

**Representative Mike Schultz** proposes the following substitute bill:

**SPECIAL NEEDS SCHOLARSHIP AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike Schultz**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill creates the Special Needs Opportunity Scholarship Program and related income tax credits.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ creates the Special Needs Opportunity Scholarship Program (program);
- ▶ establishes requirements for a scholarship recipient and a private school that accepts scholarship money;
- ▶ requires the State Board of Education to oversee the program, including selection of a scholarship granting organization;
- ▶ establishes the duties of a scholarship granting organization, including:
  - accepting program donations;
  - awarding scholarships; and
  - issuing tax credit certificates;
- ▶ creates a nonrefundable corporate income tax credit and a nonrefundable individual income tax credit for certain program donations;
- ▶ prohibits a taxpayer from claiming more than one state income tax benefit from



26 making the donation; and  
27       ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29       None

30 **Other Special Clauses:**

31       This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34       **53-10-108**, as last amended by Laws of Utah 2019, Chapters 136, 192, and 404

35       **53E-8-403**, as last amended by Laws of Utah 2019, Chapter 314

36       **53F-4-303**, as last amended by Laws of Utah 2019, Chapter 186

37       **59-7-109**, as last amended by Laws of Utah 1995, Chapter 311

38 ENACTS:

39       **53E-7-401**, Utah Code Annotated 1953

40       **53E-7-402**, Utah Code Annotated 1953

41       **53E-7-403**, Utah Code Annotated 1953

42       **53E-7-404**, Utah Code Annotated 1953

43       **53E-7-405**, Utah Code Annotated 1953

44       **53E-7-406**, Utah Code Annotated 1953

45       **53E-7-407**, Utah Code Annotated 1953

46       **59-7-625**, Utah Code Annotated 1953

47       **59-10-1041**, Utah Code Annotated 1953



49 *Be it enacted by the Legislature of the state of Utah:*

50       Section 1. Section **53-10-108** is amended to read:

51       **53-10-108. Restrictions on access, use, and contents of division records -- Limited**  
52 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**  
53 **-- Missing children records -- Penalty for misuse of records.**

54       (1) As used in this section:

55       (a) "FBI Rap Back System" means the rap back system maintained by the Federal  
56 Bureau of Investigation.

57 (b) "Rap back system" means a system that enables authorized entities to receive  
58 ongoing status notifications of any criminal history reported on individuals whose fingerprints  
59 are registered in the system.

60 (c) "WIN Database" means the Western Identification Network Database that consists  
61 of eight western states sharing one electronic fingerprint database.

62 (2) Dissemination of information from a criminal history record, including information  
63 obtained from a fingerprint background check, name check, warrant of arrest information, or  
64 information from division files, is limited to:

65 (a) criminal justice agencies for purposes of administration of criminal justice and for  
66 employment screening by criminal justice agencies;

67 (b) (i) agencies or individuals pursuant to a specific agreement with a criminal justice  
68 agency to provide services required for the administration of criminal justice;

69 (ii) the agreement shall specifically authorize access to data, limit the use of the data to  
70 purposes for which given, and ensure the security and confidentiality of the data;

71 (c) a qualifying entity for employment background checks for their own employees and  
72 persons who have applied for employment with the qualifying entity;

73 (d) noncriminal justice agencies or individuals for any purpose authorized by statute,  
74 executive order, court rule, court order, or local ordinance;

75 (e) agencies or individuals for the purpose of obtaining required clearances connected  
76 with foreign travel or obtaining citizenship;

77 (f) agencies or individuals for the purpose of a preplacement adoptive study, in  
78 accordance with the requirements of Sections [78B-6-128](#) and [78B-6-130](#);

79 (g) private security agencies through guidelines established by the commissioner for  
80 employment background checks for their own employees and prospective employees;

81 (h) state agencies for the purpose of conducting a background check for the following  
82 individuals:

83 (i) employees;

84 (ii) applicants for employment;

85 (iii) volunteers; and

86 (iv) contract employees;

87 (i) governor's office for the purpose of conducting a background check on the

88 following individuals:

89 (i) cabinet members;

90 (ii) judicial applicants; and

91 (iii) members of boards, committees, and commissions appointed by the governor;

92 (j) the office of the lieutenant governor for the purpose of conducting a background  
93 check on an individual applying to be a notary public under Section [46-1-3](#).

94 (k) agencies and individuals as the commissioner authorizes for the express purpose of  
95 research, evaluative, or statistical activities pursuant to an agreement with a criminal justice  
96 agency; [~~and~~]

97 (l) the State Board of Education for employment background checks of individuals in  
98 accordance with Section [53E-7-404](#); and

99 [~~(+)~~ (m) other agencies and individuals as the commissioner authorizes and finds  
100 necessary for protection of life and property and for offender identification, apprehension, and  
101 prosecution pursuant to an agreement.

102 (3) An agreement under Subsection (2)(k) shall specifically authorize access to data,  
103 limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of  
104 individuals to whom the information relates, and ensure the confidentiality and security of the  
105 data.

106 (4) (a) Before requesting information, a qualifying entity under Subsection (2)(c), state  
107 agency, or other agency or individual described in Subsections (2)(d) through (j) shall obtain a  
108 signed waiver from the person whose information is requested.

109 (b) The waiver shall notify the signee:

110 (i) that a criminal history background check will be conducted;

111 (ii) who will see the information; and

112 (iii) how the information will be used.

