**South Carolina General Assembly**

121st Session, 2015-2016

**H. 3072**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Henderson, McCoy, Hamilton, Allison, Bingham, Brannon, Delleney, Merrill, D.C. Moss, Putnam, Quinn, G.M. Smith, G.R. Smith, Spires, Whitmire, Yow and Thayer

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Introduced in the House on January 13, 2015

Currently residing in the House Committee on **Ways and Means**

Summary: Nonprofit scholarship funding organizations

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/11/2014 House Prefiled

12/11/2014 House Referred to Committee on **Ways and Means**

1/13/2015 House Introduced and read first time ([House Journal‑page 83](file:///h:\HJ%20Archive\2015\01-13-15.docx))

1/13/2015 House Referred to Committee on **Ways and Means** ([House Journal‑page 83](file:///h:\HJ%20Archive\2015\01-13-15.docx))

1/21/2015 House Member(s) request name added as sponsor: Thayer

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**VERSIONS OF THIS BILL**

[12/11/2014](file:///p:\pprever\2015-16\3072_20141211.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT “EVAN’S LAW” BY ADDING SECTION 59‑63‑47 SO AS TO CREATE NONPROFIT SCHOLARSHIP FUNDING ORGANIZATIONS TO PROVIDE GRANTS FOR DEFRAYING THE COSTS OF TUITION, TRANSPORTATION, AND TEXTBOOK EXPENSES INCURRED BY EXCEPTIONAL NEEDS CHILDREN TO ATTEND ELIGIBLE INDEPENDENT SCHOOLS, TO DEFINE NECESSARY TERMINOLOGY, TO PROVIDE TAX CREDITS FOR CONTRIBUTIONS MADE TO NONPROFIT SCHOLARSHIP FUNDING ORGANIZATIONS, AND TO PROVIDE RELATED MISCELLANEOUS PROVISIONS.

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

SECTION 1. This act must be known and may be cited as “Evan’s Law”.

SECTION 2. Article 1, Chapter 63, Title 59 of the 1976 Code is amended by adding:

“Section 59‑63‑47. (A) As used in this section:

(1) ‘Independent school’ means a school, other than a public school, at which the compulsory attendance requirements of Section 59‑65‑10 may be met and that does not discriminate based on the grounds of race, color, religion, or national origin.

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

(3) ‘Qualifying student’ means a student who is a South Carolina resident and who is eligible to be enrolled in a South Carolina secondary or elementary public school at the kindergarten or later‑year level for the current school year.

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

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

(6) ‘Eligible school’ means an independent school including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59‑65‑10 may be met that:

(a) offers a general education to primary or secondary school students;

(b) does not discriminate on the basis of race, color, or national origin;

(c) is located in this State;

(d) has an educational curriculum that includes courses set forth in the state’s diploma requirements and where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress;

(e) has school facilities that are subject to applicable federal, state, and local laws; and

(f) is a member in good standing of the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools or the South Carolina Independent Schools Association.

(7) ‘Nonprofit scholarship funding organization’ means a charitable organization that:

(a) is exempt from federal tax under Section 501(a) of the Internal Revenue Code by being listed as an exempt organization in Section 501(c)(3);

(b) allocates, after its first year of operation, at least ninety‑five percent of its annual contributions and gross revenue received during a particular year to provide grants for tuition, transportation, textbook expenses, or any combination of them, to children enrolled in an eligible school meeting the criteria of this section, and incurs administrative expenses annually, after its first year of operation, of not more than five percent of its annual contributions and revenue for a particular year;

(c) allocates all of its funds used for grants on an annual basis to exceptional needs children;

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

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

(f) does not have as a member of its governing board or an employee, volunteer, contractor, consultant, or fundraiser who has been convicted of a felony, who has declared bankruptcy within the last seven years, or both;

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

(h) must not place conditions on schools enrolling students receiving scholarships to limit the ability of the schools to enroll students accepting grants from other nonprofit scholarship funding organizations.  
 (8) ‘Person’ means an individual, partnership, corporation, or other similar entity.

(9) ‘Exceptional needs’ means the unique educational needs of a child:

(a)(i) who has been evaluated in accordance with evaluation criteria in Regulation 43‑243.1 and determined eligible as a child with a disability who needs special education and related services pursuant to of Section 300.8 of the Individuals with Disabilities Education Act; or

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

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

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

(B) A person is entitled to a tax credit against income taxes imposed pursuant to Chapter 6, Title 12 or bank taxes imposed pursuant to Chapter 11, Title 12 for the amount of money the person contributes to a nonprofit scholarship funding organization within the limits of this section if the:

(1) contribution is used to provide grants for tuition, transportation, and textbook expenses or any combination of them, to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this section; and

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

(C)(1) A scholarship funding organization may award a grant to a qualifying exceptional needs child to attend an independent school in an amount not exceeding the lesser of:

(a) ten thousand dollars; or

(b) the total cost of tuition, transportation, and textbook expenses.

