

Senate Engrossed House Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
Second Regular Session  
2010

CHAPTER 293

# **HOUSE BILL 2664**

AN ACT

AMENDING SECTION 43-1089, ARIZONA REVISED STATUTES; AMENDING TITLE 43, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 15; RELATING TO SCHOOL TUITION ORGANIZATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 43-1089, Arizona Revised Statutes, is amended to  
3 read:

4 43-1089. Credit for contributions to school tuition  
5 organization; definitions

6 A. A credit is allowed against the taxes imposed by this title for the  
7 amount of voluntary cash contributions by the taxpayer or on the taxpayer's  
8 behalf pursuant to section 43-401, subsection ~~H~~ I during the taxable year to  
9 a school tuition organization, ~~but not exceeding~~ THAT IS CERTIFIED PURSUANT  
10 TO CHAPTER 15 OF THIS TITLE AT THE TIME OF DONATION. EXCEPT AS PROVIDED BY  
11 SUBSECTION C OF THIS SECTION, THE AMOUNT OF THE CREDIT SHALL NOT EXCEED:

12 1. Five hundred dollars in any taxable year for a single individual or  
13 a head of household.

14 ~~2. Eight hundred twenty five dollars in taxable year 2005 for a~~  
15 ~~married couple filing a joint return.~~

16 ~~3.~~ 2. One thousand dollars in ~~taxable year 2006~~ and any subsequent  
17 taxable year for a married couple filing a joint return.

18 B. A husband and wife who file separate returns for a taxable year in  
19 which they could have filed a joint return may each claim only one-half of  
20 the tax credit that would have been allowed for a joint return.

21 C. FOR EACH TAXABLE YEAR BEGINNING ON OR AFTER JANUARY 1, THE  
22 DEPARTMENT SHALL ADJUST THE DOLLAR AMOUNTS PRESCRIBED BY SUBSECTION A,  
23 PARAGRAPHS 1 AND 2 OF THIS SECTION ACCORDING TO THE AVERAGE ANNUAL CHANGE IN  
24 THE METROPOLITAN PHOENIX CONSUMER PRICE INDEX PUBLISHED BY THE UNITED STATES  
25 BUREAU OF LABOR STATISTICS, EXCEPT THAT THE DOLLAR AMOUNTS SHALL NOT BE  
26 REVISED DOWNWARD BELOW THE AMOUNTS ALLOWED IN THE PRIOR TAXABLE YEAR. THE  
27 REVISED DOLLAR AMOUNTS SHALL BE RAISED TO THE NEAREST WHOLE DOLLAR.

28 ~~C.~~ D. If the allowable tax credit exceeds the taxes otherwise due  
29 under this title on the claimant's income, or if there are no taxes due under  
30 this title, the taxpayer may carry the amount of the claim not used to offset  
31 the taxes under this title forward for not more than five consecutive taxable  
32 years' income tax liability.

33 ~~D.~~ E. The credit allowed by this section is in lieu of any deduction  
34 pursuant to section 170 of the internal revenue code and taken for state tax  
35 purposes.

36 ~~E.~~ F. The tax credit is not allowed if the taxpayer designates the  
37 taxpayer's contribution to the school tuition organization for the direct  
38 benefit of any dependent of the taxpayer OR IF THE TAXPAYER DESIGNATES A  
39 STUDENT BENEFICIARY AS A CONDITION OF THE TAXPAYER'S CONTRIBUTION TO THE  
40 SCHOOL TUITION ORGANIZATION. THE TAX CREDIT IS NOT ALLOWED IF THE TAXPAYER,  
41 WITH THE INTENT TO BENEFIT THE TAXPAYER'S DEPENDENT, AGREES WITH ONE OR MORE  
42 OTHER TAXPAYERS TO DESIGNATE EACH TAXPAYER'S CONTRIBUTION TO THE SCHOOL  
43 TUITION ORGANIZATION FOR THE DIRECT BENEFIT OF THE OTHER TAXPAYER'S  
44 DEPENDENT.

