

Senator Wayne L. Niederhauser proposes the following substitute bill:

HIGHER EDUCATION CONTRIBUTION

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill allows an individual to designate on the individual's income tax return a contribution to a Utah Educational Savings Plan account.

Highlighted Provisions:

This bill:

► allows a resident or nonresident individual to designate on the individual's income tax return a contribution to a Utah Educational Savings Plan account in the amount of the individual's entire individual income tax refund.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-1-403, as last amended by Laws of Utah 2008, Chapters 3, 382, and 384

59-10-1303, as enacted by Laws of Utah 2008, Chapter 389

ENACTS:

59-10-1313, Utah Code Annotated 1953



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

Section 1. Section **59-1-403** is amended to read:

59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) (a) Any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

- (i) a tax commissioner;
- (ii) an agent, clerk, or other officer or employee of the commission; or
- (iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) An official charged with the custody of a return filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except:

- (i) in accordance with judicial order;
- (ii) on behalf of the commission in any action or proceeding under:
 - (A) this title; or
 - (B) other law under which persons are required to file returns with the commission;
- (iii) on behalf of the commission in any action or proceeding to which the commission

is a party; or

(iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

57 (i) who brings action to set aside or review a tax based on the report or return;
58 (ii) against whom an action or proceeding is contemplated or has been instituted under
59 this title; or

60 (iii) against whom the state has an unsatisfied money judgment.

61 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
62 commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative
63 Rulemaking Act, provide for a reciprocal exchange of information with:

64 (i) the United States Internal Revenue Service; or

65 (ii) the revenue service of any other state.

66 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
67 corporate franchise tax, the commission may by rule, made in accordance with Title 63G,
68 Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and
69 other written statements with the federal government, any other state, any of the political
70 subdivisions of another state, or any political subdivision of this state, except as limited by
71 Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal
72 government grant substantially similar privileges to this state.

73 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
74 corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3,
75 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
76 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
77 due.

78 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
79 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
80 requested by the executive secretary, any records, returns, or other information filed with the
81 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
82 regarding the environmental assurance program participation fee.

83 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
84 provide that person sales and purchase volume data reported to the commission on a report,
85 return, or other information filed with the commission under:

86 (i) Chapter 13, Part 2, Motor Fuel; or

87 (ii) Chapter 13, Part 4, Aviation Fuel.

88 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
89 as defined in Section 59-22-202, the commission shall report to the manufacturer:

90 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
91 manufacturer and reported to the commission for the previous calendar year under Section
92 59-14-407; and

93 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
94 manufacturer for which a tax refund was granted during the previous calendar year under
95 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

96 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
97 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
98 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

99 (h) Notwithstanding Subsection (1), the commission may:

100 (i) provide to the Division of Consumer Protection within the Department of
101 Commerce and the attorney general data:

102 (A) reported to the commission under Section 59-14-212; or

103 (B) related to a violation under Section 59-14-211; and

104 (ii) upon request provide to any person data reported to the commission under
105 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

106 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
107 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
108 and Budget, provide to the committee or office the total amount of revenues collected by the
109 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period
110 specified by the committee or office.

111 (j) Notwithstanding Subsection (1), the commission shall at the request of the
112 Legislature provide to the Legislature the total amount of sales or uses exempt under
113 Subsection 59-12-104(46) reported to the commission in accordance with Section 59-12-105.

114 (k) Notwithstanding Subsection (1), the commission shall make the directory required
115 by Section 59-14-603 available for public inspection.

116 (l) Notwithstanding Subsection (1), the commission may share information with
117 federal, state, or local agencies as provided in Subsection 59-14-606(3).

118 (m) (i) Notwithstanding Subsection (1), the commission shall provide the Office of

119 Recovery Services within the Department of Human Services any relevant information
120 obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer
121 who has become obligated to the Office of Recovery Services.

122 (ii) The information described in Subsection (3)(m)(i) may be provided by the Office
123 of Recovery Services to any other state's child support collection agency involved in enforcing
124 that support obligation.

125 (n) (i) Notwithstanding Subsection (1), upon request from the state court administrator,
126 the commission shall provide to the state court administrator, the name, address, telephone
127 number, county of residence, and Social Security number on resident returns filed under
128 Chapter 10, Individual Income Tax Act.

129 (ii) The state court administrator may use the information described in Subsection
130 (3)(n)(i) only as a source list for the master jury list described in Section 78B-1-106.

131 (o) Notwithstanding Subsection (1), the commission shall at the request of a
132 committee, commission, or task force of the Legislature provide to the committee, commission,
133 or task force of the Legislature any information relating to a tax imposed under Chapter 9,
134 Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

135 (p) (i) As used in this Subsection (3)(p), "office" means the:

136 (A) Office of the Legislative Fiscal Analyst; or

137 (B) Office of Legislative Research and General Counsel.

138 (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(p)(iii),
139 the commission shall at the request of an office provide to the office all information:

140 (A) gained by the commission; and

141 (B) required to be attached to or included in returns filed with the commission.

142 (iii) (A) An office may not request and the commission may not provide to an office a
143 person's:

144 (I) address;

145 (II) name;

146 (III) Social Security number; or

147 (IV) taxpayer identification number.

148 (B) The commission shall in all instances protect the privacy of a person as required by
149 Subsection (3)(p)(iii)(A).

