

**Senator D. Chris Butters** proposes the following substitute bill:

**TUITION TAX CREDITS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: D. Chris Butters**

Thomas V. Hatch

**This act modifies Corporate Franchise and Income Taxes and the Individual Income Tax Act to provide for nonrefundable tax credits for contributions made to a scholarship granting organization to be used for tuition grants for a qualifying student to attend a private school, or nonrefundable tax credits for amounts paid for tuition to a private school on behalf of a qualifying student. The act provides definitions and establishes procedures and requirements for administering the tax credits. The act establishes duties of scholarship granting organizations and provides penalties. The act authorizes the State Tax Commission to make rules. This act authorizes the Division of Consumer Protection to enforce certain private school requirements. This act has retrospective operation for taxable years beginning on or after January 1, 2003.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**13-2-1**, as last amended by Chapter 222, Laws of Utah 2002

ENACTS:

**59-7-616**, Utah Code Annotated 1953

**59-7-618**, Utah Code Annotated 1953

**59-10-136**, Utah Code Annotated 1953

**59-10-137**, Utah Code Annotated 1953

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

Section 1. Section **13-2-1** is amended to read:



26 **13-2-1. Consumer protection division established -- Functions.**

27 (1) There is established within the Department of Commerce the Division of Consumer  
28 Protection.

29 (2) The division shall administer and enforce the following:

30 (a) Chapter 5, Unfair Practices Act;

31 (b) Chapter 10a, Music Licensing Practices Act;

32 (c) Chapter 11, Utah Consumer Sales Practices Act;

33 (d) Chapter 15, Business Opportunity Disclosure Act;

34 (e) Chapter 20, New Motor Vehicles Warranties Act;

35 (f) Chapter 21, Credit Services Organizations Act;

36 (g) Chapter 22, Charitable Solicitations Act;

37 (h) Chapter 23, Health Spa Services Protection Act;

38 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;

39 (j) Chapter 26, Telephone Fraud Prevention Act;

40 (k) Chapter 28, Prize Notices Regulation Act;

41 (l) Chapter 30, Utah Personal Introduction Services Protection Act; [~~and~~]

42 (m) Chapter 34, Utah Postsecondary Proprietary School Act[-]; and

43 (n) Section 59-7-618, the requirements of private schools that issue school tuition  
44 certificates.

45 Section 2. Section **59-7-616** is enacted to read:

46 **59-7-616. Tax credit for contributions to scholarship granting organizations --**  
47 **Definitions -- Duties of scholarship granting organizations -- Penalties.**

48 (1) As used in this section:

49 (a) (i) "Private school" means an elementary or secondary school within this state that:

50 (A) is not owned and controlled by a governmental entity;

51 (B) provides instruction for one or more grades kindergarten through 12; and

52 (C) at which the compulsory attendance requirements of Section 53A-11-101 may be  
53 met.

54 (ii) "Private school" does not include a home school.

55 (b) (i) "Qualifying student" means, except as provided in Subsection (1)(b)(ii), an  
56 individual:

57 (A) who is enrolled at a private school as a full-time student as determined by the  
58 private school;

59 (B) for whom the private school has on file a release of information form;

60 (C) who will be under 21 years of age on the last day of the school year as determined  
61 by the private school; and

62 (D) who meets one or more of the following criteria:

63 (I) the individual was not enrolled at a private school on January 1, 2003; or

64 (II) the individual is a member of a household as defined in 7 C.F.R. Sec. 245.2 whose  
65 household income as determined under 7 C.F.R. Part 245, Determining Eligibility for Free and  
66 Reduced Price Meals and Free Milk in Schools, is less than 100% of the reduced price meals  
67 income eligibility guideline for the applicable household size as published by the U.S.  
68 Department of Agriculture by notice in the Federal Register.

69 (ii) "Qualifying student" does not include a private school student while enrolled in  
70 kindergarten during the 2003-04 school year.

71 (c) "Release of information form" means a form developed by a private school that:

72 (i) states that a parent of a qualifying student consents to the release of the information  
73 contained in the school tuition certificate; and

74 (ii) is consistent with the requirements of 20 U.S.C. Sec. 1232g, Family Educational  
75 Rights and Privacy Act of 1974.

76 (d) "Scholarship granting organization" means an organization that:

77 (i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code; and

78 (ii) makes tuition grants to qualifying students to attend private schools in this state.

