

Senator Leonard M. Blackham proposes the following substitute bill:

TUITION TAX CREDITS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Chris Buttars

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. This act appropriates \$1,000,000 from the General Fund, for fiscal year 2003-04 only, to the State Board of Education for distribution to school districts with declining enrollment that are impacted by this act. 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:

53A-17a-149, Utah Code Annotated 1953

59-7-616, Utah Code Annotated 1953

59-7-618, Utah Code Annotated 1953



26 **59-10-136**, Utah Code Annotated 1953

27 **59-10-137**, Utah Code Annotated 1953

28 **63-55b-153**, as last amended by Chapters 49, 219 and 301, Laws of Utah 2002

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

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

31 **13-2-1. Consumer protection division established -- Functions.**

32 (1) There is established within the Department of Commerce the Division of Consumer
33 Protection.

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

35 (a) Chapter 5, Unfair Practices Act;

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

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

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

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

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

41 (g) Chapter 22, Charitable Solicitations Act;

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

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

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

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

46 (l) Chapter 30, Utah Personal Introduction Services Protection Act; ~~and~~

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

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

50 Section 2. Section **53A-17a-149** is enacted to read:

51 **53A-17a-149. Appropriation for school districts with declining enrollment.**

52 (1) For fiscal year 2003-04 only, there is appropriated \$1,000,000 from the General
53 Fund to the State Board of Education to be distributed to school districts that:

54 (a) experience a net decline in enrollment in the 2003-04, 2004-05, or 2005-06 school
55 year; and

56 (b) all or a part of the decline can be attributed to the enactment of Section 59-7-616,

57 59-10-136, or 59-10-137.

58 (2) The appropriation under Subsection (1) shall be nonlapsing.

59 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
60 board shall make rules establishing criteria and procedures for the distribution of funds

61 appropriated under Subsection (1).

62 Section 3. Section **59-7-616** is enacted to read:

63 **59-7-616. Tax credit for contributions to scholarship granting organizations --**

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

65 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

81 (II) the individual is a member of a household as defined in 7 C.F.R. Sec. 245.2 whose
82 household income as determined under 7 C.F.R. Part 245, Determining Eligibility for Free and

83 Reduced Price Meals and Free Milk in Schools, is less than 100% of the reduced price meals
84 income eligibility guideline for the applicable household size as published by the U.S.

85 Department of Agriculture by notice in the Federal Register.

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

88 (c) "Release of information form" means a form developed by a private school that:
89 (i) states that a parent of a qualifying student consents to the release of the information
90 contained in the school tuition certificate; and

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

93 (d) "Scholarship granting organization" means an organization that:
94 (i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code; and
95 (ii) makes tuition grants to qualifying students to attend private schools in this state.

96 (e) "School tuition certificate" means a certificate developed by a private school that:
97 (i) is issued by the private school to the first taxpayer or scholarship granting
98 organization that during the calendar year:

99 (A) makes a:

100 (I) tuition grant to a qualifying student in accordance with this section or Section
101 59-10-136; or

102 (II) tuition payment on behalf of a qualifying student in accordance with Section
103 59-10-137; and

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

105 (ii) lists:

106 (A) the name of the qualifying student;

107 (I) receiving a tuition grant in accordance with this section or Section 59-10-136; or

108 (II) on behalf of whom a tuition payment is made in accordance with Section
109 59-10-137;

110 (B) the calendar year for which the school tuition certificate is issued; and

111 (C) the value of the weighted pupil unit on the first day of the calendar year described
112 in Subsection (1)(e)(ii)(B).

113 (f) "Value of the weighted pupil unit" means the amount specified in Section
114 53A-17a-103 that is multiplied by the number of weighted pupil units to yield the funding level
115 for the basic state-supported school program.

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

119 (i) the taxpayer makes during a taxable year to a scholarship granting organization; and
120 (ii) that will be used to make tuition grants, in accordance with Subsections (5) through
121 (7), to qualifying students to attend private school.

122 (b) The maximum tax credit that may be claimed under this section is 30% of the
123 taxpayer's tax liability imposed by this chapter.

124 (3) The tax credit provided for in this section may not be carried forward or carried
125 back.

126 (4) A scholarship granting organization shall within 30 days after the day on which a
127 taxpayer seeking to claim a tax credit under this section or Section 59-10-136 makes a
128 contribution to the scholarship granting organization, provide to the taxpayer a written
129 statement:

130 (a) certifying that the contribution shall be used to make tuition grants, in accordance
131 with Subsections (5) through (7), to qualifying students to attend private schools; and

132 (b) listing the amount of the contribution.

