

By Senator Steube

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1 A bill to be entitled
2 An act relating to educational choice programs;
3 amending s. 1002.385, F.S.; revising the term
4 "disability"; authorizing Gardiner Scholarship Program
5 funds to be spent for specified school supplies;
6 revising obligations of a scholarship-funding
7 organization; providing a maximum application fee that
8 an organization may charge for specified applicants;
9 requiring the Auditor General to conduct operational
10 audits of program participants at least once every 3
11 years, instead of annually; amending s. 1002.395,
12 F.S.; defining the term "expend"; revising student
13 eligibility requirements for the Florida Tax Credit
14 Scholarship Program; capping the amount of eligible
15 contributions that an organization may use for
16 administrative expenses; specifying that such funds
17 may not be used for professional development or
18 accreditation purposes; providing a maximum
19 application fee that an organization may charge for
20 specified applicants; authorizing, rather than
21 requiring, a parent to notify his or her child's
22 school district of withdrawal of the child to attend
23 an eligible private school; providing an effective
24 date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Paragraph (d) of subsection (2) of section
29 1002.385, Florida Statutes, is amended, paragraph (p) is added

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30 to subsection (5) of that section, and paragraph (b) of
31 subsection (6), paragraph (h) of subsection (12), paragraph (g)
32 of subsection (13), and paragraph (a) of subsection (14) of that
33 section are amended, to read:

34 1002.385 The Gardiner Scholarship.—

35 (2) DEFINITIONS.—As used in this section, the term:

36 (d) "Disability" means, for a 3- or 4-year-old child or for
37 a student in kindergarten to grade 12, autism spectrum disorder,
38 as defined in the Diagnostic and Statistical Manual of Mental
39 Disorders, Fifth Edition, published by the American Psychiatric
40 Association; cerebral palsy, as defined in s. 393.063(6); Down
41 syndrome, as defined in s. 393.063(15); an intellectual
42 disability, as defined in s. 393.063(24); Phelan-McDermid
43 syndrome, as defined in s. 393.063(28); Prader-Willi syndrome,
44 as defined in s. 393.063(29); spina bifida, as defined in s.
45 393.063(40); being a high-risk child, as defined in s.
46 393.063(23) (a); muscular dystrophy; Williams syndrome; rare
47 diseases which affect patient populations of fewer than 200,000
48 individuals in the United States, as defined by the National
49 Organization for Rare Disorders; ~~anaphylaxis~~; deaf; visually
50 impaired; traumatic brain injured; hospital or homebound; or
51 identification as dual sensory impaired, as defined by rules of
52 the State Board of Education and evidenced by reports from local
53 school districts. The term "hospital or homebound" includes a
54 student who has a medically diagnosed physical or psychiatric
55 condition or illness, as defined by the state board in rule, and
56 who is confined to the home or hospital for more than 6 months.
57 (5) AUTHORIZED USES OF PROGRAM FUNDS.—Program funds must be
58 used to meet the individual educational needs of an eligible

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59 student and may be spent for the following purposes:

60 (p) School supplies, including pens, pencils, erasers,
61 crayons, notebooks, notebook filler paper, legal pads, binders,
62 lunch boxes, construction paper, markers, folders, poster board,
63 composition books, poster paper, scissors, cellophane tape,
64 glue, paste, rulers, computer disks, protractors, compasses, and
65 calculators.

66

67 A provider of any services receiving payments pursuant to this
68 subsection may not share, refund, or rebate any moneys from the
69 Gardiner Scholarship with the parent or participating student in
70 any manner. A parent, student, or provider of any services may
71 not bill an insurance company, Medicaid, or any other agency for
72 the same services that are paid for using Gardiner Scholarship
73 funds.

74 (6) TERM OF THE PROGRAM.—For purposes of continuity of
75 educational choice and program integrity:

76 (b)1. A student's scholarship account must be closed and
77 any remaining funds, including, but not limited to,
78 contributions made to the Stanley G. Tate Florida Prepaid
79 College Program or earnings from or contributions made to the
80 Florida College Savings Program using program funds pursuant to
81 paragraph (5)(f), shall revert to the state after:

82 a. Denial or revocation of program eligibility by the
83 commissioner for fraud or abuse, including, but not limited to,
84 the student or student's parent accepting any payment, refund,
85 or rebate, in any manner, from a provider of any services
86 received pursuant to subsection (5);

87 b. Any period of 3 consecutive years after high school

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88 completion or graduation during which the student has not been
 89 enrolled in an eligible postsecondary educational institution or
 90 a program offered by the institution; ~~or~~

91 c. Three consecutive fiscal years in which an account has
 92 been inactive; ~~or~~

93 d. The student is no longer eligible for a scholarship.

