

# ACT No. 394

SENATE BILL NO. 361 (Substitute of Senate Bill No. 189 by Senator Duplessis)

BY SENATORS DUPLESSIS, CHAISSON, HINES, KOSTELKA, MICHOT, MOUNT, NEVERS, DUPRE, N. GAUTREAU, MURRAY, SCHEDLER AND JACKSON AND REPRESENTATIVES BALDONE, BRUCE, K. CARTER, CAZAYOUX, DORSEY, DOWNS, DURAND, FARRAR, ELCIE GUILLORY, HILL, KATZ, LAFLEUR, LAFONTA, PINAC, SALTER, GARY SMITH, ST. GERMAIN, TOWNSEND, WALSWORTH, ALARIO, ANDERS, ANSARDI, ARNOLD, BADON, BARROW, BAUDOIN, BAYLOR, BURNS, BURRELL, CHANDLER, CRANE, CROWE, CURTIS, DANIEL, DARTEZ, DEWITT, DOERGE, DOVE, ERDEY, FANNIN, FAUCHEUX, FRITH, GALLOT, GRAY, GREENE, ELBERT GUILLORY, HARRIS, HEBERT, HONEY, HUNTER, HUTTER, JACKSON, JEFFERSON, JOHNS, KENNARD, KENNEY, LORUSSO, MARCHAND, MARTINY, MCDONALD, MORRELL, ODINET, PIERRE, PITRE, T. POWELL, QUEZAIRE, RICHMOND, RITCHIE, ROMERO, SCALISE, SCHNEIDER, JACK SMITH, JOHN SMITH, STRAIN, THOMPSON, TOOMY, TRAHAN, TUCKER, WALKER, WILLIAMS, WINSTON AND WOOTON

1 AN ACT

2 To enact Chapter 2 of Subtitle VII of Title 47 of the Louisiana Revised Statutes of 1950, to  
3 be composed of R.S. 47:6101 through 6109, relative to tax credits; to provide for tax  
4 credits for individuals for child care expenses, for child care providers, for child care  
5 directors and staff, and for businesses providing or assisting child care programs; to  
6 authorize the Department of Social Services to establish certain criteria and systems  
7 to determine eligibility for the kind and amount of tax credits; and to provide for  
8 related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 2 of Subtitle VII of Title 47 of the Louisiana Revised Statutes of  
11 1950, to be composed of R.S. 47:6101 through 6109, is hereby enacted to read as follows:

12 **CHAPTER 2. SCHOOL READINESS TAX CREDITS**

13 **§6101. Purpose**

14 **The legislature hereby determines that the benefits of quality child care**  
15 **are indisputable, and that a striking connection exists between children's**  
16 **learning experiences well before kindergarten and his or her later school**  
17 **success.**

1           **§6102. Definitions**

2                   **For purposes of this Chapter, the following terms shall have the**  
3           **following definitions:**

4                   **(1) "Child" or "children" means people who are five years of age or less.**

5                   **(2) "Child care facility" means any entity which the Department of**  
6           **Social Services determines is eligible to participate in the quality rating system**  
7           **according to criteria set forth by rule adopted in the manner provided for in**  
8           **R.S. 47:6103, has applied to the Department of Social Services for evaluation**  
9           **under such system, and is participating in the system.**

10                  **(3) "Child care provider" means a taxpayer who owns an eligible child**  
11           **care facility or facilities.**

12                  **(4) "Child care resource and referral agencies" means those agencies**  
13           **with whom the Department of Social Services has contracted to provide child**  
14           **care resource and referral.**

15                  **(5) "Eligible business child care expenses" means the total of the**  
16           **following expenses of a business that supports quality child care as provided for**  
17           **in R.S. 47:6107:**

18                  **(a) For the construction, renovation, expansion, or major repair of an**  
19           **eligible child care facility, or for the purchase of equipment for such facility, or**  
20           **for the maintenance and operation thereof, not to exceed fifty thousand dollars**  
21           **in expenses per tax year.**

22                  **(b) For payments made to an eligible child care facility for child care**  
23           **services to support employees not to exceed five thousand dollars per child per**  
24           **tax year.**

25                  **(c) For the purchase of child care slots at eligible child care facilities**  
26           **actually provided or reserved for children of employees not to exceed fifty**  
27           **thousand dollars per tax year.**

28                  **(6) "Eligible child care director" means an individual as defined in Title**  
29           **48 of the Louisiana Administrative Code, as amended, enrolled in the state**  
30           **practitioner registry developed and maintained by the Department of Social**

1 Services, and who is employed in an eligible child care facility which  
 2 participates in the quality rating system.

3 (7) "Eligible child care facility" means a child care facility which has  
 4 applied to the Department of Social Services for an evaluation under its quality  
 5 rating system and is participating in the quality rating system.

