

SENATE BILL NO. 404—SENATORS HAMMOND, PICKARD, HANSEN;
KIECKHEFER, SEEVERS GANSERT AND SETTELMEYER

MARCH 21, 2019

JOINT SPONSORS: ASSEMBLYMEN HARDY, ROBERTS AND LEAVITT

Referred to Committee on Education

SUMMARY—Provides for the issuance of scholarships for certain career and technical education or early childhood education programs by scholarship organizations. (BDR 34-778)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to education; establishing a credit against the modified business tax for taxpayers who donate money to a scholarship organization; setting forth certain requirements for a scholarship organization and for programs that receive grants from a scholarship organization; requiring a scholarship organization to submit an annual report to the Department of Education; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, financial institutions and other employers are required to pay an excise tax referred to as the modified business tax, on wages paid by them. (NRS 363A.130, 363B.110) Existing law also establishes a tax credit equal to an amount approved by the Department of Taxation, which must not exceed the amount of any donation of money made by a taxpayer to a scholarship organization for the purpose of providing grants on behalf of pupils who are members of a household with a household income which is not more than 300 percent of the federally designated level signifying poverty to attend certain schools in this State, including private schools, chosen by the parents or legal guardians of those pupils. (NRS 363A.139, 363B.119, 388D.270) This bill establishes a program of tax credits for donations to scholarship organizations that provide grants on behalf of pupils to enroll in an eligible program of early childhood education or career and technical education.



Existing law imposes an excise tax on each wholesale sale of marijuana by a cultivation facility to another medical marijuana establishment, each wholesale sale of marijuana by a marijuana cultivation facility and each retail sale of marijuana or marijuana products by a retail marijuana store. (NRS 372A.290, 453D.500) With respect to that tax, **sections 8 and 11** of this bill establish a tax credit equal to an amount approved by the Department of Taxation, which must not exceed the amount of any donation of money made by a taxpayer to a scholarship organization. To claim the tax credit, **sections 8 and 11** require a scholarship organization to apply to the Department for approval of the credit for a taxpayer who intends to make a donation to the scholarship organization. If the Department approves the application, the scholarship organization must provide notice to the prospective donor, who must make the donation within 30 days after receiving the notice. If the donor does not make the donation within the requisite period, the donor forfeits eligibility for the credit. The Department: (1) must approve or deny applications for the tax credit in the order in which the applications are received by the Department; and (2) is authorized to approve applications for each fiscal year until \$7.5 million of tax credits are approved for that fiscal year.

Section 5 of this bill establishes the requirements for a program of early childhood education or career and technical education to be an eligible program. **Section 6** of this bill provides that a scholarship organization: (1) must be exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501 (c)(3)); (2) must not own or operate any eligible program that receives grants pursuant to **sections 2-7** of this bill; (3) must accept donations and may also solicit and accept gifts and grants in addition to donations; (4) must not expend for administrative expenses more than 5 percent of the money it receives; (5) must provide grants on behalf of pupils who are members of a household with a household income which is not more than 300 percent of the federally designated level signifying poverty to attend eligible programs in this State; (6) must not limit to a single eligible program the eligible programs for which it provides grants; and (7) must not limit grants to specific pupils. **Section 6** also requires the maximum amount of a grant provided by the scholarship organization to be adjusted each fiscal year in an amount corresponding to the percentage of increase in the Consumer Price Index published by the United States Department of Labor for the preceding calendar year. With respect to donations, gifts and grants governed by this bill, **section 6** also requires the organization to provide each person who makes a donation, gift or grant with an affidavit attesting to certain information. For each pupil who is a beneficiary of a grant, **section 6** requires that the eligible program in which the pupil is enrolled maintain a record of the pupil's academic progress in such a manner that the information may be aggregated for all such pupils enrolled in the eligible program.

Section 7 of this bill requires a scholarship organization to submit an annual report to the Department of Education concerning the donations, gifts and grants received by the organization and the grants made by it during the preceding year. **Sections 9 and 10** of this bill provide specifically for application of the credit against the taxes affected by this bill.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 388D of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *As used in sections 2 to 7, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Eligible program” means a program of early childhood education or a program of career and technical education that meets the requirements set forth in section 5 of this act.*

Sec. 4. *“Scholarship organization” means an organization in this State that meets the requirements set forth in section 6 of this act.*

Sec. 5. 1. *A program of early childhood education is an eligible program if the program:*

(a) Requires the payment of tuition for each pupil enrolled in the program;

(b) Is rated by the Nevada Silver State Stars Quality Rating and Improvement System, or a successor system determined by the Department to be equivalent, at a level that the Department determines to be satisfactory; and

(c) Is operated by a public school or a private school that does not offer any other program of early childhood education. For the purpose of this paragraph, a public school or private school is deemed not to offer any other program of early childhood education if it currently operates a single program of early childhood education and includes pupils on whose behalf a grant is provided pursuant to section 6 of this act in such a program.

