

## 1 HOUSE BILL NO. 279

2 INTRODUCED BY S. BERGLEE, M. BINKLEY, J. CARLSON, J. FULLER, W. GALT, S. GIST, E. HILL, J.  
 3 HINKLE, C. HINKLE, J. KASSMIER, C. KNUDSEN, R. KNUDSEN, W. MCKAMEY, B. MERCER, B.  
 4 MITCHELL, T. MOORE, F. NAVE, M. NOLAND, J. READ, A. REGIER, V. RICCI, J. SCHILLINGER, K.  
 5 SEEKINS-CROWE, D. SKEES, M. STROMSWOLD, J. TREBAS, B. TSCHIDA, S. VINTON, K. ZOLNIKOV

6  
 7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE TAX CREDIT  
 8 SCHOLARSHIP PROGRAM AND THE INNOVATIVE EDUCATIONAL PROGRAM; REMOVING THE  
 9 ASSESSMENT REQUIREMENTS FOR QUALIFIED EDUCATION PROVIDERS; REVISING LIMITS ON  
 10 SCHOLARSHIP AMOUNTS; ALLOWING TAX CREDITS EARNED UNDER THE PROGRAMS TO BE  
 11 CARRIED FORWARD; REVISING THE TAX CREDIT LIMIT AND THE AGGREGATE LIMIT OF CREDITS  
 12 UNDER THE PROGRAMS; REVISING THE PREAPPROVAL PROCESS FOR THE TAX CREDIT  
 13 SCHOLARSHIP PROGRAM; EXTENDING THE TERMINATION DATE FOR THE TAX CREDIT  
 14 SCHOLARSHIP PROGRAM AND THE INNOVATIVE EDUCATIONAL PROGRAM; AMENDING SECTIONS  
 15 15-30-3101, 15-30-3102, 15-30-3103, 15-30-3104, 15-30-3106, 15-30-3110, AND 15-30-3111, MCA;  
 16 AMENDING SECTION 33, CHAPTER 457, LAWS OF 2015; AND PROVIDING AN IMMEDIATE EFFECTIVE  
 17 DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

18  
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20  
 21 **Section 1.** Section 15-30-3101, MCA, is amended to read:

22 **"15-30-3101. (Temporary) Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of  
 23 student scholarship organizations is to provide parental and student choice in education with private  
 24 contributions through tax replacement programs. ~~The tax credit for taxpayer donations under this part must be~~  
 25 ~~administered in compliance with Article V, section 11(5), and Article X, section 6, of the Montana constitution.~~  
 26 (Terminates December 31, ~~2023~~ 2026 ~~sec. 33, Ch. 457, L. 2015.~~)"

27  
 28 **Section 2.** Section 15-30-3102, MCA, is amended to read:

1           **"15-30-3102. (Temporary) Definitions.** As used in this part, the following definitions apply:

2           (1) "Department" means the department of revenue provided for in 2-15-1301.

3           (2) "Eligible student" means a student who is a Montana resident and who is 5 years of age or older  
4 on or before September 10 of the year of attendance and has not yet reached 19 years of age.

5           (3) "Geographic region" has the meaning provided in 20-9-903.

6           (4) "Large district" has the meaning provided in 20-9-903.

7           (5) "Partnership" has the meaning provided in 15-30-2101.

8           (6) "Pass-through entity" has the meaning provided in 15-30-2101.

9           (7) "Qualified education provider" means an education provider that:

10           (a) is not a public school;

11           (b) (i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or  
12 national accreditation organization; or

13           (ii) is a nonaccredited provider or tutor and has informed the child's parents or legal guardian in writing  
14 at the time of enrollment that the provider is not accredited and is not seeking accreditation;

15           (c) is not a home school as referred to in 20-5-102(2)(e);

16           ~~(d) administers a nationally recognized standardized assessment test or criterion-referenced test and:~~

17           ~~(i) makes the results available to the child's parents or legal guardian; and~~

18           ~~(ii) administers the test for all 8th grade and 11th grade students and provides the overall scores on a~~  
19 ~~publicly accessible private website or provides the composite results of the test to the office of public instruction~~  
20 ~~for posting on its website;~~

21           ~~(e)(d)~~ satisfies the health and safety requirements prescribed by law for private schools in this state;

22 and

23           ~~(f)(e)~~ qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.

24           (8) "Small business corporation" has the meaning provided in 15-30-3301.

25           (9) "Student scholarship organization" means a charitable organization in this state that:

26           (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26  
27 U.S.C. 501(c)(3);

28           (b) allocates not less than 90% of its annual revenue from contributions eligible for the tax credit

1 under 15-30-3111 for scholarships to allow students to enroll with any qualified education provider; and

2 (c) provides educational scholarships to eligible students without limiting student access to only one  
3 education provider.