(2) A scholarship funding organization must receive written documentation from the parent documenting that the qualifying student is an exceptional needs child before it may award a grant.

(3) Upon approving the application, the scholarship funding organization must issue a check to the eligible school in the name of the qualifying student.  If the student leaves or withdraws from the school before the end of the semester or school year and does not reenroll within thirty days, the eligible school must return a prorated amount of the grant to the scholarship funding organization within sixty days after the student leaves or withdraws from the school.

(D)(1)(a) The tax credits authorized by subsection (B) cumulatively may not exceed eight million dollars in contributions made on behalf of exceptional needs students.  If the Department of Revenue determines that the cumulative total of these credits claimed by all taxpayers exceeds this amount, the department only shall allow credits up to those amounts on a first come, first serve basis.

(b) The Department of Revenue shall establish an application process to determine the amount of credit available to be claimed.  The receipt of the application by the department will determine priority for the credit.  A credit must be claimed on the return for tax year that the contribution is made.

(2) A taxpayer may not claim more than sixty percent of their total tax liability for the year in contribution towards the tax credit authorized by subsection (B). This credit is not refundable.

(3) The Department of Revenue shall:

(a) prescribe the form and manner of proof required to obtain the credit authorized by subsection (B); and

(b) develop a method of informing taxpayers if either of the credit limits are met at any time during the current fiscal year.

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

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

(G)(1) The Education Oversight Committee shall determine if an eligible school meets the criteria established by subsection (A)(6), publish an approved list of such schools meeting this criteria below, and promulgate regulations further enumerating the specifics of these criteria. In performing this function, the Education Oversight Committee shall establish an advisory committee made up of nine members including parents and representatives of independent schools and independent school associations. This advisory committee shall provide recommendations to the Education Oversight Committee on the content of these regulations and other related matters requested by the Education Oversight Committee.

(2)(a) Within ninety days after the effective date of this section, the Education Oversight Committee shall provide:

(i) a list with addresses and telephone numbers of nonprofit scholarship funding organizations in good standing which provide grants under this section, and

(ii) a list of approved independent schools which accept grants for eligible students and which in its determination are in compliance with the requirements of subsection (A)(6).

(b) The Education Oversight Committee shall publish the lists provided in subitem (a) on its Internet website for public availability, and shall update these lists weekly.

(c) Student test scores, by category, on national achievement or state standardized tests, or both, for all grades tested and administered by an eligible school receiving or entitled to receive scholarship grants under this section must be transmitted to the Education Oversight Committee, which shall publish this information on its Internet website for public availability with the most recent scores by category included.

(3) An independent school not determined to be an eligible school under the provisions of this section may seek review by filing a request for a contested case hearing with the Administrative Law Court.

(4) The Education Oversight Committee, in consultation with the advisory committee established in item (1), may exempt an independent school that has exceptional needs students who receive scholarship grants pursuant to this section from the curriculum requirements of subsection (A)(6)(d).

(H)(1) A nonprofit scholarship funding organization providing grants under subsection (C) shall engage an outside auditing firm to conduct a comprehensive financial audit of its operations in conformity with generally accepted accounting principles. The audit also must document, at a minimum, the total number of grants awarded, the total amount of each grant, and the names of the eligible schools receiving grants on behalf of the eligible students. The organization shall provide a copy of this audit to the Secretary of State and Department of Revenue within thirty days after the organization receives the completed audit. The Secretary of State and the Department of Revenue each shall publish the audit on their respective Internet websites for public availability.

(2) An independent school that accepts grants for eligible students shall engage an outside entity or auditing firm to conduct an audit to examine its compliance with the provisions of this section. The school shall provide a copy of this compliance audit to the Secretary of State and Department of Revenue within thirty days after the school receives the completed audit. The Secretary of State and the Department of Revenue each shall publish the audit on their respective Internet websites for public availability.

(3) A nonprofit scholarship funding organization may transfer funds to another nonprofit scholarship funding organization, especially in the event that the organization cannot distribute the funds in a timely manner or if the organization ceases to exist.  No funds that are transferred by one nonprofit scholarship funding organization to another may be considered by the former organization when calculating its administrative expenses.”

SECTION 3. This act takes effect upon approval by the Governor.

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