113 (c) A qualifying entity under Subsection (2)(c), state agency, or other agency or  
114 individual described in Subsections (2)(d) through (g) that submits a request for a noncriminal  
115 justice name based background check of local databases to the bureau shall provide to the  
116 bureau:

117 (i) personal identifying information for the subject of the background check; and

118 (ii) the fee required by Subsection (15).

119 (d) A qualifying entity under Subsection (2)(c), state agency, or other agency or  
120 individual described in Subsections (2)(d) through (g) that submits a request for a WIN  
121 database check and a nationwide background check shall provide to the bureau:

- 122 (i) personal identifying information for the subject of the background check;
- 123 (ii) a fingerprint card for the subject of the background check; and
- 124 (iii) the fee required by Subsection (15).

125 (e) Information received by a qualifying entity under Subsection (2)(c), state agency, or  
126 other agency or individual described in Subsections (2)(d) through (j) may only be:

- 127 (i) available to individuals involved in the hiring or background investigation of the job  
128 applicant, employee, or notary applicant;
- 129 (ii) used for the purpose of assisting in making an employment appointment, selection,  
130 or promotion decision or for considering a notary applicant under Section 46-1-3; and
- 131 (iii) used for the purposes disclosed in the waiver signed in accordance with Subsection  
132 (4)(b).

133 (f) An individual who disseminates or uses information obtained from the division  
134 under Subsections (2)(c) through (j) for purposes other than those specified under Subsection  
135 (4)(e), in addition to any penalties provided under this section, is subject to civil liability.

136 (g) A qualifying entity under Subsection (2)(c), state agency, or other agency or  
137 individual described in Subsections (2)(d) through (j) that obtains background check  
138 information shall provide the subject of the background check an opportunity to:

- 139 (i) review the information received as provided under Subsection (9); and
- 140 (ii) respond to any information received.

141 (h) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
142 division may make rules to implement this Subsection (4).

143 (i) The division or its employees are not liable for defamation, invasion of privacy,  
144 negligence, or any other claim in connection with the contents of information disseminated  
145 under Subsections (2)(c) through (j).

146 (5) (a) Any criminal history record information obtained from division files may be  
147 used only for the purposes for which it was provided and may not be further disseminated,  
148 except under Subsection (5)(b), (c), or (d).

149 (b) A criminal history provided to an agency pursuant to Subsection (2)(f) may be

150 provided by the agency to the individual who is the subject of the history, another licensed  
151 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an  
152 adoption.

153 (c) A criminal history of a defendant provided to a criminal justice agency under  
154 Subsection (2)(a) may also be provided by the prosecutor to a defendant's defense counsel,  
155 upon request during the discovery process, for the purpose of establishing a defense in a  
156 criminal case.

157 (d) A public transit district, as described in Title 17B, Chapter 2a, Part 8, Public  
158 Transit District Act, that is under contract with a state agency to provide services may, for the  
159 purposes of complying with Subsection 62A-5-103.5(5), provide a criminal history record to  
160 the state agency or the agency's designee.

161 (6) The division may not disseminate criminal history record information to qualifying  
162 entities under Subsection (2)(c) regarding employment background checks if the information is  
163 related to charges:

- 164 (a) that have been declined for prosecution;
- 165 (b) that have been dismissed; or
- 166 (c) regarding which a person has been acquitted.

167 (7) (a) This section does not preclude the use of the division's central computing  
168 facilities for the storage and retrieval of criminal history record information.

169 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by  
170 unauthorized agencies or individuals.

171 (8) Direct access through remote computer terminals to criminal history record  
172 information in the division's files is limited to those agencies authorized by the commissioner  
173 under procedures designed to prevent unauthorized access to this information.

174 (9) (a) The commissioner shall establish procedures to allow an individual right of  
175 access to review and receive a copy of the individual's criminal history report.

176 (b) A processing fee for the right of access service, including obtaining a copy of the  
177 individual's criminal history report under Subsection (9)(a) shall be set in accordance with  
178 Section 63J-1-504.

179 (c) (i) The commissioner shall establish procedures for an individual to challenge the  
180 completeness and accuracy of criminal history record information contained in the division's

181 computerized criminal history files regarding that individual.

182 (ii) These procedures shall include provisions for amending any information found to  
183 be inaccurate or incomplete.

184 (10) The private security agencies as provided in Subsection (2)(g):

185 (a) shall be charged for access; and

186 (b) shall be registered with the division according to rules made by the division under  
187 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

188 (11) Before providing information requested under this section, the division shall give  
189 priority to criminal justice agencies needs.

190 (12) (a) It is a class B misdemeanor for a person to knowingly or intentionally access,  
191 use, disclose, or disseminate a record created, maintained, or to which access is granted by the  
192 division or any information contained in a record created, maintained, or to which access is  
193 granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or  
194 policy of a governmental entity.

195 (b) A person who discovers or becomes aware of any unauthorized use of records  
196 created or maintained, or to which access is granted by the division shall inform the  
197 commissioner and the director of the Utah Bureau of Criminal Identification of the  
198 unauthorized use.

199 (13) (a) Subject to Subsection (13)(b), a qualifying entity or an entity described in  
200 Subsection (2) may request that the division register fingerprints taken for the purpose of  
201 conducting current and future criminal background checks under this section with:

202 (i) the WIN Database rap back system, or any successor system;

203 (ii) the FBI Rap Back System; or

204 (iii) a system maintained by the division.

205 (b) A qualifying entity or an entity described in Subsection (2) may only make a  
206 request under Subsection (13)(a) if the entity:

207 (i) has the authority through state or federal statute or federal executive order;

208 (ii) obtains a signed waiver from the individual whose fingerprints are being registered;

209 and

210 (iii) establishes a privacy risk mitigation strategy to ensure that the entity only receives  
211 notifications for individuals with whom the entity maintains an authorizing relationship.