6 (8) "Eligible child care staff" means an individual enrolled in the state  
 7 practitioner registry developed and maintained by the Department of Social  
 8 Services and who is employed in an eligible child care facility which participates  
 9 in the quality rating system and who otherwise meets the qualifications  
 10 provided for in Title 48 of the Louisiana Administrative Code, Chapter 53, as  
 11 amended.

12 (9)(a) "Quality rating" means the number of "stars" awarded to an  
 13 eligible child care facility by the quality rating system.

14 (b) The quality rating of the facility shall be based on the initial rating  
 15 of the facility if it is the facility's first year participating in the quality rating  
 16 system. Thereafter, the quality rating shall be the rating of the facility as of July  
 17 first of each year.

18 (10) "Quality rating system" means a rule promulgated by the  
 19 Department of Social Services implementing the Louisiana Quality Rating  
 20 System which establishes criteria for evaluating and rating the quality of an  
 21 eligible child care facility in terms of the award of "stars," with five "stars"  
 22 being the highest quality child care facility.

23 §6103. Implementation

24 A.(1) The Department of Social Services shall promulgate rules and  
 25 regulations for the purpose of developing and implementing the provisions of  
 26 this Chapter in accordance with the provisions of the Administrative Procedure  
 27 Act.

28 (2) The Department of Social Services is authorized to use the emergency  
 29 rulemaking process for the first set of rules developing and implementing this  
 30 Chapter. Prior to adoption of the emergency rule, the department shall provide

1 written notification that it intends to publish such rule in the State Register and  
 2 the rule shall be subject to approval by the Senate Committee on Revenue and  
 3 Fiscal Affairs and the House Committee on Ways and Means. However, if such  
 4 committees do not take action on the rule within sixty days of publication in the  
 5 State Register, the rule shall become effective.

6 (3) Any promulgated rule which is first applicable to any calendar year  
 7 shall be finally adopted prior to December first of the preceding calendar year.

8 B. In addition to the approval of oversight committees provided for in  
 9 the Administrative Procedure Act, such rule also shall be approved by the  
 10 Senate Committee on Revenue and Fiscal Affairs and the House Committee on  
 11 Ways and Means.

12 §6104. Child care expense tax credit

13 A. There shall be a credit against Louisiana individual income tax for  
 14 child care expenses in addition to the credit provided for such expenses in R.S.  
 15 47:297.4. Such credit shall be based upon the credit provided for such expenses  
 16 in R.S. 47:297.4 and shall be based upon the quality rating of the child care  
 17 facility which the child attends as follows:

<u>Quality Rating of Child Care Facility</u>	<u>Percentage of the credit in R.S. 47:297.4</u>
<u>Five star</u>	<u>200%</u>
<u>Four star</u>	<u>150%</u>
<u>Three star</u>	<u>100%</u>
<u>Two star</u>	<u>50%</u>
<u>One star or non-participating child care facility</u>	<u>0</u>

26 B. Parents with multiple children shall calculate the credit of each child  
 27 separately. In the event that a single child receives services in more than one  
 28 child care facility in a single year, the facility with the highest quality rating  
 29 shall be used to calculate the credit.