1           ~~F. A school tuition organization that receives a voluntary cash~~  
2 ~~contribution pursuant to subsection A shall report electronically to the~~  
3 ~~department, in a form prescribed by the department, by February 28 of each~~  
4 ~~year the following information:~~  
5           ~~1. The name, address and contact name of the school tuition~~  
6 ~~organization.~~  
7           ~~2. The total number of contributions received during the previous~~  
8 ~~calendar year.~~  
9           ~~3. The total dollar amount of contributions received during the~~  
10 ~~previous calendar year.~~  
11           ~~4. The total number of children awarded educational scholarships or~~  
12 ~~tuition grants during the previous calendar year.~~  
13           ~~5. The total dollar amount of educational scholarships and tuition~~  
14 ~~grants awarded during the previous calendar year.~~  
15           ~~6. For each school to which educational scholarships or tuition grants~~  
16 ~~were awarded:~~  
17           ~~(a) The name and address of the school.~~  
18           ~~(b) The number of educational scholarships and tuition grants awarded~~  
19 ~~during the previous calendar year.~~  
20           ~~(c) The total dollar amount of educational scholarships and tuition~~  
21 ~~grants awarded during the previous calendar year.~~  
22           ~~G. For the purposes of this section:~~  
23           ~~1. "Handicapped student" means a student who has any of the following~~  
24 ~~conditions:~~  
25           ~~(a) Hearing impairment.~~  
26           ~~(b) Visual impairment.~~  
27           ~~(c) Developmental delay.~~  
28           ~~(d) Preschool severe delay.~~  
29           ~~(e) Speech/language impairment.~~  
30           ~~2. "Qualified school":~~  
31           ~~(a) Means a nongovernmental primary school or secondary school or a~~  
32 ~~preschool for handicapped students that is located in this state, that does~~  
33 ~~not discriminate on the basis of race, color, handicap, familial status or~~  
34 ~~national origin and that satisfies the requirements prescribed by law for~~  
35 ~~private schools in this state on January 1, 1997.~~  
36           ~~(b) DOES NOT INCLUDE A CHARTER SCHOOL OR PROGRAMS OPERATED BY CHARTER~~  
37 ~~SCHOOLS.~~  
38           ~~3. "School tuition organization" means a charitable organization in~~  
39 ~~this state that is exempt from federal taxation under section 501(c)(3) of~~  
40 ~~the internal revenue code and that allocates at least ninety per cent of its~~  
41 ~~annual revenue for educational scholarships or tuition grants to children to~~  
42 ~~allow them to attend any qualified school of their parents' choice. In~~  
43 ~~addition, to qualify as a school tuition organization the charitable~~  
44 ~~organization shall provide educational scholarships or tuition grants to~~  
45 ~~students without limiting availability to only students of one school.~~



1 TUITION ORGANIZATIONS AND SHALL MAKE AVAILABLE TO THE PUBLIC NOTICE OF  
2 REMOVAL AS SOON AS POSSIBLE. AN ORGANIZATION THAT IS REMOVED FROM THE LIST  
3 OF CERTIFIED SCHOOL TUITION ORGANIZATIONS MUST NOTIFY ANY TAXPAYER WHO  
4 ATTEMPTS TO MAKE A CONTRIBUTION THAT THE CONTRIBUTION IS NOT ELIGIBLE FOR THE  
5 TAX CREDIT AND OFFER TO REFUND ALL DONATIONS RECEIVED AFTER THE DATE OF THE  
6 NOTICE OF TERMINATION OF CERTIFICATION.

7 E. A SCHOOL TUITION ORGANIZATION MAY REQUEST AN ADMINISTRATIVE HEARING  
8 ON THE REVOCATION OF ITS CERTIFICATION AS PROVIDED BY TITLE 41, CHAPTER 6,  
9 ARTICLE 10. EXCEPT AS PROVIDED IN SECTION 41-1092.08, SUBSECTION H, A  
10 DECISION OF THE DEPARTMENT IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE  
11 12, CHAPTER 7, ARTICLE 6.

12 43-1503. Operational requirements for school tuition  
13 organizations; notice; qualified schools

14 A. A CERTIFIED SCHOOL TUITION ORGANIZATION MUST BE ESTABLISHED TO  
15 RECEIVE CONTRIBUTIONS FROM TAXPAYERS FOR THE PURPOSES OF INCOME TAX CREDITS  
16 UNDER SECTION 43-1089 AND TO PAY EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS  
17 TO ALLOW STUDENTS TO ATTEND ANY QUALIFIED SCHOOL OF THEIR PARENTS' CHOICE.