212 (14) The division is authorized to submit fingerprints to the FBI Rap Back System to  
213 be retained in the FBI Rap Back System for the purpose of being searched by future  
214 submissions to the FBI Rap Back System, including latent fingerprint searches.

215 (15) (a) The division shall impose fees set in accordance with Section 63J-1-504 for  
216 the applicant fingerprint card, name check, and to register fingerprints under Subsection  
217 (13)(a).

218 (b) Funds generated under this Subsection (15) shall be deposited into the General  
219 Fund as a dedicated credit by the department to cover the costs incurred in providing the  
220 information.

221 (c) The division may collect fees charged by an outside agency for services required  
222 under this section.

223 (16) For the purposes of conducting a criminal background check authorized under  
224 Subsection (2)(h), (i), or (j), the Department of Human Resource Management, in accordance  
225 with Title 67, Chapter 19, Utah State Personnel Management Act, and the governor's office  
226 shall have direct access to criminal background information maintained under Title 53, Chapter  
227 10, Part 2, Bureau of Criminal Identification.

228 Section 2. Section 53E-7-401 is enacted to read:

229 **CHAPTER 7. STUDENTS WITH DISABILITIES**

230 **Part 4. Special Needs Opportunity Scholarship Program**

231 **53E-7-401. Definitions.**

232 As used in this part:

233 (1) "Eligible student" means a student who:

234 (a) is eligible to participate in public school, in kindergarten or grades 1 through 12;

235 (b) is a resident of the state;

236 (c) (i) has an IEP;

237 (ii) has an individualized family service plan in accordance with the Individuals with  
238 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., if entering kindergarten; or

239 (iii) is determined by a multidisciplinary evaluation team to be eligible for services  
240 under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; and

241 (d) during the school year for which the student is applying for the scholarship, is not:

242 (i) a scholarship student in the Carson Smith Scholarship Program created in Section



- 243 [53F-4-302](#); or
- 244 (ii) a public school student.
- 245 (2) (a) "Employee" means an individual working in a position in which the individual's
- 246 salary, wages, pay, or compensation, including as a contractor, is paid from:
- 247 (i) program donations received by a scholarship granting organization; or
- 248 (ii) scholarship money allocated to a qualifying school by a scholarship granting
- 249 organization under Section [53E-7-405](#).
- 250 (b) "Employee" does not include an individual who volunteers at the scholarship
- 251 granting organization or qualifying school.
- 252 (3) "Officer" means:
- 253 (a) a member of the board of a scholarship granting organization or qualifying school;
- 254 or
- 255 (b) the chief administrative officer of a scholarship granting organization or qualifying
- 256 school.
- 257 (4) "Program donations" means donations to the program under Section [53E-7-405](#).
- 258 (5) "Qualifying school" means a private school that:
- 259 (a) provides kindergarten, elementary, or secondary education;
- 260 (b) is approved by the state board under Section [53F-4-303](#); and
- 261 (c) meets the requirements described in Section [53E-7-403](#).
- 262 (6) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother,
- 263 uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,
- 264 sister-in-law, son-in-law, or daughter-in-law.
- 265 (7) "Scholarship" means a grant awarded to an eligible student:
- 266 (a) by a scholarship granting organization out of program donations; and
- 267 (b) for the purpose of paying for a scholarship expense.
- 268 (8) "Scholarship expense" means:
- 269 (a) tuition, fees, textbooks, or uniforms for a qualifying school;
- 270 (b) educational therapy, if the educational therapy is provided by a licensed physician
- 271 or licensed practitioner, including occupational, behavioral, physical, or speech-language
- 272 therapies;
- 273 (c) textbooks, curriculum, or other instructional materials, including supplemental

274 materials or associated online instruction required by a curriculum;

275 (d) tuition and fees for an online learning course or program; or

276 (e) fees for a national norm-referenced examination, advanced placement examination,

277 or similar course, fees associated with a state-recognized industry certification exam, or any

278 examination related to college or university admission.

279 (9) "Scholarship granting organization" means an organization that is:

280 (a) qualified as tax exempt under Section 501(c)(3), Internal Revenue Code; and

281 (b) recognized through an agreement with the state board as a scholarship granting

282 organization, as described in Section [53E-7-404](#).

283 (10) "Special Needs Opportunity Scholarship Program" or "program" means the

284 program established in Section [53E-7-402](#).

285 (11) "Value of the weighted pupil unit" means the amount established each year in the

286 enacted public education budget that is multiplied by the number of weighted pupil units to

287 yield the funding level for the basic state-supported school program.

288 Section 3. Section **53E-7-402** is enacted to read:

289 **53E-7-402. Special Needs Opportunity Scholarship Program.**

290 (1) There is established the Special Needs Opportunity Scholarship Program under

291 which a parent may apply to a scholarship granting organization on behalf of the parent's

292 student for a scholarship to help cover the cost of a scholarship expense.

293 (2) A scholarship granting organization shall:

294 (a) award, in accordance with this part, scholarships to eligible students; and

295 (b) determine the amount of a scholarship in accordance with Subsection (3).