94 2. The commissioner must notify the parent and the
 95 organization when a Gardiner Scholarship account is closed and
 96 program funds revert to the state.

97 (12) OBLIGATIONS OF SCHOLARSHIP-FUNDING ORGANIZATIONS.—An
 98 organization may establish Gardiner Scholarships for eligible
 99 students by:

100 (h) Notifying the parent about the availability of, ~~and the~~
 101 ~~requirements associated with requesting,~~ an initial IEP or IEP
 102 reevaluation every 3 years for each student participating in the
 103 program.

104 (13) FUNDING AND PAYMENT.—

105 (g) In addition to funds appropriated for scholarship
 106 awards and subject to a separate, specific legislative
 107 appropriation, an organization may receive an amount equivalent
 108 to not more than 3 percent of the amount of each scholarship
 109 award from state funds for administrative expenses if the
 110 organization has operated as a nonprofit entity for at least the
 111 preceding 3 fiscal years and did not have any findings of
 112 material weakness or material noncompliance in its most recent
 113 audit under s. 1002.395(6)(m). Such administrative expenses must
 114 be reasonable and necessary for the organization's management
 115 and distribution of scholarships under this section. Funds
 116 authorized under this paragraph may not be used for lobbying or

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117 political activity or expenses related to lobbying or political
 118 activity. An organization may not charge more than \$35 for an
 119 application fee to a family that applies for a scholarship on
 120 behalf of one or more children of the family ~~for a scholarship.~~
 121 Administrative expenses may not be deducted from funds
 122 appropriated for scholarship awards.

123 (14) OBLIGATIONS OF THE AUDITOR GENERAL.—

124 (a) The Auditor General shall conduct an ~~annual~~ operational
 125 audit of accounts and records of each organization that
 126 participates in the program at least once every 3 years. As part
 127 of this audit, the Auditor General shall verify, at a minimum,
 128 the total number of students served and the eligibility of
 129 reimbursements made by the organization and transmit that
 130 information to the department. The Auditor General shall provide
 131 the commissioner with a copy of each ~~annual~~ operational audit
 132 performed pursuant to this subsection within 10 days after the
 133 audit is finalized.

134 Section 2. Present paragraphs (h) through (k) of subsection
 135 (2) of section 1002.395, Florida Statutes, are redesignated as
 136 paragraphs (i) through (l), respectively, a new paragraph (h) is
 137 added to that subsection, and paragraph (b) of subsection (3),
 138 paragraphs (b), (e), and (j) of subsection (6), and paragraph
 139 (b) of subsection (7) of section 1002.395, Florida Statutes, are
 140 amended, to read:

141 1002.395 Florida Tax Credit Scholarship Program.—

142 (2) DEFINITIONS.—As used in this section, the term:

143 (h) "Expend" means to incur a legal obligation to disburse
 144 money.

145 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.—

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146 (b) A student is eligible for a Florida tax credit
147 scholarship under this section if the student is a resident of
148 this state and meets one or more of the following criteria:

149 1. The student is on the direct certification list or the
150 student's household income level does not exceed 185 percent of
151 the federal poverty level; ~~or~~

152 2. The student is currently placed, or during the previous
153 state fiscal year was placed, in foster care or in out-of-home
154 care as defined in s. 39.01; or-

155 3. The student's household income level is greater than 185
156 percent of the federal poverty level but does not exceed 260
157 percent of the federal poverty level.

158
159 A student who initially receives a scholarship based on
160 eligibility under subparagraph (b)2. remains eligible to
161 participate until the student graduates from high school or
162 attains the age of 21 years, whichever occurs first, regardless
163 of the student's household income level. A sibling of a student
164 who is participating in the scholarship program under this
165 subsection is eligible for a scholarship if the student resides
166 in the same household as the sibling.