79 (e) "School tuition certificate" means a certificate developed by a private school that:

80 (i) is issued by the private school to the first taxpayer or scholarship granting  
81 organization that during the calendar year:

82 (A) makes a:

83 (I) tuition grant to a qualifying student in accordance with this section or Section  
84 59-10-136; or

85 (II) tuition payment on behalf of a qualifying student in accordance with Section  
86 59-10-137; and

87 (B) requests the certificate from the private school; and

88           (ii) lists:  
89           (A) the name of the qualifying student:  
90           (I) receiving a tuition grant in accordance with this section or Section 59-10-136; or  
91           (II) on behalf of whom a tuition payment is made in accordance with Section  
92 59-10-137;  
93           (B) the calendar year for which the school tuition certificate is issued; and  
94           (C) the value of the weighted pupil unit on the first day of the calendar year described  
95 in Subsection (1)(e)(ii)(B).  
96           (f) "Value of the weighted pupil unit" means the amount specified in Section  
97 53A-17a-103 that is multiplied by the number of weighted pupil units to yield the funding level  
98 for the basic state-supported school program.  
99           (2) For taxable years beginning on or after January 1, 2003, a taxpayer may claim a  
100 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section  
101 for monetary contributions:  
102           (a) the taxpayer makes during a taxable year to a scholarship granting organization; and  
103           (b) that will be used to make tuition grants, in accordance with Subsections (5) through  
104 (7), to qualifying students to attend private school.  
105           (3) The tax credit provided for in this section may not be carried forward or carried  
106 back.  
107           (4) A scholarship granting organization shall within 30 days after the day on which a  
108 taxpayer seeking to claim a tax credit under this section or Section 59-10-136 makes a  
109 contribution to the scholarship granting organization, provide to the taxpayer a written  
110 statement:  
111           (a) certifying that the contribution shall be used to make tuition grants, in accordance  
112 with Subsections (5) through (7), to qualifying students to attend private schools; and  
113           (b) listing the amount of the contribution.  
114           (5) A scholarship granting organization shall make tuition payments for a qualifying  
115 student receiving a tuition grant funded from a contribution for which the scholarship granting  
116 organization issues a written statement in accordance with Subsection (4) to any private school  
117 in this state that is not under an injunction from the Division of Consumer Protection in  
118 accordance with Section 59-7-618, as selected by a parent of the qualifying student.

119 (6) (a) A scholarship granting organization may make a tuition grant during a calendar  
120 year to a qualifying student from a contribution for which the scholarship granting organization  
121 issues a written statement in accordance with Subsection (4), if the scholarship granting  
122 organization during the calendar year:

123 (i) does not make tuition grants to that qualifying student from a contribution for which  
124 the scholarship granting organization issues a written statement in accordance with Subsection  
125 (4) the total amount of which exceeds the amount specified in Subsection (6)(b); and

126 (ii) obtains from the private school a school tuition certificate listing the name of that  
127 qualifying student.

128 (b) For the purpose of Subsection (6)(a), a scholarship granting organization may make  
129 tuition grants to:

130 (i) a qualifying student enrolled in private school for only kindergarten during the  
131 calendar year in an amount not to exceed the greater of:

132 (A) \$586; or

133 (B) \$586 adjusted by the percentage increase in the value of the weighted pupil unit  
134 from January 1, 2003 to the first day of the calendar year for which the private school issues the  
135 school tuition certificate in accordance with this section;

136 (ii) a qualifying student enrolled in private school for both kindergarten and a higher  
137 grade during the calendar year in an amount not to exceed the greater of:

138 (A) \$1,652; or

139 (B) \$1,652 adjusted by the percentage increase in the value of the weighted pupil unit  
140 from January 1, 2003 to the first day of the calendar year for which the private school issues the  
141 school tuition certificate in accordance with this section; and

142 (iii) a qualifying student enrolled in private school for only grades 1-12 during a  
143 calendar year in an amount not to exceed the greater of:

144 (A) \$2,132; or

145 (B) the value of the weighted pupil unit on the first day of the calendar year for which  
146 the private school issues the school tuition certificate in accordance with this section.

147 (c) A private school may not issue more than one school tuition certificate during a  
148 calendar year that lists the name of a particular qualifying student.

149 (d) (i) A scholarship granting organization shall pay to the commission a penalty

150 calculated under Subsection (6)(d)(ii) if during a calendar year the scholarship granting  
151 organization makes one or more tuition grants to a qualifying student:

152 (A) that exceed the total amount described in Subsections (6)(a) and (6)(b); or  
153 (B) without obtaining from the private school a school tuition certificate listing the  
154 name of that qualifying student.

