students.

21           "(2) Academic accountability standards. There shall  
22 be sufficient information about the academic impact  
23 educational scholarship tax credits have on participating  
24 students in order to allow parents and taxpayers to measure  
25 the achievements of the tax credit scholarship program, and  
26 therefore:

1           "a. Each scholarship granting organization shall  
2 ensure that participating schools that accept its educational  
3 scholarship shall do all of the following:

4           "1. Annually administer either the state achievement  
5 tests or nationally recognized norm-referenced tests that  
6 measure learning gains in math and language arts to all  
7 participating students in grades that require testing under  
8 the accountability testing laws of the state for public  
9 schools.

10           "2. Allow costs of the testing requirements to be  
11 covered by the educational scholarships distributed by the  
12 scholarship granting organizations.

13           "3. Provide the parents of each student who was  
14 tested with a copy of the results of the tests on an annual  
15 basis, beginning with the first year of testing.

16           "4. Provide the test results to the Department of  
17 Revenue on an annual basis, beginning with the first year of  
18 testing.

19           "5. Report student information that allows the state  
20 to aggregate data by grade level, gender, family income level,  
21 and race.

22           "6. Provide graduation rates of those students  
23 benefitting from education scholarships to the Department of  
24 Revenue or an organization chosen by the state in a manner  
25 consistent with nationally recognized standards.

1            "b. The Department of Revenue or an organization  
2 chosen by the Department of Revenue shall do all of the  
3 following:

4            "1. Ensure compliance with all student privacy laws.

5            "2. Collect all test results.

6            "3. Provide the test results and associated learning  
7 gains to the public via a state website after the third year  
8 of test and test-related data collection. The findings shall  
9 be aggregated by the grade level, gender, family income level,  
10 number of years of participation in the tax credit scholarship  
11 program, and race of the student.

12           " (d) (1) The Department of Revenue shall adopt rules  
13 and procedures consistent with this section as necessary.

14           " (2) The Department of Revenue shall provide a  
15 standardized format for a receipt to be issued by a  
16 scholarship granting organization to a taxpayer to indicate  
17 the value of a contribution received. The Department of  
18 Revenue shall require a taxpayer to provide a copy of the  
19 receipt when claiming the tax credit pursuant to this section.

20           " (3) The Department of Revenue shall provide a  
21 standardized format for a scholarship granting organization to  
22 report the information required in paragraph j. of subdivision  
23 (1) of subsection (b).

24           " (4) The Department of Revenue may conduct either a  
25 financial review or audit of a scholarship granting  
26 organization if possessing evidence of fraud.

1           "(5) The Department of Revenue may bar a scholarship  
2     granting organization from participating in the tax credit  
3     scholarship program if the Department of Revenue establishes  
4     that the scholarship granting organization has intentionally  
5     and substantially failed to comply with the requirements in  
6     subsection (b) or subsection (c).

7           "(6) If the Department of Revenue decides to bar a  
8     scholarship granting organization from the tax credit  
9     scholarship program, the Department of Revenue shall notify  
10    affected educational scholarship students and their parents of  
11    the decision as quickly as possible.

12          "(7) The Department of Revenue shall publish and  
13    routinely update, on the website of the department, a list of  
14    scholarship granting organizations in the state, by county.

15          "(e) (1) All schools participating in the tax credit  
16    scholarship program shall be required to operate in Alabama.

17          "(2) All schools participating in the tax credit  
18    scholarship program shall comply with all state laws that  
19    apply to public schools regarding criminal background checks  
20    for employees and exclude from employment any person not  
21    permitted by state law to work in a public school.

22          "(f) The tax credit provided in this section may be  
23    first claimed for the 2013 tax year but may not be claimed for  
24    any tax year prior to the 2013 tax year.

25          "(g) (1) Nothing in this section shall be construed  
26    to force any public school, school system, or school district

1 or any nonpublic school, school system, or school district to  
2 enroll any student.

3 "(2) A public school, school system, or school  
4 district or any nonpublic school, school system, or school  
5 district may develop the terms and conditions under which it  
6 will allow a student who receives a scholarship from a  
7 scholarship granting organization pursuant to this section to  
8 be enrolled, but such terms and conditions may not  
9 discriminate on the basis of the race, gender, religion,  
10 color, disability status, or ethnicity of the student or of  
11 the student's parent.

12 "(3) Nothing in this section shall be construed to  
13 authorize the violation of or supersede the authority of any  
14 court ruling that applies to the public school, school system,  
15 or school district, specifically any federal court order  
16 related to the desegregation of the local school system's  
17 student population.

18 "(h) Nothing in this chapter shall affect or change  
19 the athletic eligibility rules of student athletes governed by  
20 the Alabama High School Athletic Association or similar  
21 association."

22 Section 2. This act shall become effective  
23 immediately following its passage and approval by the  
24 Governor, or its otherwise becoming law, and shall apply  
25 retroactively to tax years beginning on or after January 1,  
26 2014.