2. *A program of career and technical education is an eligible program if the program:*

(a) Requires the payment of tuition for each pupil enrolled in the program;

(b) Graduates pupils who earn a credential of value to employers and:

(1) Complete the requirements for a standard high school diploma; or

(2) Successfully complete a high school equivalency assessment,

↪ at a rate that the Office of Workforce Innovation determines to be satisfactory; and

(c) Is offered to pupils enrolled in high school.



3. The Department and the Office of Workforce Innovation shall adopt regulations to carry out the provisions of this section.

Sec. 6. 1. A scholarship organization must:

(a) Be exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

(b) Not own or operate any eligible program in this State which receives any grant money pursuant to sections 2 to 7, inclusive, of this act.

(c) Accept donations from taxpayers and other persons and may also solicit and accept gifts and grants.

(d) Not expend more than 5 percent of the total amount of money accepted pursuant to paragraph (c) to pay its administrative expenses.

(e) Provide grants on behalf of pupils who are members of a household that has a household income which is not more than 300 percent of the federally designated level signifying poverty to allow those pupils to attend an eligible program. The total amount of a grant provided by the scholarship organization on behalf of a pupil pursuant to this paragraph must not exceed, for a pupil enrolled in an eligible program of:

(1) Early childhood education, \$5,000 for Fiscal Year 2019-2020.

(2) Career and technical education, \$8,262 for Fiscal Year 2019-2020.

(f) Not limit to a single eligible program the eligible programs for which it provides grants.

(g) Except as otherwise provided in paragraph (e), not limit to specific pupils the grants provided pursuant to that paragraph.

2. The maximum amount of a grant provided by the scholarship organization pursuant to paragraph (e) of subsection 1 must be adjusted on July 1 of each year for the fiscal year beginning that day and ending June 30 in a rounded dollar amount corresponding to the percentage of increase in the Consumer Price Index (All Items) published by the United States Department of Labor for the preceding calendar year. On May 1 of each year, the Department of Education shall determine the amount of increase required by this subsection, establish the adjusted amounts to take effect on July 1 of that year and notify each scholarship organization of the adjusted amounts. The Department of Education shall also post the adjusted amounts on its Internet website.

3. A grant provided on behalf of a pupil pursuant to subsection 1 must be paid directly to the eligible program chosen by the parent or legal guardian of the pupil. If a grant is provided on behalf of a pupil pursuant to subsection 1 to an eligible



1 program of early childhood education in which the pupil is
2 enrolled and the pupil or the family of the pupil receives any other
3 money or assistance from this State or any political subdivision of
4 this State, the grant supplements the other money or assistance
5 and the State or political subdivision must not count the amount of
6 the grant against the pupil or the family of the pupil when
7 determining the money or assistance provided to the pupil or the
8 family of the pupil.

9 4. A scholarship organization shall provide each taxpayer
10 and other person who makes a donation, gift or grant of money to
11 the scholarship organization pursuant to paragraph (c) of
12 subsection 1 with an affidavit, signed under penalty of perjury,
13 which includes, without limitation:

14 (a) A statement that the scholarship organization satisfies the
15 requirements set forth in subsection 1; and

16 (b) The total amount of the donation, gift or grant made to the
17 scholarship organization.

18 5. Each eligible program in which a pupil is enrolled for
19 whom a grant is provided by a scholarship organization shall
20 maintain a record of the academic progress of the pupil. The
21 record must be maintained in such a manner that the information
22 may be aggregated and reported for all such pupils if reporting is
23 required by the regulations of the Department of Education.

24 6. The Department of Education:

25 (a) Shall adopt regulations prescribing the contents of and
26 procedures for applications for grants provided pursuant to
27 subsection 1.

28 (b) May adopt such other regulations as the Department
29 determines necessary to carry out the provisions of this section.

30 **Sec. 7.** A scholarship organization which receives a
31 donation, gift or grant of money described in section 6 of this act
32 shall report to the Department of Education, on or before
33 January 31 of each year, on a form prescribed by the Department:

34 1. The name, address and contact information of the
35 scholarship organization;

36 2. The total number of such donations, gifts and grants
37 received by the scholarship organization during the immediately
38 preceding calendar year;

39 3. The total dollar amount of such donations, gifts and grants
40 received during the immediately preceding calendar year;

41 4. The total number of pupils for whom the scholarship
42 organization made grants during the immediately preceding
43 calendar year pursuant to section 6 of this act;

44 5. The total dollar amount of such grants made during the
45 immediately preceding calendar year; and



6. For each eligible program for which such a grant was made during the immediately preceding calendar year:

- (a) The name and address of the eligible program;
- (b) The number of pupils enrolled in the eligible program for whom such a grant was made; and
- (c) The total dollar amount of such grants provided for pupils enrolled in the eligible program.

Sec. 8. Chapter 372A of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any taxpayer who is required to pay a tax pursuant to NRS 372A.290 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. The Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation is \$7,500,000. The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.