4 (10) "Taxpayer" has the meaning provided in 15-30-2101. (Terminates December 31, ~~2023~~ 2026—~~see~~  
5 ~~33, Ch. 457, L. 2015.~~)"

6

7 **Section 3.** Section 15-30-3103, MCA, is amended to read:

8 **"15-30-3103. (Temporary) Requirements for student scholarship organizations.** (1) A student  
9 scholarship organization:

10 (a) shall obligate at least 90% of its annual revenue from contributions eligible for the tax credit under  
11 15-30-3111 for scholarships. For the purpose of this calculation:

12 (i) the cost of the annual fiscal review provided for in 15-30-3105(1)(b) may be paid out of the total  
13 contributions before calculation of the 90% minimum obligation amount; and

14 (ii) all contributions subject to the 90% minimum obligation amount that are received in 1 calendar year  
15 must be paid out in scholarships within the 3 calendar years following the contribution.

16 (b) may not restrict or reserve scholarships for use at a particular education provider or any particular  
17 type of education provider and shall allow an eligible student to enroll with any qualified education provider of  
18 the parents' or legal guardian's choice;

19 (c) shall provide scholarships to eligible students to attend instruction offered by a qualified education  
20 provider;

21 (d) may not provide a scholarship to an eligible student for an academic year that exceeds ~~50%~~ of the  
22 per-pupil average of total public school expenditures calculated in 20-9-570;

23 ~~(e) shall ensure that the organization's average scholarship for an academic year does not exceed~~  
24 ~~30% of the per-pupil average of total public school expenditures calculated in 20-9-570;~~

25 ~~(f)~~(e) shall maintain separate accounts for scholarship funds and operating funds;

26 ~~(g)~~(f) may transfer funds to another student scholarship organization;

27 ~~(h)~~(g) shall maintain an application process under which scholarship applications are accepted,  
28 reviewed, approved, and denied; and

1           ~~(i)(h)~~ shall comply with payment and reporting requirements in accordance with 15-30-3104 and 15-  
2 30-3105.

3           (2) An organization that fails to satisfy the conditions of this section is subject to termination as  
4 provided in 15-30-3113. (Terminates December 31, ~~2023~~ 2026~~--sec. 33, Ch. 457, L. 2015.~~)"

5

6           **Section 4.** Section 15-30-3104, MCA, is amended to read:

7           **"15-30-3104. (Temporary) Tuition payment limitation.** (1) A student scholarship organization shall  
8 deliver the scholarship funds directly to the qualified education provider selected by the parents or legal  
9 guardian of the child to whom the scholarship was awarded. The qualified education provider shall immediately  
10 notify the parents or legal guardian that the payment was received.

11           (2) A parent or legal guardian of an eligible student may not accept one or more scholarship awards  
12 from a student scholarship organization for an eligible student if the total amount of the awards exceeds ~~50%~~ of  
13 the per-pupil average of total public school expenditures calculated in 20-9-570. This limitation applies to each  
14 eligible student of a parent or legal guardian. (Terminates December 31, ~~2023~~ 2026~~--sec. 33, Ch. 457, L.~~  
15 ~~2015.~~)"

16

17           **Section 5.** Section 15-30-3106, MCA, is amended to read:

18           **"15-30-3106. (Temporary) Student scholarship organizations -- listing on website.** ~~(1)~~The  
19 department shall maintain on its website a hyperlink to a current list of all:

20           ~~(a)(1)~~ student scholarship organizations that have provided notice pursuant to 15-30-3105(1)(a); and

21           ~~(b)(2)~~ qualified education providers that accepted scholarship funds from a student scholarship  
22 organization.

23           ~~(2) The list must include:~~

24           ~~(a) a statistical compilation of the information received from the student scholarship organizations;~~

25 and

26           ~~(b) a hyperlink to the qualified education provider's overall testing scores contained on a publicly~~  
27 ~~accessible private website or to the office of public instruction's website pursuant to 15-30-3102(7)(d)(ii).~~

28 (Terminates December 31, ~~2023~~ 2026~~--sec. 33, Ch. 457, L. 2015.~~)"

1

2 **Section 6.** Section 15-30-3110, MCA, is amended to read:

3 **"15-30-3110. (Temporary) Credit for providing supplemental funding to public schools --**

4 **innovative educational program.** (1) Subject to subsection ~~(5)~~ (4), a taxpayer or corporation is allowed a  
5 credit against the tax imposed by chapter 30 or 31 for donations made to the educational improvement account  
6 provided for in 20-9-905 for the purpose of providing supplemental funding to public schools for innovative  
7 educational programs and technology deficiencies. The taxpayer may direct the donation to a geographic  
8 region or a large district as provided in 20-9-904(2)(b). The amount of the credit allowed is equal to the amount  
9 of the donation, not to exceed ~~\$150~~ \$200,000.

10 (2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-  
11 through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the  
12 same proportion as used to report the entity's income or loss.

13 (b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust  
14 may be attributed to each beneficiary of the estate or trust in the same proportion used to report the  
15 beneficiary's income from the estate or trust for Montana income tax purposes.

16 (3) The credit allowed under this section may not exceed the taxpayer's income tax liability but may  
17 be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first  
18 to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

19 ~~(4) There is no carryback or carryforward of the credit permitted under this section, and the credit~~  
20 ~~must be applied in the year the donation is made, as determined by the taxpayer's accounting method.~~

21 ~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million per year  
22 beginning in tax year ~~2016~~ 2021.