296 (3) A scholarship granting organization shall determine a full-year scholarship award to

297 pay for the cost of one or more scholarship expenses in an amount not more than:

298 (a) for an eligible student in grades 1 through 12 with an IEP, the value of the weighted

299 pupil unit multiplied by two;

300 (b) for an eligible student in grades 1 through 12 who does not have an IEP, the value

301 of the weighted pupil unit;

302 (c) for an eligible student in kindergarten with an IEP, the value of the weighted pupil

303 unit; or

304 (d) for an eligible student in kindergarten who does not have an IEP, half the value of

305 the weighted pupil unit.

306 (4) The state board shall prepare and disseminate to a scholarship granting organization  
307 for distribution to a parent applying for a scholarship on behalf of a student:

308 (a) information on the program; and

309 (b) information on how a parent may enroll the parent's child in a public school.

310 (5) A scholarship granting organization shall distribute the information described in  
311 Subsection (4) to a parent who applies to the scholarship granting organization for a  
312 scholarship on behalf of the parent's student.

313 Section 4. Section **53E-7-403** is enacted to read:

314 **53E-7-403. Qualifying school requirements.**

315 (1) A qualifying school shall:

316 (a) notify a scholarship granting organization of the qualifying school's intention to  
317 participate in the program;

318 (b) submit evidence to the scholarship granting organization that the qualifying school  
319 has been approved by the state board under Section [53F-4-303](#); and

320 (c) submit a signed affidavit to the scholarship granting organization that the qualifying  
321 school will comply with the requirements of this part.

322 (2) A qualifying school shall comply with 42 U.S.C. Sec. 1981, and meet state and  
323 local health and safety laws and codes.

324 (3) Before the beginning of the school year immediately following a school year in  
325 which a qualifying school receives scholarship money equal to or more than \$100,000, the  
326 qualifying school shall file with a scholarship granting organization that allocates scholarship  
327 money to the qualifying school:

328 (a) a surety bond payable to the scholarship granting organization in an amount equal  
329 to the aggregate amount of scholarship money expected to be received during the school year;  
330 or

331 (b) financial information that demonstrates the financial viability of the qualifying  
332 school, as required by the scholarship granting organization.

333 (4) If a scholarship granting organization determines that a qualifying school has  
334 violated a provision of this part, the scholarship granting organization may interrupt  
335 disbursement of or withhold scholarship money from the qualifying school.

336 (5) (a) If the state board determines that a qualifying school no longer meets the  
337 eligibility requirements described in Section 53F-4-303, the state board may withdraw the state  
338 board's approval of the school.

339 (b) A private school that does not have the state board's approval under Section  
340 53F-4-303 may not accept scholarship money under this part.

341 (6) A qualifying school shall, when administering an annual assessment required under  
342 Section 53F-4-303, ensure that the qualifying school uses a norm-referenced assessment.

343 Section 5. Section 53E-7-404 is enacted to read:

344 **53E-7-404. Program administration by the state board.**

345 (1) The state board shall administer the program.

346 (2) The state board shall:

347 (a) provide a tax credit certificate form, for use by a scholarship granting organization  
348 as described in Section 53E-7-407, that includes:

349 (i) the name, address, and social security number or federal employer identification  
350 number of the person that makes a donation under Section 53E-7-405;

351 (ii) the date of the donation;

352 (iii) the amount of the donation;

353 (iv) the amount of the tax credit; and

354 (v) any other relevant information;

355 (b) conduct a financial review or audit of a scholarship granting organization, if the  
356 state board receives evidence of fraudulent practice by the scholarship granting organization;

357 (c) conduct a criminal background check on each scholarship granting organization  
358 employee and scholarship granting organization officer;

359 (d) establish uniform financial accounting standards for scholarship granting  
360 organizations; and

361 (e) annually calculate the amount of the program donations cap described in Section  
362 53E-7-407.

363 (3) (a) In accordance with Subsection (4) and Title 63G, Chapter 6a, Utah Procurement  
364 Code, the state board shall issue a request for proposals and enter into at least one agreement  
365 with an organization that is qualified as tax exempt under Section 501(c)(3), Internal Revenue  
366 Code, to be recognized by the state board as a scholarship granting organization.

367 (b) An organization that responds to a request for proposals described in Subsection  
368 (3)(a) shall submit the following information in the organization's response:

369 (i) a copy of the organization's incorporation documents;

370 (ii) a copy of the organization's Internal Revenue Service determination letter  
371 qualifying the organization as being tax exempt under Section 501(c)(3), Internal Revenue  
372 Code;

373 (iii) a description of the methodology the organization will use to verify that a student  
374 is an eligible student under this part; and

375 (iv) a description of the organization's proposed scholarship application process.

376 (4) (a) The state board shall enter into an agreement described in Subsection (3)(a) with  
377 one scholarship granting organization on or before January 1, 2021.

378 (b) The state board may enter into an agreement described in Subsection (3)(a) with  
379 additional scholarship granting organizations after January 1, 2022, if the state board makes  
380 rules regarding how multiple scholarship granting organizations may issue tax credit  
381 certificates in accordance with Section [53E-7-407](#).

382 (c) (i) No later than 10 days after the day on which the state board enters into an  
383 agreement with a scholarship granting organization, the state board shall forward the name and  
384 contact information of the scholarship granting organization to the State Tax Commission.

385 (ii) If, under Subsection (5)(c)(i), the state board bars a scholarship granting  
386 organization from further participation in the program, the state board shall, no later than 10  
387 days after the day on which the state board bars the scholarship granting organization, forward  
388 the name and contact information of the barred scholarship granting organization to the State  
389 Tax Commission.

390 (5) (a) If the state board determines that a scholarship granting organization has  
391 violated a provision of this part or state board rule, the state board shall send written notice to  
392 the scholarship granting organization explaining the violation and the remedial action required  
393 to correct the violation.

