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**SENATE BILL 5200**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Schoesler, Dozier, Gildon, Holy, and Honeyford

AN ACT Relating to establishing a tax credit for contributions to student scholarship organizations; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.16 RCW; adding a new section to chapter 83.100 RCW; adding a new chapter to Title 28A RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  INTENT. The legislature intends to expand parent and student choice in education by authorizing a tax credit for private contributions to student scholarship organizations. With this tax credit, the legislature intends to enable parents to independently determine which school best meets the educational needs of their children.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Eligible child" or "eligible student" means a person eligible to attend kindergarten or grades one through 12 in Washington state who is:

(a) Eligible to receive special education services; or

(b) A child in foster care or a child who is a candidate for foster care as defined in RCW 74.13.020.

(2) "Qualified education provider" means an approved private school under chapter 28A.195 RCW or a private tutoring service.

(3) "Student scholarship organization" means a charitable organization in Washington state that:

(a) Is exempt from federal income taxation under section 501(c)(3) of the federal internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)); and

(b) Allocates not less than 90 percent of its annual revenue for educational scholarships to allow eligible students to receive instruction by any qualified education provider.

NEW SECTION. **Sec.**  STUDENT SCHOLARSHIP ORGANIZATIONS—REQUIREMENTS. (1) A student scholarship organization must create and maintain an application process under which scholarship applications are accepted, reviewed, approved, and denied.

(2) A student scholarship organization may not restrict or reserve scholarships for use at a particular qualified education provider or a particular type of qualified education provider, and must allow an eligible student to receive instruction by any qualified education provider of the parents' or legal guardians' choice.

(3) A student scholarship organization must maintain separate accounts for operating funds and scholarship funds. Such funds are subject to the following requirements:

(a) At least 90 percent of all revenue received by a student scholarship organization must be used for scholarships;

(b) The cost of the annual fiscal review required under section 4 of this act may be paid out of the total contributions received by a student scholarship organization before calculation of the 90 percent minimum obligation amount; and

(c) All contributions subject to the 90 percent minimum obligation amount that are received in one calendar year must be paid out in scholarships within the next three calendar years.

(4) A student scholarship organization may not provide, in any calendar year, a scholarship to an eligible student that exceeds $15,000.

(5) A student scholarship organization may transfer funds to another student scholarship organization.

(6) A student scholarship organization that fails to satisfy the conditions of this section is subject to termination as provided in section 8 of this act.

NEW SECTION. **Sec.**  STUDENT SCHOLARSHIP ORGANIZATIONS—NOTICE AND ANNUAL REVIEW. (1) Each student scholarship organization must submit notice to the state auditor's office of its intent to operate as a student scholarship organization prior to accepting donations.

(2) Each student scholarship organization must complete an annual fiscal review of its accounts by an independent certified public accountant within 150 days after the close of each calendar year, and submit the annual fiscal review to the state auditor's office within 150 days of the close of the calendar year. The annual fiscal review must disclose the following for each of the three most recent calendar years:

(a) The total number and dollar value of individual and corporate contributions;

(b) The total number and dollar value of scholarships awarded to eligible students;

(c) The names of all qualified education providers that have accepted scholarship funds from the organization; and

(d) The cost of the annual fiscal review.

(3) A student scholarship organization that fails to satisfy the conditions of this section is subject to termination as provided in section 8 of this act.

NEW SECTION. **Sec.**  TUITION PAYMENT. (1) A student scholarship organization must deliver scholarship funds directly to a qualified education provider selected by the parents or legal guardians of the eligible student to whom the scholarship was awarded. The qualified education provider must immediately notify the parents or legal guardians that the payment was received.

(2) An eligible student is not eligible for a scholarship award amount in excess of $15,000 in each calendar year. This limitation applies to each eligible student of a parent or legal guardian.

NEW SECTION. **Sec.**  PUBLICATION. The state auditor's office shall maintain on its website a current list of all student scholarship organizations that have provided notice under section 4 of this act and all qualified education providers that have accepted scholarship funds from a student scholarship organization.