167 (6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING
168 ORGANIZATIONS.—An eligible nonprofit scholarship-funding
169 organization:

170 (b) Must comply with the following background check
171 requirements:

172 1. All owners and operators as defined in subparagraph
173 (2) (j)1. ~~(2) (i)1.~~ are, before employment or engagement to
174 provide services, subject to level 2 background screening as

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175 provided under chapter 435. The fingerprints for the background
176 screening must be electronically submitted to the Department of
177 Law Enforcement and can be taken by an authorized law
178 enforcement agency or by an employee of the eligible nonprofit
179 scholarship-funding organization or a private company who is
180 trained to take fingerprints. However, the complete set of
181 fingerprints of an owner or operator may not be taken by the
182 owner or operator. The results of the state and national
183 criminal history check shall be provided to the Department of
184 Education for screening under chapter 435. The cost of the
185 background screening may be borne by the eligible nonprofit
186 scholarship-funding organization or the owner or operator.

187 2. Every 5 years following employment or engagement to
188 provide services or association with an eligible nonprofit
189 scholarship-funding organization, each owner or operator must
190 meet level 2 screening standards as described in s. 435.04, at
191 which time the nonprofit scholarship-funding organization shall
192 request the Department of Law Enforcement to forward the
193 fingerprints to the Federal Bureau of Investigation for level 2
194 screening. If the fingerprints of an owner or operator are not
195 retained by the Department of Law Enforcement under subparagraph
196 3., the owner or operator must electronically file a complete
197 set of fingerprints with the Department of Law Enforcement. Upon
198 submission of fingerprints for this purpose, the eligible
199 nonprofit scholarship-funding organization shall request that
200 the Department of Law Enforcement forward the fingerprints to
201 the Federal Bureau of Investigation for level 2 screening, and
202 the fingerprints shall be retained by the Department of Law
203 Enforcement under subparagraph 3.

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204 3. Fingerprints submitted to the Department of Law
205 Enforcement as required by this paragraph must be retained by
206 the Department of Law Enforcement in a manner approved by rule
207 and entered in the statewide automated biometric identification
208 system authorized by s. 943.05(2)(b). The fingerprints must
209 thereafter be available for all purposes and uses authorized for
210 arrest fingerprints entered in the statewide automated biometric
211 identification system pursuant to s. 943.051.

212 4. The Department of Law Enforcement shall search all
213 arrest fingerprints received under s. 943.051 against the
214 fingerprints retained in the statewide automated biometric
215 identification system under subparagraph 3. Any arrest record
216 that is identified with an owner's or operator's fingerprints
217 must be reported to the Department of Education. The Department
218 of Education shall participate in this search process by paying
219 an annual fee to the Department of Law Enforcement and by
220 informing the Department of Law Enforcement of any change in the
221 employment, engagement, or association status of the owners or
222 operators whose fingerprints are retained under subparagraph 3.
223 The Department of Law Enforcement shall adopt a rule setting the
224 amount of the annual fee to be imposed upon the Department of
225 Education for performing these services and establishing the
226 procedures for the retention of owner and operator fingerprints
227 and the dissemination of search results. The fee may be borne by
228 the owner or operator of the nonprofit scholarship-funding
229 organization.

230 5. A nonprofit scholarship-funding organization whose owner
231 or operator fails the level 2 background screening is not
232 eligible to provide scholarships under this section.

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233 6. A nonprofit scholarship-funding organization whose owner
234 or operator in the last 7 years has filed for personal
235 bankruptcy or corporate bankruptcy in a corporation of which he
236 or she owned more than 20 percent shall not be eligible to
237 provide scholarships under this section.

238 7. In addition to the offenses listed in s. 435.04, a
239 person required to undergo background screening pursuant to this
240 part or authorizing statutes must not have an arrest awaiting
241 final disposition for, must not have been found guilty of, or
242 entered a plea of nolo contendere to, regardless of
243 adjudication, and must not have been adjudicated delinquent, and
244 the record must not have been sealed or expunged for, any of the
245 following offenses or any similar offense of another
246 jurisdiction:

247 a. Any authorizing statutes, if the offense was a felony.

248 b. This chapter, if the offense was a felony.

249 c. Section 409.920, relating to Medicaid provider fraud.

250 d. Section 409.9201, relating to Medicaid fraud.

251 e. Section 741.28, relating to domestic violence.

252 f. Section 817.034, relating to fraudulent acts through
253 mail, wire, radio, electromagnetic, photoelectronic, or
254 photooptical systems.

255 g. Section 817.234, relating to false and fraudulent
256 insurance claims.

257 h. Section 817.505, relating to patient brokering.