18 B. TO BE ELIGIBLE FOR CERTIFICATION AND RETAIN CERTIFICATION, THE  
19 SCHOOL TUITION ORGANIZATION:

20 1. MUST ALLOCATE AT LEAST NINETY PER CENT OF ITS ANNUAL REVENUE FOR  
21 EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS.

22 2. SHALL NOT LIMIT THE AVAILABILITY OF EDUCATIONAL SCHOLARSHIPS OR  
23 TUITION GRANTS TO ONLY STUDENTS OF ONE SCHOOL.

24 3. MAY ALLOW DONORS TO RECOMMEND STUDENT BENEFICIARIES, BUT SHALL NOT  
25 AWARD, DESIGNATE OR RESERVE SCHOLARSHIPS SOLELY ON THE BASIS OF DONOR  
26 RECOMMENDATIONS.

27 4. SHALL NOT ALLOW DONORS TO DESIGNATE STUDENT BENEFICIARIES AS A  
28 CONDITION OF ANY CONTRIBUTION TO THE ORGANIZATION, OR FACILITATE, ENCOURAGE  
29 OR KNOWINGLY PERMIT THE EXCHANGE OF BENEFICIARY STUDENT DESIGNATIONS IN  
30 VIOLATION OF SECTION 43-1089, SUBSECTION F.

31 C. A SCHOOL TUITION ORGANIZATION SHALL INCLUDE THE FOLLOWING NOTICE IN  
32 ANY PRINTED MATERIALS SOLICITING DONATIONS, IN APPLICATIONS FOR SCHOLARSHIPS  
33 AND ON ITS WEBSITE:

34 NOTICE

35 A SCHOOL TUITION ORGANIZATION CANNOT AWARD, RESTRICT OR  
36 RESERVE SCHOLARSHIPS SOLELY ON THE BASIS OF A DONOR'S  
37 RECOMMENDATION.

38 A TAXPAYER MAY NOT CLAIM A TAX CREDIT IF THE TAXPAYER  
39 AGREES TO SWAP DONATIONS WITH ANOTHER TAXPAYER TO BENEFIT EITHER  
40 TAXPAYER'S OWN DEPENDENT.

41 D. IN EVALUATING APPLICATIONS AND AWARDING, DESIGNATING OR RESERVING  
42 SCHOLARSHIPS, A SCHOOL TUITION ORGANIZATION:

43 1. SHALL NOT AWARD, DESIGNATE OR RESERVE A SCHOLARSHIP SOLELY ON THE  
44 RECOMMENDATION OF ANY PERSON CONTRIBUTING MONEY TO THE ORGANIZATION, BUT MAY  
45 CONSIDER THE RECOMMENDATION AMONG OTHER FACTORS.

1           2. SHALL CONSIDER THE FINANCIAL NEED OF APPLICANTS.

2           E. A QUALIFIED SCHOOL SHALL NOT ACCEPT AN EDUCATIONAL SCHOLARSHIP OR  
3 TUITION GRANT FROM A SCHOOL TUITION ORGANIZATION IN AN AMOUNT THAT EXCEEDS  
4 THE SCHOOL'S TOTAL COST OF EDUCATING THE STUDENT IN WHOSE NAME THE  
5 SCHOLARSHIP OR GRANT IS RECEIVED.

6           43-1504. Annual report

7           ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, EACH SCHOOL TUITION  
8 ORGANIZATION SHALL REPORT ELECTRONICALLY TO THE DEPARTMENT, IN A FORM  
9 PRESCRIBED BY THE DEPARTMENT, THE FOLLOWING INFORMATION, SEPARATELY COMPILED  
10 AND IDENTIFIED FOR THE PURPOSES OF SECTION 43-1089:

11           1. THE NAME, ADDRESS AND CONTACT PERSON OF THE SCHOOL TUITION  
12 ORGANIZATION.

13           2. THE TOTAL NUMBER OF CONTRIBUTIONS RECEIVED DURING THE PREVIOUS  
14 FISCAL YEAR.

15           3. THE TOTAL DOLLAR AMOUNT OF CONTRIBUTIONS RECEIVED DURING THE  
16 PREVIOUS FISCAL YEAR.

17           4. THE TOTAL NUMBER OF CHILDREN AWARDED EDUCATIONAL SCHOLARSHIPS OR  
18 TUITION GRANTS DURING THE PREVIOUS FISCAL YEAR.