5. *If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.*

6. *If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.*

7. *As used in this section, "scholarship organization" has the meaning ascribed to it in section 4 of this act.*

Sec. 9. NRS 372A.290 is hereby amended to read as follows:

372A.290 1. An excise tax is hereby imposed on each wholesale sale in this State of marijuana by a cultivation facility to another medical marijuana establishment at the rate of 15 percent of the fair market value at wholesale of the marijuana. The excise tax imposed pursuant to this subsection is the obligation of the cultivation facility.

2. An excise tax is hereby imposed on each retail sale in this State of marijuana or marijuana products by a retail marijuana store at the rate of 10 percent of the sales price of the marijuana or marijuana products. The excise tax imposed pursuant to this subsection:

(a) Is the obligation of the retail marijuana store.

(b) Is separate from and in addition to any general state and local sales and use taxes that apply to retail sales of tangible personal property.

3. The revenues collected from the excise tax imposed pursuant to subsection 1 must be distributed:

(a) To the Department and to local governments in an amount determined to be necessary by the Department to pay the costs of the Department and local governments in carrying out the provisions of chapter 453A of NRS; and

(b) If any money remains after the revenues are distributed pursuant to paragraph (a), to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund.



4. For the purpose of subsection 3 and NRS 453D.510, a total amount of \$5,000,000 of the revenues collected from the excise tax imposed pursuant to subsection 1 and the excise tax imposed pursuant to NRS 453D.500 in each fiscal year shall be deemed sufficient to pay the costs of all local governments to carry out the provisions of chapters 453A and 453D of NRS. The Department shall, by regulation, determine the manner in which local governments may be reimbursed for the costs of carrying out the provisions of chapters 453A and 453D of NRS.

5. The revenues collected from the excise tax imposed pursuant to subsection 2 must be paid over as collected to the State Treasurer to be deposited to the credit of the Account to Stabilize the Operation of the State Government created in the State General Fund pursuant to NRS 353.288.

6. A taxpayer who makes a donation of money to a scholarship organization during the calendar quarter for which a return is filed pursuant to this section is entitled, in accordance with section 8 of this act, to a credit equal to the amount authorized pursuant to section 8 of this act against any tax otherwise due pursuant to this section. As used in this subsection, "scholarship organization" has the meaning ascribed to it in section 4 of this act.

7. As used in this section:

(a) "Local government" has the meaning ascribed to it in NRS 360.640.

(b) "Marijuana products" has the meaning ascribed to it in NRS 453D.030.

(c) "Medical marijuana establishment" has the meaning ascribed to it in NRS 453A.116.

Sec. 10. NRS 453D.500 is hereby amended to read as follows:

453D.500 **1.** An excise tax is hereby imposed and must be collected by the State respecting wholesale sales of marijuana in this State by a marijuana cultivation facility at a rate of 15 percent of the fair market value at wholesale of the marijuana. The tax imposed pursuant to this section:

~~1.1~~ (a) Is the obligation of the marijuana cultivation facility; and

~~1.2~~ (b) Is separate from and in addition to any general state and local sales and use taxes that apply to retail sales of tangible personal property.

2. A marijuana cultivation facility who makes a donation of money to a scholarship organization during the calendar quarter for which a return is filed for the excise tax imposed pursuant to this section is entitled, in accordance with section 8 of this act, to a credit equal to the amount authorized pursuant to section 8 of this



act against any tax otherwise due pursuant to this section. As used in this subsection, "scholarship organization" has the meaning ascribed to it in section 4 of this act.

Sec. 11. Section 8 of this act is hereby amended to read as follows:

Sec. 8. 1. Any taxpayer who is required to pay a tax pursuant to NRS 372A.290 *or 453D.500* may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. The Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation is \$7,500,000. The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

5. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section



1 is equal to the amount approved by the Department of
2 Taxation pursuant to subsection 2, which must not exceed the
3 amount of the donation made by the taxpayer to a scholarship
4 organization. The total amount of the credit applied against
5 the taxes described in subsection 1 and otherwise due from a
6 taxpayer must not exceed the amount of the donation.

7 6. If the amount of the tax described in subsection 1 and
8 otherwise due from a taxpayer is less than the credit to which
9 the taxpayer is entitled pursuant to this section, the taxpayer
10 may, after applying the credit to the extent of the tax
11 otherwise due, carry the balance of the credit forward for not
12 more than 5 years after the end of the calendar year in which
13 the donation is made or until the balance of the credit is
14 applied, whichever is earlier.

15 7. As used in this section ~~["scholarship"]~~ :

16 (a) *"Scholarship"* organization" has the meaning ascribed
17 to it in section 4 of this act.

18 (b) *"Taxpayer" includes a marijuana cultivation facility,*
19 *as defined in NRS 453D.030.*

20 **Sec. 12.** 1. This section and sections 1 to 9, inclusive, of this
21 act become effective on July 1, 2019.

22 2. Sections 10 and 11 of this act become effective on
23 January 2, 2020.