23 (ii) Beginning in ~~2017, by August 1, 2022, by December 31~~ of each year, the department shall  
24 determine if ~~\$3 million or the 80% of the~~ aggregate limit provided for in subsection ~~(5)(a)(iii)~~ (4)(a)(iii) in  
25 donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits  
26 allowed must be increased by ~~40%~~ 20% for the succeeding tax years.

27 (iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the  
28 base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of

1 subsection ~~(5)(a)(ii)~~ (4)(a)(ii).

2 ~~(b) The department shall approve the amount of donations for taxpayers on a first-come, first-served~~  
 3 ~~basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer~~  
 4 ~~makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be~~  
 5 ~~processed without regard to the credit.~~

6 (b) The aggregate limit under this subsection (4) applies to the year in which a donation is made  
 7 regardless of whether the full credit is claimed in that tax year or carried forward.

8 ~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer  
 9 for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3)  
 10 of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

11 (a) claiming a credit under this section instead of a deduction; or

12 (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount  
 13 for which the credit is allowed under this section.

14 ~~(7)(6)~~ After consultation with the superintendent of public instruction, the department may develop an  
 15 internet-based registration system that provides taxpayers with the opportunity to obtain preapproval for a tax  
 16 credit before making a donation. (Terminates December 31, ~~2023~~ 2026—~~sec. 33, Ch. 457, L. 2015.~~)"

17

18 **Section 7.** Section 15-30-3111, MCA, is amended to read:

19 **"15-30-3111. (Temporary) Qualified education tax credit for contributions to student**

20 **scholarship organizations.** (1) Subject to subsection ~~(5)~~ (4), a taxpayer or corporation is allowed a credit  
 21 against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The  
 22 donor may not direct or designate contributions to a parent, legal guardian, or specific qualified education  
 23 provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed ~~\$150~~  
 24 \$200,000.

25 (2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-  
 26 through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the  
 27 same proportion as used to report the entity's income or loss.

28 (b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust

1 may be attributed to each beneficiary of the estate or trust in the same proportion used to report the  
2 beneficiary's income from the estate or trust for Montana income tax purposes.

3 (3) The credit allowed under this section may not exceed the taxpayer's income tax liability but may  
4 be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first  
5 to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

6 ~~(4) There is no carryback or carryforward of the credit permitted under this section, and the credit~~  
7 ~~must be applied in the year the donation is made, as determined by the taxpayer's accounting method.~~

8 ~~(5)(4)~~ (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million per year  
9 beginning in tax year ~~2016~~ 2021.

10 (ii) Beginning in ~~2017, by August 1 2022, by December 31~~ of each year, the department shall  
11 determine if ~~\$3 million or the 80% of the~~ aggregate limit provided for in subsection ~~(5)(a)(iii) (4)(a)(iii)~~ in tax  
12 credits was preapproved by the department. If this condition is satisfied, the aggregate ~~amount limit~~ of tax  
13 credits allowed must be increased by ~~40% 20%~~ for the succeeding tax years.

14 (iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the  
15 ~~base~~ aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of  
16 subsection ~~(5)(a)(iii) (4)(a)(ii)~~.

17 ~~(b) The department shall approve the amount of tax credits for taxpayers on a first come, first served~~  
18 ~~basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer~~  
19 ~~makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be~~  
20 ~~processed without regard to the credit.~~

21 (b) The aggregate limit under this subsection (4) applies to the year in which a donation is made  
22 regardless of whether the full credit is claimed in that tax year or carried forward.

23 ~~(6)(5)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer  
24 for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3)  
25 of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

26 (a) claiming a credit under this section instead of a deduction; or

27 (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount  
28 for which the credit is allowed under this section.

1           ~~(7)(6)~~ The department may develop an internet-based registration system that provides donors with  
 2 the opportunity to obtain preapproval for a tax credit before making a contribution. (a) On receiving a donation  
 3 under this part, a student scholarship organization shall seek preapproval, in a manner prescribed by the  
 4 department, that the amount of tax credit sought by the taxpayer is available under the aggregate limit under  
 5 subsection (4).

6           (b) On preapproval by the department, a student scholarship organization shall issue a receipt, in a  
 7 form prescribed by the department, to each contributing taxpayer indicating the value of the donation received  
 8 and preapproval of the tax credit.

9           (c) A taxpayer shall provide a copy of the receipt when claiming the tax credit. (Terminates December  
 10 31, 2023 2026--sec. 33, Ch. 457, L. 2015.)"

11

12           **Section 8.** Section 33, Chapter 457, Laws of 2015, is amended to read:

13           **"Section 33. Termination.** [This act] terminates December 31, ~~2023~~2026."

14

15           NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.

16

17           NEW SECTION. Section 10. Retroactive applicability. [This act] applies retroactively, within the  
 18 meaning of 1-2-109, to tax years beginning after December 31, 2020.

19

20           NEW SECTION. Section 11. Termination. [Sections 1 through 7] terminate December 31, 2026.

21

- END -