19           5. THE TOTAL DOLLAR AMOUNT OF:

20           (a) EDUCATIONAL SCHOLARSHIPS AND TUITION GRANTS DISTRIBUTED DURING THE  
21 PREVIOUS FISCAL YEAR.

22           (b) MONEY BEING HELD FOR IDENTIFIED STUDENTS' SCHOLARSHIPS AND TUITION  
23 GRANTS IN FUTURE YEARS.

24           6. THE COST OF AUDITS PURSUANT TO SECTION 43-1505 PAID DURING THE  
25 FISCAL YEAR.

26           7. THE TOTAL DOLLAR AMOUNT OF EDUCATIONAL SCHOLARSHIPS AND TUITION  
27 GRANTS AWARDED DURING THE PREVIOUS FISCAL YEAR TO:

28           (a) STUDENTS WHOSE FAMILY INCOME MEETS THE ECONOMIC ELIGIBILITY  
29 REQUIREMENTS ESTABLISHED UNDER THE NATIONAL SCHOOL LUNCH AND CHILD NUTRITION  
30 ACTS (42 UNITED STATES CODE SECTIONS 1751 THROUGH 1785) FOR FREE OR REDUCED  
31 PRICE LUNCHES.

32           (b) STUDENTS WHOSE FAMILY INCOME EXCEEDS THE THRESHOLD PRESCRIBED BY  
33 SUBDIVISION (a) OF THIS PARAGRAPH BUT DOES NOT EXCEED ONE HUNDRED EIGHTY-FIVE  
34 PER CENT OF THE ECONOMIC ELIGIBILITY REQUIREMENTS ESTABLISHED UNDER THE  
35 NATIONAL SCHOOL LUNCH AND CHILD NUTRITION ACTS (42 UNITED STATES CODE  
36 SECTIONS 1751 THROUGH 1785) FOR FREE OR REDUCED PRICE LUNCHES.

37           8. FOR EACH SCHOOL TO WHICH EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS  
38 WERE AWARDED:

39           (a) THE NAME AND ADDRESS OF THE SCHOOL.

40           (b) THE NUMBER OF EDUCATIONAL SCHOLARSHIPS AND TUITION GRANTS AWARDED  
41 DURING THE PREVIOUS FISCAL YEAR.

42           (c) THE TOTAL DOLLAR AMOUNT OF EDUCATIONAL SCHOLARSHIPS AND TUITION  
43 GRANTS AWARDED DURING THE PREVIOUS FISCAL YEAR.

44           9. THE NAMES, JOB TITLES AND ANNUAL SALARIES OF THE THREE EMPLOYEES  
45 WHO RECEIVE THE HIGHEST ANNUAL SALARIES FROM THE SCHOOL TUITION ORGANIZATION.

1           43-1505. Audits and financial reviews

2           A. ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, EACH SCHOOL TUITION  
3 ORGANIZATION THAT RECEIVED ONE MILLION DOLLARS OR MORE IN TOTAL DONATIONS IN  
4 THE PREVIOUS FISCAL YEAR SHALL PROVIDE FOR A FINANCIAL AUDIT OF THE  
5 ORGANIZATION. THE AUDIT MUST BE CONDUCTED IN ACCORDANCE WITH GENERALLY  
6 ACCEPTED AUDITING STANDARDS AND MUST EVALUATE THE ORGANIZATION'S COMPLIANCE  
7 WITH THE FISCAL REQUIREMENTS OF THIS ARTICLE. THE AUDIT MUST BE CONDUCTED BY  
8 AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS STATE. THE  
9 CERTIFIED PUBLIC ACCOUNTANT AND THE FIRM THE CERTIFIED PUBLIC ACCOUNTANT IS  
10 AFFILIATED WITH SHALL BE INDEPENDENT WITH RESPECT TO THE ORGANIZATION, ITS  
11 OFFICERS AND DIRECTORS, SERVICES PERFORMED AND ALL OTHER INDEPENDENT  
12 RELATIONSHIPS PRESCRIBED BY GENERALLY ACCEPTED AUDITING STANDARDS.