394 (b) A scholarship granting organization that receives a notice described in Subsection  
395 (5)(a) shall, no later than 60 days after the day on which the scholarship granting organization  
396 receives the notice, correct the violation and report the correction to the state board.

397 (c) (i) If a scholarship granting organization that received a notice described in

398 Subsection (5)(a) fails to correct a violation in the time period described in Subsection (5)(b),  
399 the state board may bar the scholarship granting organization from further participation in the  
400 program.

401 (ii) A scholarship granting organization may appeal a decision made by the state board  
402 under Subsection (5)(c)(i) in accordance with Title 63G, Chapter 4, Administrative Procedures  
403 Act.

404 (d) A scholarship granting organization may not accept program donations while the  
405 scholarship granting organization:

406 (i) is barred from participating in the program under Subsection (5)(c)(i); or

407 (ii) has an appeal pending under Subsection (5)(c)(ii).

408 (e) A scholarship granting organization that has an appeal pending under Subsection  
409 (5)(c)(ii) may continue to administer scholarships from previously donated program donations  
410 during the pending appeal.

411 (6) The state board shall provide for a process for a scholarship granting organization  
412 to report information as required under Section [53E-7-405](#).

413 (7) The state board shall make rules in accordance with Title 63G, Chapter 3, Utah  
414 Administrative Rulemaking Act, to administer the program, including rules for:

415 (a) a scholarship granting organization's acceptance of program donations;

416 (b) the administration of scholarships to a qualifying school receiving scholarship  
417 money from a scholarship granting organization that is barred from participating in the  
418 program under Subsection (5)(c)(i);

419 (c) payment of scholarship money to qualifying schools by a scholarship granting  
420 organization;

421 (d) granting scholarship awards and disbursing scholarship money for nontuition  
422 scholarship expenses by a scholarship granting organization;

423 (e) if an eligible student does not continue in enrollment at a qualifying school:

424 (i) requiring the scholarship granting organization to:

425 (A) notify the state board; and

426 (B) obtain reimbursement of scholarship money from the qualifying school in which  
427 the eligible student is no longer enrolled; and

428 (ii) requiring the qualifying school in which the eligible student is no longer enrolled to

429 reimburse scholarship money to the scholarship granting organization; and

430 (f) audit and report requirements as described in Section 53E-7-405.

431 Section 6. Section 53E-7-405 is enacted to read:

432 **53E-7-405. Program donations -- Scholarship granting organization**  
433 **requirements.**

434 (1) A person that makes a donation to a scholarship granting organization to help fund  
435 scholarships through the program may be eligible to receive a nonrefundable tax credit as  
436 described in Sections 59-7-624 and 59-10-1041.

437 (2) In accordance with Section 53E-7-404, an organization may enter into an  
438 agreement with the state board to be a scholarship granting organization.

439 (3) A scholarship granting organization shall:

440 (a) accept program donations;

441 (b) adopt an application process in accordance with Subsection (4);

442 (c) review scholarship applications and determine scholarship awards;

443 (d) allocate scholarship money to a scholarship recipient's parent or, on the parent's  
444 behalf, to a qualifying school in which the scholarship recipient is enrolled;

445 (e) adopt a process, with state board approval, that allows a parent to use a scholarship  
446 to pay for a nontuition scholarship expense for the scholarship recipient;

447 (f) ensure that:

448 (i) at least 90% of the scholarship granting organization's revenue from program  
449 donations is spent on scholarships;

450 (ii) no more than 10% of the scholarship granting organization's revenue from program  
451 donations is spent on administration of the program; and

452 (iii) all revenue from program donations' interest or investments is spent on  
453 scholarships;

454 (g) carry forward no more than 40% of the scholarship granting organization's program  
455 donations from the state fiscal year in which the scholarship granting organization received the  
456 program donations to the following state fiscal year;

457 (h) at the end of a fiscal year, remit to the state treasurer donation amounts greater than  
458 the amount described in Subsection (3)(g), who shall deposit the money into the Education  
459 Fund;

460 (i) prohibit a scholarship granting organization employee or officer from handling,  
461 managing, or processing program donations, if, based on a criminal background check  
462 conducted by the state board in accordance with Section 53E-7-404, the state board identifies  
463 the employee or officer as posing a risk to the appropriate use of program donations;

464 (j) ensure that a scholarship can be transferred during the school year to a different  
465 qualifying school that accepts the scholarship recipient;

466 (k) report to the state board on or before June 1 of each year the following information,  
467 prepared by a certified public accountant:

468 (i) the name and address of the scholarship granting organization;

469 (ii) the total number and total dollar amount of program donations that the scholarship  
470 granting organization received during the previous calendar year;

471 (iii) the total number and total dollar amount of scholarships the scholarship granting  
472 organization awarded during the previous calendar year; and

473 (iv) the percentage of first-time scholarship recipients who were enrolled in a public  
474 school during the previous school year or who entered kindergarten or a higher grade for the  
475 first time in Utah;

476 (l) issue tax credit certificates as described in Section 53E-7-407; and

477 (m) require a parent to notify a scholarship granting organization if the parent's  
478 scholarship recipient:

479 (i) receives scholarship money for tuition expenses; and

480 (ii) does not have continuing enrollment and attendance at a qualifying school.

481 (4) (a) An application for a scholarship shall contain an acknowledgment by the  
482 applicant's parent that the qualifying school selected by the parent for the applicant to attend  
483 using a scholarship is capable of providing the level of disability services required for the  
484 student.