133 (5) A scholarship granting organization shall make tuition payments for a qualifying
134 student receiving a tuition grant funded from a contribution for which the scholarship granting
135 organization issues a written statement in accordance with Subsection (4) to any private school
136 in this state that is not under an injunction from the Division of Consumer Protection in
137 accordance with Section 59-7-618, as selected by a parent of the qualifying student.

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

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

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

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

149 (i) a qualifying student enrolled in private school for only kindergarten during the

150 calendar year in an amount not to exceed the greater of:

151 (A) \$586; or

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

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

157 (A) \$1,652; or

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

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

163 (A) \$2,132; or

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

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

168 (d) (i) A scholarship granting organization shall pay to the commission a penalty
169 calculated under Subsection (6)(d)(ii) if during a calendar year the scholarship granting
170 organization makes one or more tuition grants to a qualifying student:

171 (A) that exceed the total amount described in Subsections (6)(a) and (6)(b); or

172 (B) without obtaining from the private school a school tuition certificate listing the
173 name of that qualifying student.

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

177 (I) the total amount described in Subsections (6)(a) and (6)(b); and

178 (II) the total amount of tuition grants the scholarship granting organization makes to
179 the qualifying student during a calendar year from a contribution for which the scholarship
180 granting organization issues a written statement in accordance with Subsection (4).

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

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

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

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

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

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

199 (i) the amount that is not spent in accordance with Subsection (7)(a); and
200 (ii) the interest or earnings the scholarship granting organization receives on the
201 amount that is not spent in accordance with Subsection (7)(a).

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

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

208 (a) financial audit of its accounts and records; and
209 (b) compliance audit of the requirements under this section and Section 59-10-136.

210 (9) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
211 commission may make rules requiring scholarship granting organizations to verify that each

212 tuition grant recipient meets the requirements of a qualifying student under Subsection (1)(b).

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

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

220 Section 4. Section **59-7-618** is enacted to read:

221 **59-7-618. Private school requirements -- School tuition certificates -- Enforcement**
222 **-- Orders.**

223 (1) As used in this section:

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

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

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

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

231 (ii) (A) reports the test results to the student's parents; and

232 (B) upon request, makes tests results available to other persons, in manner that does
233 not reveal the identity of any student;

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

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

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

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

242 (b) If the Division of Consumer Protection finds repeated and willful violations of

243 Subsection (2), it shall issue an order that enjoins the private school from issuing a school
244 tuition certificate for the subsequent school year.

245 Section 5. Section **59-10-136** is enacted to read:

246 **59-10-136. Tax credit for contributions to scholarship granting organizations --**

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

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

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

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

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

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

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

261 (3) The tax credit provided for in this section may not be carried forward or carried
262 back.

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

265 Section 6. Section **59-10-137** is enacted to read:

266 **59-10-137. Nonrefundable tuition tax credit -- Definitions.**

267 (1) As used in this section:

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

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

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

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

272 (2) For taxable years beginning on or after January 1, 2003, a taxpayer may claim a
273 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section

274 for amounts paid to a private school for tuition:

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

276 (b) during the taxable year.

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

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

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

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

286 (B) the greater of:

287 (I) \$586; or

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

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

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

295 (B) the greater of:

296 (I) \$1,652; or

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

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

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

304 (B) the greater of:

305 (I) \$2,132; or
306 (II) the value of the weighted pupil unit on the first day of the calendar year for which
307 the private school issues the school tuition certificate in accordance with this section.

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

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

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

315 Section 7. Section **63-55b-153** is amended to read:

316 **63-55b-153. Repeal dates -- Titles 53 and 53A.**

317 (1) Subsection 53-3-205(9)(a)(i)(D) is repealed July 1, 2007.

318 (2) Subsection 53-3-804(2)(g) is repealed July 1, 2007.

319 (3) Subsection 53-5-710(4) pertaining to restrictions at Olympic venue secure areas is
320 repealed April 1, 2002.

321 (4) Title 53, Chapter 12, State Olympic Public Safety Command Act, is repealed July
322 1, 2003.

323 (5) Section 53-12-301.1 is repealed April 1, 2002.

324 (6) Section 53A-1-403.5 is repealed July 1, 2007.

325 (7) Section 53A-3-602 is repealed July 1, 2002.

326 (8) Section 53A-17a-149 is repealed July 1, 2006.

327 Section 8. **Retrospective operation.**

328 This act has retrospective operation for taxable years beginning on or after January 1,
329 2003.