30 C. The credit shall be refundable or shall be carried forward as provided  
 31 for in R.S. 47:297.4.

**§6105. Child care provider tax credit**

**There shall be a credit against any Louisiana individual or corporation income tax or corporation franchise tax for a child care provider refundable as provided for in R.S. 47:6108. The tax credit shall be an amount based upon the average monthly number of children who either participate in the Child Care Assistance Program administered by the office of family support in the Department of Social Services or who are foster children in the custody of the Department of Social Services, and who are attending a child care facility or facilities operated by the child care provider, multiplied by an amount which shall be based upon the quality rating of each child care facility operated by the child care provider as follows:**

<b><u>Quality Rating of Child Care Facility</u></b>	<b><u>Tax Credit Per Eligible Child Attending</u></b>
<b><u>Five star</u></b>	<b><u>\$1,500</u></b>
<b><u>Four star</u></b>	<b><u>\$1,250</u></b>
<b><u>Three star</u></b>	<b><u>\$1,000</u></b>
<b><u>Two star</u></b>	<b><u>\$750</u></b>
<b><u>One star or non-participating facility</u></b>	<b><u>-0-</u></b>

**§6106. Credit for child care directors and staff**

**A. There shall be a credit against Louisiana individual income tax refundable as provided for in R.S. 47:6108 for eligible child care directors and eligible child care staff. The tax credit shall be for the following amounts and shall be based upon the following qualifications, but shall be adjusted for inflation as provided for in Subsection C of this Section:**

<b><u>Child Care Director and Child Care Staff Qualification</u></b>	<b><u>Tax Credit</u></b>
<b><u>Level Four Director or Level Four Staff</u></b>	<b><u>\$3,000</u></b>
<b><u>Level Three Director or Level Three Staff</u></b>	<b><u>\$2,500</u></b>
<b><u>Level Two Director or Level Two Staff</u></b>	<b><u>\$2,000</u></b>
<b><u>Level One Director or Level One Staff</u></b>	<b><u>\$1,500</u></b>

**B. The various levels of qualification for the tax credit for eligible child care directors and eligible child care staff as provided for in Subsection A of this**

1           Section shall be as defined in the Department of Social Services state  
 2           practitioner registry in Title 48 of the Louisiana Administrative Code, as  
 3           amended.

4           C. Beginning calendar year 2009, the tax credit amounts provided for in  
 5           Subsection A of this Section shall be adjusted annually for each calendar year  
 6           by the percentage increase in the Consumer Price Index United States city  
 7           average for all urban consumers (CPI-U), as prepared by the United States  
 8           Department of Labor, Bureau of Labor Statistics, as determined by the  
 9           secretary of the Department of Revenue on December first of the preceding  
 10          calendar year.

11          D. In order to receive the credit provided for in this Section, the child  
 12          care director or staff person shall file with his income tax return an attestation  
 13          form provided by the State Practitioner Registry verifying that the individual  
 14          meets all the requirements and qualifications of a child care director or staff  
 15          person for the level claimed.

16          §6107. Business-supported child care

17          A.(1) There shall be a refundable credit against any Louisiana individual  
 18          or corporation income tax or corporation franchise tax for the eligible business  
 19          child care expenses supported by a business. The credit shall be the following  
 20          percentages of such eligible business child care expenses depending upon the  
 21          quality rating of the child care facility to which the expenses are related or the  
 22          quality rating of the child care facility the child attends:

<u>Quality Rating of Child Care Facility</u>	<u>Percentage of eligible business child care expenses</u>
<u>Five star</u>	<u>20%</u>
<u>Four star</u>	<u>15%</u>
<u>Three star</u>	<u>10%</u>
<u>Two star</u>	<u>5%</u>
<u>One star or non-participating facility</u>	<u>-0-</u>

29          (2) There shall be an additional refundable credit against any Louisiana  
 30          individual or corporation income tax or corporation franchise tax for the

1 payment by a business of fees and grants to child care resource and referral  
2 agencies not to exceed five thousand dollars per tax year.

3 B. The credits provided for in this Section shall be allowed against  
4 income tax or corporate franchise tax for the taxable period in which the credit  
5 is earned. If the tax credit exceeds the amount of such taxes due, then the  
6 unused credit shall be refunded as provided for in R.S. 47:6108.