485 (b) A scholarship application form shall contain the following statement:

486 "I acknowledge that (1) A private school may not provide the same level of disability  
487 services that are provided in a public school;

488 (2) I will assume full financial responsibility for the education of my scholarship  
489 recipient if I accept this scholarship;

490 (3) Acceptance of this scholarship has the same effect as a parental refusal to consent



491 to evaluation or services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals  
492 with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; and

493 (4) My child may return to a public school at any time."

494 (c) Upon acceptance of a scholarship, the parent assumes full financial responsibility  
495 for the education of the scholarship recipient.

496 (d) Acceptance of a scholarship has the same effect as a parental refusal to consent to  
497 evaluation or services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals with  
498 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

499 (e) The creation of the program or granting of a scholarship does not:

500 (i) imply that a public school did not provide a free and appropriate public education  
501 for a student; or

502 (ii) constitute a waiver or admission by the state.

503 (5) A scholarship granting organization shall demonstrate the scholarship granting  
504 organization's financial accountability by annually submitting to the state board a financial  
505 information report that:

506 (a) complies with the uniform financial accounting standards described in Section  
507 53E-7-404; and

508 (b) is prepared by a certified public accountant.

509 (6) (a) If a scholarship granting organization allocates \$500,000 or more in  
510 scholarships annually through the program, the scholarship organization shall:

511 (i) contract for an annual audit, conducted by a certified public accountant who is  
512 independent from:

513 (A) the scholarship granting organization; and

514 (B) the scholarship granting organization's accounts and records pertaining to program  
515 donations; and

516 (ii) in accordance with Subsection (6)(b), report the results of the audit to the state  
517 board for review.

518 (b) For the report described in Subsection (6)(a)(ii), the scholarship granting  
519 organization shall:

520 (i) include the scholarship granting organization's financial statements in a format that  
521 meets generally accepted accounting standards; and

522 (ii) submit the report to the state board no later than 180 days after the last day of a  
523 scholarship granting organization's fiscal year.

524 (c) The certified public accountant shall conduct an audit described in Subsection  
525 (6)(a)(i) in accordance with generally accepted auditing standards and rules made by the state  
526 board.

527 (d) (i) The state board shall review a report submitted under this section and may  
528 request that the scholarship granting organization revise or supplement the report if the report  
529 is not in compliance with the provisions of this Subsection (6) or rules adopted by the state  
530 board.

531 (ii) A scholarship granting organization shall provide a revised report or supplement to  
532 the report no later than 45 days after the day on which the state board makes a request  
533 described in Subsection (6)(d)(i).

534 (7) (a) A scholarship granting organization may not allocate scholarship money to a  
535 qualifying school if:

536 (i) the scholarship granting organization determines that the qualifying school  
537 intentionally or substantially misrepresented information on overpayment;

538 (ii) the qualifying school fails to refund an overpayment in a timely manner; or

539 (iii) the qualifying school routinely fails to provide scholarship recipients with  
540 promised educational goods or services.

541 (b) A scholarship granting organization shall notify a scholarship recipient if the  
542 scholarship granting organization stops allocation of the recipient's scholarship money to a  
543 qualifying school under Subsection (7)(a).

544 (8) If a scholarship recipient transfers to another qualifying school during the school  
545 year, the scholarship granting organization may prorate scholarship money between the  
546 qualifying schools according to the time the scholarship recipient spends at each school.

547 (9) A scholarship granting organization may not:

548 (a) award a scholarship to a relative of the scholarship granting organization's officer or  
549 employee; or

550 (b) allocate scholarship money to a qualifying school at which the scholarship recipient  
551 has a relative who is an officer or an employee of the qualifying school.

552 Section 7. Section **53E-7-406** is enacted to read:

553 **53E-7-406. Private school regulation -- Student records.**

554 (1) Nothing in this part:

555 (a) grants additional authority to any state agency or LEA to regulate private schools  
556 except as expressly described in this part; or

557 (b) expands the regulatory authority of the state, a state office holder, or a local school  
558 district to impose any additional regulation of a qualifying school beyond those necessary to  
559 enforce the requirements of the program.

560 (2) A qualifying school shall be given the maximum freedom to provide for the  
561 educational needs of a scholarship recipient who attends the qualifying school without  
562 unlawful governmental control.

563 (3) Except as provided in Section [53E-7-403](#), a qualifying school may not be required  
564 to alter the qualifying school's creed, practices, admission policy, or curriculum in order to  
565 accept scholarship money.

566 (4) A local education agency or school in a local education agency in which a  
567 scholarship recipient was previously enrolled shall provide to a qualifying school in which the  
568 scholarship recipient is currently enrolled a copy of all requested school records relating to the  
569 scholarship recipient, subject to:

570 (a) Title 53E, Chapter 9, Student Privacy and Data Protection; and

571 (b) Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g.

572 Section 8. Section **53E-7-407** is enacted to read:

573 **53E-7-407. Tax credit certificates issued by a scholarship granting organization.**

574 (1) In accordance with this section and subject to Subsection (3), a scholarship granting  
575 organization shall provide a tax credit certificate to a person that makes a donation as described  
576 in Section [53E-7-405](#).

577 (2) (a) The scholarship granting organization shall issue a tax credit certificate  
578 described in Subsection (1) on the tax credit certificate form described in Section [53E-7-404](#).

579 (b) The scholarship granting organization shall provide the information from a  
580 completed tax credit certificate to the State Tax Commission electronically and in a manner  
581 prescribed by the State Tax Commission.