155 (ii) (A) The penalty for making tuition grants to a qualifying student that exceed the  
156 total amount described in Subsections (6)(a) and (6)(b) is an amount equal to the difference  
157 between:

158 (I) the total amount described in Subsections (6)(a) and (6)(b); and  
159 (II) the total amount of tuition grants the scholarship granting organization makes to  
160 the qualifying student during a calendar year from a contribution for which the scholarship  
161 granting organization issues a written statement in accordance with Subsection (4).

162 (B) The penalty for making tuition grants to a qualifying student without obtaining a  
163 school tuition certificate for the student is an amount equal to the total amount of tuition grants  
164 the scholarship granting organization makes to the qualifying student during a calendar year  
165 from a contribution for which the scholarship granting organization issues a written statement  
166 in accordance with Subsection (4).

167 (e) The commission shall deposit any penalties the commission collected under this  
168 Subsection (6) into the Uniform School Fund.

169 (7) (a) A scholarship granting organization shall expend at least 98% of each  
170 contribution for which the organization issues a written statement in accordance with  
171 Subsection (4):

172 (i) for tuition grants to qualifying students to attend private schools in this state; and  
173 (ii) within a 12-month period after the day on which the organization receives the  
174 contribution.

175 (b) A scholarship granting organization may expend up to 2% of each contribution for  
176 which the organization issues a written statement in accordance with Subsection (4) to  
177 administer the tuition grant program.

178 (c) A scholarship granting organization that fails to comply with the requirements of  
179 Subsection (7)(a) shall pay to the commission a penalty equal to the sum of:

180 (i) the amount that is not spent in accordance with Subsection (7)(a); and

181 (ii) the interest or earnings the scholarship granting organization receives on the  
182 amount that is not spent in accordance with Subsection (7)(a).

183 (d) The commission shall deposit any penalties the commission collects under this  
184 Subsection (7) into the Uniform School Fund.

185 (8) A scholarship granting organization that receives contributions from taxpayers  
186 seeking a tax credit pursuant to this section or Section 59-10-136 shall provide to the  
187 commission an annual audit conducted by an independent certified public accountant that  
188 includes a:

189 (a) financial audit of its accounts and records; and

190 (b) compliance audit of the requirements under this section and Section 59-10-136.

191 (9) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
192 commission may make rules requiring scholarship granting organizations to verify that each  
193 tuition grant recipient meets the requirements of a qualifying student under Subsection (1)(b).

194 (10) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, the  
195 commission may enjoin a scholarship granting organization that fails to comply with this  
196 section from accepting contributions from taxpayers seeking to claim a tax credit under this  
197 section or Section 59-10-136 for a period of up to one year.

198 (11) Nothing in this section or Section 13-2-1, 59-7-618, 59-10-136, or 59-10-137  
199 grants additional authority to any state agency or school district to regulate private schools,  
200 except as expressly set forth in these sections.

201 Section 3. Section **59-7-618** is enacted to read:

202 **59-7-618. Private school requirements -- School tuition certificates -- Enforcement**  
203 **-- Orders.**

204 (1) As used in this section:

205 (a) "Private school" is as defined in Section 59-7-616.

206 (b) "School tuition certificate" is as defined in Section 59-7-616.

207 (2) A private school may not issue a school tuition certificate unless it:

208 (a) (i) annually assesses the achievement of each student for which a tuition tax credit  
209 certificate is issued by administering a standardized achievement test scored by an independent  
210 party that provides a comparison of the student's performance to other students on a national  
211 basis; and

212 (ii) (A) reports the test results to the student's parents; and  
213 (B) upon request, makes tests results available to other persons, in manner that does  
214 not reveal the identity of any student;

215 (b) provides to parents the relevant credentials of teachers who will be teaching their  
216 children;

217 (c) provides to parents a statement indicating which, if any, organizations have  
218 accredited the private school; and

219 (d) has not been enjoined from issuing school tuition certificates in accordance with  
220 Subsection (3).

221 (3) (a) The Division of Consumer Protection may use its enforcement powers to  
222 investigate complaints and convene administrative hearings for a violation of Subsection (2).

223 (b) If the Division of Consumer Protection finds repeated and willful violations of  
224 Subsection (2), it shall issue an order that enjoins the private school from issuing a school  
225 tuition certificate for the subsequent school year.