NEW SECTION. **Sec.**  QUALIFIED EDUCATION TAX CREDITS. See sections 9, 10, and 11 of this act for the new tax credits authorized under this chapter.

NEW SECTION. **Sec.**  REVIEW AND TERMINATION. (1) The state auditor's office is authorized to examine any records of a student scholarship organization that are relevant to determine whether the student scholarship organization is in compliance with sections 3 through 5 of this act.

(2) If the state auditor's office finds that a student scholarship organization is not in compliance with sections 3 through 5 of this act, the state auditor's office must provide written notice to the organization explaining the specific reasons for finding noncompliance. The student scholarship organization has 30 days from the date of the notice to correct any deficiencies.

(3) If a student scholarship organization fails to correct all deficiencies after a finding of noncompliance, the state auditor's office must provide a final written notice of failure to the student scholarship organization. This final written notice of failure must:

(a) Indicate that the student scholarship organization will be removed from the list of eligible student scholarship organizations;

(b) Direct the student scholarship organization to cease all operations as a student scholarship organization; and

(c) Direct the student scholarship organization to transfer all scholarship account funds to a properly operating student scholarship organization within 30 days of receiving the final written notice of failure.

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

(1) Subject to the limitations in this section, a credit is allowed against the tax imposed under this chapter for contributions made by a person to a Washington state student scholarship organization.

(2) The person must make the contribution before claiming a credit authorized under this section. Credits earned under this section may be claimed against taxes due for the calendar year in which the contribution is made. The amount of credit claimed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. No refunds may be granted for any unused credits.

(3) Except as provided under subsection (4) of this section, a tax credit claimed under this section may not be carried over to another year.

(4) Any amount of tax credit otherwise allowable under this section not claimed by the person in any calendar year may be carried over and claimed against the person's tax liability for the next succeeding calendar year. Any credit remaining unused in the next succeeding calendar year may be carried forward and claimed against the person's tax liability for the second succeeding calendar year; and any credit not used in that second succeeding calendar year may be carried over and claimed against the person's tax liability for the third succeeding calendar year, but may not be carried over for any calendar year thereafter.

(5) Credits are available on a first-in-time basis. The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section and sections 10 and 11 of this act during any calendar year to exceed the amount specified under subsection (6) of this section. If this limitation is reached, the department must notify all student scholarship organizations that the annual statewide limit has been met. In addition, the department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and provide that the tax be paid within 30 days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(6) In fiscal year 2022, the department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section and sections 10 and 11 of this act during any fiscal year to exceed $750,000. In fiscal year 2023 and each fiscal year thereafter, the total amount of credits available to be claimed under this section and sections 10 and 11 of this act is the total amount allowable for the prior fiscal year unless the amount of credits actually claimed under this section and sections 10 and 11 of this act for the prior fiscal year is equal to or greater than 90 percent of the maximum allowable amount for that fiscal year, in which case the total amount of credits eligible to be claimed under this section and sections 10 and 11 of this act will be increased by 25 percent. The department shall publish on its website information identifying the tax credit cap amount when it is increased under this subsection (6).

(7) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection, "return" has the meaning provided in RCW 82.32.050.

(8) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section.

(9) A student scholarship organization must provide to the department, upon request, such information needed to verify eligibility for credit under this section, including information regarding contributions received by the student scholarship organization.

(10) The department may not allow any credit under this section before July 1, 2021.

(11) For the purposes of this section, "student scholarship organization" has the meaning provided in section 2 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 82.16 RCW to read as follows:

(1) Subject to the limitations in this section, a credit is allowed against the tax imposed under this chapter for contributions made by a person to a Washington state student scholarship organization.

(2) The person must make the contribution before claiming a credit authorized under this section. Credits earned under this section may be claimed against taxes due for the calendar year in which the contribution is made. The amount of credit claimed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. No refunds may be granted for any unused credits.