582 (c) A scholarship granting organization shall issue a tax credit certificate within 30  
583 days after the day on which a person makes a donation to the program.

584 (3) (a) A scholarship granting organization may not issue a tax credit certificate for a  
585 calendar year if issuing the tax credit certificate will cause the total amount of the tax credit  
586 certificates issued for the calendar year to exceed the program donations cap amount described  
587 in Subsection (4).

588 (b) Before accepting a donation to the program from a person, the scholarship granting  
589 organization shall provide the person with notice:

590 (i) that the donation may not be eligible for a tax credit;

591 (ii) of the process described in Subsection (3)(c); and

592 (iii) of the total amount of tax credit certificates that the scholarship granting  
593 organization has issued for the calendar year.

594 (c) During a calendar year, a scholarship granting organization shall:

595 (i) issue tax credit certificates in the order that the scholarship granting organization  
596 received a corresponding donation; and

597 (ii) track the total amount of program donations received during the year as  
598 corresponding tax credit certificates are issued.

599 (d) If a scholarship granting organization accepts a donation that, when added to the  
600 current total amount of program donations received that year, will exceed the program  
601 donations cap described in Subsection (4), the scholarship granting organization shall issue a  
602 tax credit certificate in the amount that is the difference between the program donations cap  
603 and the total amount of program donations received before the donation was received.

604 (4) (a) The program donations cap for the 2021 calendar year is \$12,000,000.

605 (b) For a calendar year after 2021, the state board shall calculate the program donations  
606 cap as follows:

607 (i) if the total program donations for the previous calendar year exceed 90% of the cap  
608 amount for that calendar year, the cap for the current calendar year is the cap amount for the  
609 previous calendar year increased by 10%; or

610 (ii) if the total program donations for the previous calendar year did not exceed 90% of  
611 the cap amount for that calendar year, the cap for the current calendar year is the same as the  
612 cap amount for the previous calendar year.

613 (5) A person that receives a tax credit certificate in accordance with this section shall  
614 retain the certificate for the same time period a person is required to keep books and records

615 under Section [59-1-1406](#).

616 Section 9. Section **53E-8-403** is amended to read:

617 **53E-8-403. Educational programs.**

618 (1) The Utah Schools for the Deaf and the Blind shall provide an educational program  
619 for a student:

620 (a) based on assessments of the student's abilities; and

621 (b) in accordance with the student's IEP or Section 504 accommodation plan.

622 (2) If a student's ability to access the core curriculum is impaired primarily due to a  
623 severe sensory loss and requires intensive sensory-based instruction or services, the Utah  
624 Schools for the Deaf and the Blind shall provide an educational program that will enable the  
625 student, with accommodations, to access the core curriculum.

626 (3) The Utah Schools for the Deaf and the Blind shall provide instruction in Braille to  
627 students who are blind [~~as required by Chapter 7, Part 3, Braille Requirements for Blind~~  
628 ~~Students~~].

629 Section 10. Section **53F-4-303** is amended to read:

630 **53F-4-303. Eligible private schools.**

631 (1) As used in this section, "scholarship student" means:

632 (a) a student who receives a scholarship under this part; or

633 (b) an eligible student who receives a scholarship under Title 53E, Chapter 7, Part 4,  
634 Special Needs Opportunity Scholarship Program.

635 ~~(1)~~ (2) To be eligible to enroll a scholarship student, a private school shall:

636 (a) have a physical location in Utah where the scholarship students attend classes and  
637 have direct contact with the school's teachers;

638 (b) (i) (A) obtain an audit and report from a licensed independent certified public  
639 accountant that conforms with the following requirements:

640 (I) the audit shall be performed in accordance with generally accepted auditing  
641 standards;

642 (II) the financial statements shall be presented in accordance with generally accepted  
643 accounting principles; and

644 (III) the audited financial statements shall be as of a period within the last 12 months;

645 or

646 (B) contract with an independent licensed certified public accountant to conduct an  
647 Agreed Upon Procedures engagement, as adopted by the state board; and  
648 (ii) submit the audit report or report of the agreed upon procedure to the state board  
649 when the private school applies to accept scholarship students;  
650 (c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;  
651 (d) meet state and local health and safety laws and codes;  
652 (e) provide a written disclosure to the parent of each prospective student, before the  
653 student is enrolled of:  
654 (i) the special education services that will be provided to the student, including the cost  
655 of those services;  
656 (ii) tuition costs;  
657 (iii) additional fees a parent will be required to pay during the school year; and  
658 (iv) the skill or grade level of the curriculum that the student will be participating in;  
659 (f) (i) administer an annual assessment of each scholarship student's academic  
660 progress;  
661 (ii) report the results of the assessment described in Subsection [~~(1)(f)(i)~~] (2)(f)(i) to  
662 the student's parent; and  
663 (iii) for a student who receives a scholarship under this part, make the results available  
664 to the assessment team evaluating the student pursuant to Subsection [53F-4-302\(6\)](#);  
665 (g) employ or contract with teachers who:  
666 (i) hold baccalaureate or higher degrees;  
667 (ii) have at least three years of teaching experience in public or private schools; or  
668 (iii) have the necessary special skills, knowledge, or expertise that qualifies them to  
669 provide instruction:  
670 (A) in the subjects taught; and  
671 (B) to the special needs students taught;  
672 (h) maintain documentation demonstrating that teachers at the private school meet the  
673 qualifications described in Subsection [~~(1)(g)~~] (2)(g);  
674 (i) require the following individuals to submit to a nationwide, fingerprint-based  
675 criminal background check and ongoing monitoring, in accordance with Section [53G-11-402](#),  
676 as a condition for employment or appointment, as authorized by the Adam Walsh Child

677 Protection and Safety Act of 2006, Pub. L. No. 109-248:

678 (i) an employee who does not hold a current Utah educator license issued by the state  
679 board under Title 53E, Chapter 6, Education Professional Licensure;

680 (ii) a contract employee; and

681 (iii) a volunteer who is given significant unsupervised access to a student in connection  
682 with the volunteer's assignment; and

683 (j) provide to parents the relevant credentials of the teachers who will be teaching their  
684 students.