226 Section 4. Section **59-10-136** is enacted to read:

227 **59-10-136. Tax credit for contributions to scholarship granting organizations --**

228 **Definitions -- Duties of scholarship granting organizations -- Penalties.**

229 (1) As used in this section:

230 (a) "Private school" is as defined in Section 59-7-616.

231 (b) "Qualifying student" is as defined in Section 59-7-616.

232 (c) "Scholarship granting organization" is as defined in Section 59-7-616.

233 (d) "School tuition certificate" is as defined in Section 59-7-616.

234 (e) "Value of the weighted pupil unit" is as defined in Section 59-7-616.

235 (2) For taxable years beginning on or after January 1, 2003, a taxpayer may claim a  
236 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section  
237 for monetary contributions:

238 (a) the taxpayer makes during a taxable year to a scholarship granting organization; and

239 (b) that will be used to make tuition grants, in accordance with Section 59-7-616 and  
240 rules adopted by the commission under that section, to qualifying students to attend private  
241 school.

242 (3) The tax credit provided for in this section may not be carried forward or carried



243 back.

244 (4) A scholarship granting organization shall provide a written statement to a taxpayer  
245 seeking to claim a tax credit under this section in accordance with Section 59-7-616.

246 Section 5. Section **59-10-137** is enacted to read:

247 **59-10-137. Nonrefundable tuition tax credit -- Definitions.**

248 (1) As used in this section:

249 (a) "Private school" is as defined in Section 59-7-616.

250 (b) "Qualifying student" is as defined in Section 59-7-616.

251 (c) "School tuition certificate" is as defined in Section 59-7-616.

252 (d) "Value of the weighted pupil unit" is as defined in Section 59-7-616.

253 (2) For taxable years beginning on or after January 1, 2003, a taxpayer may claim a  
254 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section  
255 for amounts paid to a private school for tuition:

256 (a) on behalf of a qualifying student; and

257 (b) during the taxable year.

258 (3) (a) For a taxable year the amount of tax credit that a taxpayer may claim under this  
259 section for a qualifying student on whose behalf the taxpayer paid tuition in accordance with  
260 Subsection (2) may not exceed the amounts specified in Subsection (3)(b).

261 (b) For the purpose of Subsection (3)(a), a taxpayer may claim a tax credit for tuition  
262 paid on behalf of:

263 (i) a qualifying student enrolled in private school for only kindergarten during the  
264 taxable year in an amount not to exceed the lesser of:

265 (A) the amount of tuition the taxpayer paid on behalf of the qualifying student during  
266 the taxable year; or

267 (B) the greater of:

268 (I) \$586; or

269 (II) \$586 adjusted by the percentage increase in the value of the weighted pupil unit  
270 from January 1, 2003 to the first day of the calendar year for which the private school issues the  
271 school tuition certificate in accordance with Section 59-7-616;

272 (ii) a qualifying student enrolled in private school for both kindergarten and a higher  
273 grade during the taxable year in an amount not to exceed the lesser of:

274 (A) the amount of tuition the taxpayer paid on behalf of the qualifying student during  
275 the taxable year; or

276 (B) the greater of:

277 (I) \$1,652; or

278 (II) \$1,652 adjusted by the percentage increase in the value of the weighted pupil unit  
279 from January 1, 2003 to the first day of the calendar year for which the private school issues the  
280 school tuition certificate in accordance with Section 59-7-616; and

281 (iii) a qualifying student enrolled in private school for only grades 1-12 during the  
282 taxable year in an amount not to exceed the lesser of:

283 (A) the amount of tuition the taxpayer paid on behalf of the qualifying student during  
284 the taxable year; or

285 (B) the greater of:

286 (I) \$2,132; or

287 (II) the value of the weighted pupil unit on the first day of the calendar year for which  
288 the private school issues the school tuition certificate in accordance with this section.

289 (4) The tax credit provided for in this section may not be carried forward or carried  
290 back.

291 (5) A taxpayer may claim a tax credit under this section for a taxable year only if the  
292 taxpayer obtains from a private school a school tuition certificate listing the name of the  
293 qualifying student on whose behalf the taxpayer paid tuition in accordance with Subsection (2).

294 (6) A private school may not issue more than one school tuition certificate during a  
295 calendar year that lists the name of a particular qualifying student.

296 **Section 6. Retrospective operation.**

297 This act has retrospective operation for taxable years beginning on or after January 1,  
298 2003.