258 i. Section 817.568, relating to criminal use of personal
259 identification information.

260 j. Section 817.60, relating to obtaining a credit card
261 through fraudulent means.

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262 k. Section 817.61, relating to fraudulent use of credit
263 cards, if the offense was a felony.

264 l. Section 831.01, relating to forgery.

265 m. Section 831.02, relating to uttering forged instruments.

266 n. Section 831.07, relating to forging bank bills, checks,
267 drafts, or promissory notes.

268 o. Section 831.09, relating to uttering forged bank bills,
269 checks, drafts, or promissory notes.

270 p. Section 831.30, relating to fraud in obtaining medicinal
271 drugs.

272 q. Section 831.31, relating to the sale, manufacture,
273 delivery, or possession with the intent to sell, manufacture, or
274 deliver any counterfeit controlled substance, if the offense was
275 a felony.

276 (e) Must give first priority to eligible students who
277 received a scholarship from an eligible nonprofit scholarship-
278 funding organization or from the State of Florida during the
279 previous school year and who applied to participate in an
280 eligible nonprofit scholarship-funding organization's program by
281 the date set by the organization. Beginning in the 2016-2017
282 school year, An eligible nonprofit scholarship-funding
283 organization shall give priority to new applicants whose
284 household income levels do not exceed 185 percent of the federal
285 poverty level or who are in foster care or out-of-home care.

286 (j)1. May use the lesser of \$20 million or up to 3 percent
287 of eligible contributions received during the state fiscal year
288 in which such contributions are collected for administrative
289 expenses if the organization has operated as an eligible
290 nonprofit scholarship-funding organization for at least the

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291 preceding 3 fiscal years and did not have any findings of
292 material weakness or material noncompliance in its most recent
293 audit under paragraph (m). Such administrative expenses must be
294 reasonable and necessary for the organization's management and
295 distribution of eligible contributions under this section. ~~No~~
296 Funds authorized under this subparagraph may not ~~shall~~ be used
297 for professional development or the accreditation of
298 participating schools; for lobbying or political activity; or
299 for expenses related to the provision of professional
300 development or the accreditation of participating schools,
301 lobbying, or political activity. Up to one-third of the funds
302 authorized for administrative expenses under this subparagraph
303 may be used for expenses related to the recruitment of
304 contributions from taxpayers. An eligible nonprofit scholarship-
305 funding organization may not charge more than \$35 for an
306 application fee to a family that applies for a scholarship on
307 behalf of one or more children of the family.

308 2. Must expend for annual or partial-year scholarships an
309 amount equal to or greater than 75 percent of the net eligible
310 contributions remaining after administrative expenses during the
311 state fiscal year in which such contributions are collected. No
312 more than 25 percent of such net unexpended eligible
313 contributions may be carried forward to the following state
314 fiscal year. All amounts carried forward, for audit purposes,
315 must be specifically identified for particular students, by
316 student name and the name of the school to which the student is
317 admitted, subject to the requirements of ss. 1002.22 and
318 1002.221 and 20 U.S.C. s. 1232g, and the applicable rules and
319 regulations issued pursuant thereto. Any amounts carried forward

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320 shall be expended for annual or partial-year scholarships in the
321 following state fiscal year. Net unexpended eligible
322 contributions remaining on June 30 of each year that are in
323 excess of the 25 percent that may be carried forward shall be
324 transferred to other eligible nonprofit scholarship-funding
325 organizations to provide scholarships for eligible students. All
326 transferred funds must be deposited by each eligible nonprofit
327 scholarship-funding organization receiving such funds into its
328 scholarship account. All transferred amounts received by any
329 eligible nonprofit scholarship-funding organization must be
330 separately disclosed in the annual financial audit required
331 under paragraph (m).

332 3. Must, before granting a scholarship for an academic
333 year, document each scholarship student's eligibility for that
334 academic year. A scholarship-funding organization may not grant
335 multiyear scholarships in one approval process.

336

337 Information and documentation provided to the Department of
338 Education and the Auditor General relating to the identity of a
339 taxpayer that provides an eligible contribution under this
340 section shall remain confidential at all times in accordance
341 with s. 213.053.

342 (7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM
343 PARTICIPATION.—

344 (b) The parent may ~~must~~ inform the child's school district
345 when the parent withdraws his or her child to attend an eligible
346 private school.

347 Section 3. This act shall take effect July 1, 2018.