685 ~~[(2)]~~ (3) A private school is not eligible to enroll scholarship students if:

686 (a) the private school requires a student to sign a contract waiving the student's rights  
687 to transfer to another eligible private school during the school year;

688 (b) the audit report submitted under Subsection ~~[(1)(b)]~~ (2)(b) contains a going concern  
689 explanatory paragraph; or

690 (c) the report of the agreed upon procedure submitted under Subsection ~~[(1)(b)]~~ (2)(b)  
691 shows that the private school does not have adequate working capital to maintain operations for  
692 the first full year, as determined under Subsection ~~[(1)(b)]~~ (2)(b).

693 ~~[(3)]~~ (4) A home school is not eligible to enroll scholarship students.

694 ~~[(4)]~~ (5) Residential treatment facilities licensed by the state are not eligible to enroll  
695 scholarship students.

696 ~~[(5)]~~ (6) A private school intending to enroll scholarship students shall submit an  
697 application to the state board by May 1 of the school year preceding the school year in which it  
698 intends to enroll scholarship students.

699 ~~[(6)]~~ (7) The state board shall:

700 (a) approve a private school's application to enroll scholarship students, if the private  
701 school meets the eligibility requirements of this section; and

702 (b) make available to the public a list of the eligible private schools.

703 ~~[(7)]~~ (8) An approved eligible private school that changes ownership shall submit a  
704 new application to the state board and demonstrate that it continues to meet the eligibility  
705 requirements of this section.

706 Section 11. Section **59-7-109** is amended to read:

707 **59-7-109. Charitable contributions.**

708 (1) Except as provided in ~~[Subsection]~~ Subsections (2) and (4), a subtraction is allowed  
709 for charitable contributions made within the taxable year to organizations described in Section  
710 170(c), Internal Revenue Code.

711 (2) (a) The aggregate amount of charitable contributions deductible under this section  
712 may not exceed 10% of the taxpayer's apportionable income.

713 (b) The limitation imposed in this ~~[subsection]~~ Subsection (2) shall be calculated on a  
714 combined basis in a combined report.

715 (3) Any charitable contribution made in a taxable year ~~[beginning on or after January 1,~~  
716 ~~1994, which]~~ that is in excess of the amount allowed as a deduction under Subsection (2) may  
717 be carried over to the five succeeding taxable years in the same manner as allowed under  
718 federal law.

719 (4) A taxpayer may not subtract a charitable contribution that meets the requirements  
720 of this section to the extent that the taxpayer claims a tax credit under Section 59-7-625 for the  
721 same charitable contribution.

722 Section 12. Section **59-7-625** is enacted to read:

723 **59-7-625. Nonrefundable tax credit for donation to Special Needs Opportunity**  
724 **Scholarship Program.**

725 (1) A taxpayer that makes a donation to the Special Needs Opportunity Scholarship  
726 Program established in Section 53E-7-402 may claim a nonrefundable tax credit equal to 100%  
727 of the amount stated on a tax credit certificate issued in accordance with Section 53E-7-407.

728 (2) (a) If the amount of a tax credit listed on the tax credit certificate exceeds a  
729 taxpayer's liability under this chapter for a taxable year, the taxpayer may carry forward the  
730 amount of the tax credit exceeding the liability for a period that does not exceed the next three  
731 taxable years.

732 (b) A taxpayer may not carry back the amount of the tax credit that exceeds the  
733 taxpayer's tax liability for the taxable year.

734 Section 13. Section **59-10-1041** is enacted to read:

735 **59-10-1041. Nonrefundable tax credit for donation to Special Needs Opportunity**  
736 **Scholarship Program.**

737 (1) Except as provided in Subsection (3), a claimant, estate, or trust that makes a  
738 donation to the Special Needs Opportunity Scholarship Program established in Section



739 53E-7-402, may claim a nonrefundable tax credit equal to 100% of the amount stated on a tax  
740 credit certificate issued in accordance with Section 53E-7-407.

741 (2) (a) If the amount of a tax credit listed on the tax credit certificate exceeds a  
742 claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the claimant,  
743 estate, or trust may carry forward the amount of the tax credit exceeding the liability for a  
744 period that does not exceed the next three taxable years.

745 (b) A claimant, estate, or trust may not carry back the amount of the tax credit that  
746 exceeds the claimant's, estate's, or trust's tax liability for the taxable year.

747 (3) A claimant, estate, or trust may not claim a credit described in Subsection (1) to the  
748 extent the claimant, estate, or trust claims a donation described in Subsection (1) as an itemized  
749 deduction on the claimant's, estate's, or trust's federal individual income tax return for that  
750 taxable year.

751 Section 14. **Effective date.**

752 (1) Except as provided in Subsection (2), this bill takes effect on January 1, 2021.

753 (2) The amendments to Section 59-7-109 and the enactment of Sections 59-7-625 and  
754 59-10-1041 take effect for a taxable year beginning on or after January 1, 2021.