7 §6108. Refundable tax credits

8 A. Notwithstanding any other provision of law to the contrary, any  
9 excess of allowable credit provided in R.S. 47:6105, 6106, and 6107 and the  
10 refundable portion of the credit as provided for in R.S. 47:6104 over the  
11 aggregate tax liabilities against which such credit may be applied, as provided  
12 in this Section, shall constitute an overpayment, as defined in R.S. 47:1621(A),  
13 and the secretary shall make a refund of such overpayment from the current  
14 collections of the taxes imposed by Chapter 1 or Chapter 5 of Subtitle II of this  
15 Title, together with interest as provided in R.S. 47:1624. The right to a credit or  
16 refund of any such overpayment shall not be subject to the requirements of R.S.  
17 47:1621(B). All credits and refunds, together with interest thereof, must be paid  
18 or disallowed within one year of receipt by the secretary of any such claim for  
19 refund or credit. Failure of the secretary to pay or disallow, in whole or in part,  
20 any claim for a credit or a refund shall entitle the aggrieved taxpayer to proceed  
21 with the remedies provided in R.S. 47:1625.

22 B. Notwithstanding anything to the contrary in either Chapter 1 or  
23 Chapter 5 of Subtitle II of this Title, as amended, the following rules shall apply  
24 with respect to the application of the credit established in Subsection A of this  
25 Section:

26 (1) The credit for taxes paid by or on behalf of a corporation shall be  
27 applied against Louisiana corporate income and corporation franchise taxes of  
28 such corporation.

29 (2) The credit for taxes paid by an individual shall be applied against  
30 Louisiana personal income taxes.

1           (3) The credit for taxes paid by or on behalf of a corporation classified  
2           under Subchapter S of the Internal Revenue Code of 1954, as amended, as an  
3           S corporation shall be applied first against any Louisiana corporate income and  
4           corporation franchise taxes due by such S corporation, and the remainder of  
5           any such credit shall be allocated to the shareholder or shareholders of such S  
6           corporation in accordance with their respective interests and applied against the  
7           Louisiana income tax of such shareholder or shareholders of the S corporation.

8           (4) The credit for taxes paid by or on behalf of a partnership shall be  
9           allocated to the partners according to their distributive shares of partnership  
10           gross income and applied against any Louisiana income tax and corporation  
11           franchise tax liability of such partners.

12           (5) The character of the credit for taxes paid by or on behalf of a  
13           partnership or S corporation and allocated to the partners or shareholders,  
14           respectively, of such partnership or S corporation, shall be determined as if  
15           such credit were incurred by such partners or shareholders, as the case may be  
16           in the same manner as incurred by the partnership or S corporation, as the case  
17           may be.

18           (6) The credit for taxes paid by an estate or trust shall be applied against  
19           the Louisiana income tax imposed on estates and trusts.

20           §6109. Recapture of credits

21           A. If the Department of Social Services or the Department of Revenue  
22           find that a child care facility, a business, or an individual has obtained a tax  
23           credit in violation of the provisions of this Chapter, including but not limited to  
24           fraud or misrepresentation, then the taxpayer's state income tax for such  
25           taxable period shall be increased by such amount necessary for the recapture  
26           of the tax credit provided for in this Chapter.

27           B.(1) Credits granted to a taxpayer, but later disallowed, may be  
28           recovered by the secretary of the Department of Revenue through any collection  
29           remedy authorized by R.S. 47:1561 and initiated within three years from  
30           December thirty-first of the year in which the credit was taken.

1                   (2) The only interest that may be assessed and collected on recovered  
 2                   credits is interest at a rate three percentage points above the rate provided in  
 3                   R.S. 9:3500(B)(1), which shall be computed from the original date of the return  
 4                   on which the credit was taken.

5                   C. The provisions of this Section are in addition to and shall not limit the  
 6                   authority of the secretary of the Department of Revenue to assess or to collect  
 7                   under any other provision of law.

8                   Section 2. The provisions of this Act shall be applicable to either of the following,  
 9                   whichever occurs last:

10                   (1) Income tax years beginning on or after January 1, 2008, and franchise tax years  
 11                   beginning on or after January 1, 2009.

12                   (2) Income tax years beginning during the calendar year in which the rules providing  
 13                   for a Quality Rating System are finally promulgated, and franchise tax years beginning the  
 14                   year after such rules are promulgated.

15                   Section 3. This Act shall become effective upon signature by the governor or, if not  
 16                   signed by the governor, upon expiration of the time for bills to become law without signature  
 17                   by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 18                   vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 19                   effective on the day following such approval.

\_\_\_\_\_  
 PRESIDENT OF THE SENATE

\_\_\_\_\_  
 SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_