13           B. ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, EACH SCHOOL TUITION  
14 ORGANIZATION THAT RECEIVED LESS THAN ONE MILLION DOLLARS IN TOTAL DONATIONS  
15 IN THE PREVIOUS FISCAL YEAR SHALL PROVIDE FOR A FINANCIAL REVIEW OF THE  
16 ORGANIZATION. THE REVIEW MUST BE CONDUCTED IN ACCORDANCE WITH STANDARDS FOR  
17 ACCOUNTING AND REVIEW SERVICES AND MUST EVALUATE THE ORGANIZATION'S  
18 COMPLIANCE WITH THE FISCAL REQUIREMENTS OF THIS ARTICLE. THE REVIEW MUST BE  
19 CONDUCTED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS  
20 STATE. THE CERTIFIED PUBLIC ACCOUNTANT AND THE FIRM THE CERTIFIED PUBLIC  
21 ACCOUNTANT IS AFFILIATED WITH SHALL BE INDEPENDENT WITH RESPECT TO THE  
22 ORGANIZATION, ITS OFFICERS AND DIRECTORS, SERVICES PERFORMED AND ALL OTHER  
23 INDEPENDENT RELATIONSHIPS PRESCRIBED BY GENERALLY ACCEPTED AUDITING  
24 STANDARDS.

25           C. WITHIN FIVE DAYS AFTER RECEIVING THE AUDIT OR FINANCIAL REVIEW THE  
26 SCHOOL TUITION ORGANIZATION SHALL FILE A SIGNED COPY OF THE AUDIT OR  
27 FINANCIAL REVIEW WITH THE DEPARTMENT.

28           D. THE SCHOOL TUITION ORGANIZATION SHALL PAY THE FEES AND COSTS OF THE  
29 CERTIFIED PUBLIC ACCOUNTANT UNDER THIS SECTION FROM THE ORGANIZATION'S  
30 OPERATING MONIES. THE FEES AND COSTS SHALL BE EXCLUDED FROM THE CALCULATION  
31 OF TOTAL REVENUES SPENT ON SCHOLARSHIPS AND TUITION GRANTS.

32           Sec. 3. School tuition organizations; transition reports

33           Notwithstanding the provisions of this act providing for school tuition  
34 organization annual reports on or before September 30, on or before February  
35 28, 2011, each school tuition organization shall submit to the department of  
36 revenue the report required by section 43-1089, subsection F, Arizona Revised  
37 Statutes, as in effect before the effective date of this act, for the 2010  
38 calendar year. Thereafter, the school tuition organization shall submit an  
39 annual fiscal year report as prescribed by section 43-1504, Arizona Revised  
40 Statutes, as added by this act.

41           Sec. 4. Effective date

42           This act is effective from and after December 31, 2010.

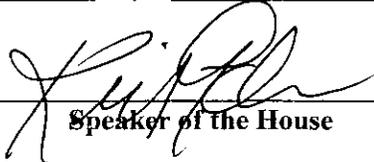
APPROVED BY THE GOVERNOR MAY 10, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2010.

Passed the House March 17, 2010

by the following vote: 34 Ayes,

20 Nays, 6 Not Voting

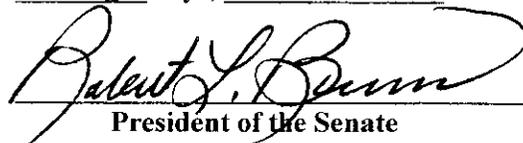
  
Speaker of the House

  
Cheryl Laube  
Chief Clerk of the House

Passed the Senate April 28, 2010

by the following vote: 17 Ayes,

13 Nays, 0 Not Voting

  
President of the Senate

  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

~~This Bill received by the Governor this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~

\_\_\_\_\_  
Secretary to the Governor

~~Approved this \_\_\_\_\_ day of  
\_\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~

\_\_\_\_\_  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

~~This Bill received by the Secretary of State  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~

\_\_\_\_\_  
Secretary of State

H.B. 2664

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

April 28, 2010,

by the following vote: 36 Ayes,

23 Nays, 1 Not Voting

[Signature]  
Speaker of the House

Cheryl Laube  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29 day of April, 2010

at 11:50 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this 10 day of

May, 2010,

at 12:05 o'clock P. M.

[Signature]  
Governor of Arizona

H.B. 2664

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 10<sup>th</sup> day of May, 2010,

at 4:10 o'clock P. M.

[Signature]  
Secretary of State