(3) Except as provided under subsection (4) of this section, a tax credit claimed under this section may not be carried over to another year.

(4) Any amount of tax credit otherwise allowable under this section not claimed by the person in any calendar year may be carried over and claimed against the person's tax liability for the next succeeding calendar year. Any credit remaining unused in the next succeeding calendar year may be carried forward and claimed against the person's tax liability for the second succeeding calendar year; and any credit not used in that second succeeding calendar year may be carried over and claimed against the person's tax liability for the third succeeding calendar year, but may not be carried over for any calendar year thereafter.

(5) Credits are available on a first-in-time basis. The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section and sections 9 and 11 of this act during any calendar year to exceed the amount specified under subsection (6) of this section. If this limitation is reached, the department must notify all student scholarship organizations that the annual statewide limit has been met. In addition, the department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and provide that the tax be paid within 30 days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(6) In fiscal year 2022, the department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section and sections 9 and 11 of this act during any fiscal year to exceed $750,000. In fiscal year 2023 and each fiscal year thereafter, the total amount of credits available to be claimed under this section and sections 9 and 11 of this act is the total amount allowable for the prior fiscal year unless the amount of credits actually claimed under this section and sections 9 and 11 of this act for the prior fiscal year is equal to or greater than 90 percent of the maximum allowable amount for that fiscal year, in which case the total amount of credits eligible to be claimed under this section and sections 9 and 11 of this act will be increased by 25 percent. The department shall publish on its website information identifying the tax credit cap amount when it is increased under this subsection (6).

(7) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection, "return" has the meaning provided in RCW 82.32.050.

(8) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section.

(9) A student scholarship organization must provide to the department, upon request, such information needed to verify eligibility for credit under this section, including information regarding contributions received by the student scholarship organization.

(10) The department may not allow any credit under this section before July 1, 2021.

(11) For the purposes of this section, "student scholarship organization" has the meaning provided in section 2 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 83.100 RCW to read as follows:

(1) For the purposes of determining the estate tax due under this chapter, a credit is allowed against the tax imposed under this chapter for contributions made by an estate to a Washington state student scholarship organization.

(2) The personal representative may not make the contribution to the Washington state student scholarship organization until payment of the tax under this chapter is paid or otherwise secured as provided in RCW 83.100.120.

(3) Credits are available on a first-in-time basis. The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section and sections 9 and 10 of this act during any calendar year to exceed the amount specified under subsection (4) of this section. If this limitation is reached, the department must notify all student scholarship organizations that the annual statewide limit has been met. In addition, the department must provide written notice to the personal representative of any estate that has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and provide that the tax be paid within 30 days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(4) In fiscal year 2022, the department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section and sections 9 and 10 of this act during any fiscal year to exceed $750,000. In fiscal year 2023 and each fiscal year thereafter, the total amount of credits available to be claimed under this section and sections 9 and 10 of this act is the total amount allowable for the prior fiscal year unless the amount of credits actually claimed under this section and sections 9 and 10 of this act for the prior fiscal year is equal to or greater than 90 percent of the maximum allowable amount for that fiscal year, in which case the total amount of credits eligible to be claimed under this section and sections 9 and 10 of this act will be increased by 25 percent. The department shall publish on its website information identifying the tax credit cap amount when it is increased under this subsection (4).

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section.

(6) A student scholarship organization must provide to the department, upon request, such information needed to verify eligibility for credit under this section, including information regarding contributions received by the student scholarship organization.

(7) This section applies to estates of decedents dying on or after January 1, 2022.

(8) For the purposes of this section, "student scholarship organization" has the meaning provided in section 2 of this act.

NEW SECTION. **Sec.**  RCW 82.32.805 and 82.32.808 do not apply to sections 9 through 11 of this act.

NEW SECTION. **Sec.**  Sections 1 through 8 of this act constitute a new chapter in Title 28A RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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