150 (iv) An office may provide information received from the commission in accordance
151 with this Subsection (3)(p) only:

152 (A) as:

153 (I) a fiscal estimate;

154 (II) fiscal note information; or

155 (III) statistical information; and

156 (B) if the information is classified to prevent the identification of a particular return.

157 (v) (A) A person may not request information from an office under Title 63G, Chapter
158 2, Government Records Access and Management Act, or this section, if that office received the
159 information from the commission in accordance with this Subsection (3)(p).

160 (B) An office may not provide to a person that requests information in accordance with
161 Subsection (3)(p)(v)(A) any information other than the information the office provides in
162 accordance with Subsection (3)(p)(iv).

163 (q) Notwithstanding Subsection (1), the commission may provide to the governing
164 board of the agreement or a taxing official of another state, the District of Columbia, the United
165 States, or a territory of the United States:

166 (i) the following relating to an agreement sales and use tax:

167 (A) information contained in a return filed with the commission;

168 (B) information contained in a report filed with the commission;

169 (C) a schedule related to Subsection (3)(q)(i)(A) or (B); or

170 (D) a document filed with the commission; or

171 (ii) a report of an audit or investigation made with respect to an agreement sales and
172 use tax.

173 (r) Notwithstanding Subsection (1), the commission may provide to the Utah
174 Educational Savings Plan Trust information related to a resident or nonresident individual's
175 contribution to a Utah Educational Savings Plan account as designated on the resident or
176 nonresident's individual income tax return under Section 59-10-1313.

177 (4) (a) Reports and returns shall be preserved for at least three years.

178 (b) After the three-year period provided in Subsection (4)(a) the commission may
179 destroy a report or return.

180 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

181 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
182 the person shall be dismissed from office and be disqualified from holding public office in this
183 state for a period of five years thereafter.

184 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in
185 accordance with Subsection (3)(p)(iii) or a person that requests information in accordance with
186 Subsection (3)(p)(v):

187 (i) is not guilty of a class A misdemeanor; and

188 (ii) is not subject to:

189 (A) dismissal from office in accordance with Subsection (5)(b); or

190 (B) disqualification from holding public office in accordance with Subsection (5)(b).

191 (6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

192 Section 2. Section **59-10-1303** is amended to read:

193 **59-10-1303. Contributions -- Amount -- Procedure for designating a contribution**
194 **-- Joint return -- Contribution irrevocable.**

195 (1) A resident or nonresident individual that makes a contribution under this part, other
196 than Section 59-10-1311 or Section 59-10-1313, may designate as the contribution any whole
197 dollar amount of \$1 or more.

198 (2) If a resident or nonresident individual designating a contribution under this part
199 other than Section 59-10-1311:

200 (a) is owed an individual income tax refund for the taxable year, the amount of the
201 contribution under this part shall be deducted from the resident or nonresident individual's
202 individual income tax refund; or

203 (b) is not owed an individual income tax refund for the taxable year, the resident or
204 nonresident individual may remit a contribution under this part with the resident or nonresident
205 individual's individual income tax return, except as provided in Section 59-10-1313.

206 (3) If a husband and wife file a single individual income tax return jointly, a
207 contribution under this part, other than Section 59-10-1311, shall be a joint contribution.

208 (4) [~~A~~] Except as provided in Subsection 59-10-1313(3)(c), a contribution under this
209 part is irrevocable for the taxable year for which the resident or nonresident individual makes
210 the contribution.

211 Section 3. Section **59-10-1313** is enacted to read:

212 **59-10-1313. Contribution to a Utah Educational Savings Plan account.**

213 (1) (a) If a resident or nonresident individual is owed an individual income tax refund
214 for the taxable year, the individual may designate on the resident or nonresident individual's
215 income tax return a contribution to a Utah Educational Savings Plan account established under
216 Title 53B, Chapter 8a, Higher Education Savings Incentive Program, in the amount of the
217 entire individual income tax refund.

218 (b) If a resident or nonresident individual is not owed an individual income tax refund
219 for the taxable year, the individual may not designate on the resident or nonresident's individual
220 income tax return a contribution to a Utah Educational Savings Plan account.

221 (2) The commission shall send the contribution to the Utah Educational Savings Plan
222 Trust along with information requested by the Utah Educational Savings Plan Trust, including
223 the taxpayer's name, social security number, and address.

224 (3) (a) If the taxpayer owns a Utah Educational Savings Plan account, the Utah
225 Educational Savings Plan Trust shall deposit the contribution into the account.

226 (b) If the taxpayer owns more than one Utah Educational Savings Plan account, the
227 Utah Educational Savings Plan Trust shall allocate the contribution among the accounts in
228 equal amounts.

229 (c) (i) If the taxpayer does not own a Utah Educational Savings Plan account, the Utah
230 Educational Savings Plan Trust shall send the taxpayer an account agreement.

231 (ii) If the taxpayer does not sign and return the account agreement by the date specified
232 by the Utah Educational Savings Plan Trust, the Utah Educational Savings Plan Trust shall
233 return the contribution to the taxpayer without any interest or earnings.

234 (4) For the purpose of determining interest on an overpayment or refund under Section
235 59-1-402, no interest accrues after the commission sends the contribution to the Utah
236 Educational Savings Plan Trust.

H.B. 35 3rd Sub. (Cherry) - Higher Education Contribution

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments. This bill could increase the contributions made to Utah Educational Savings Accounts.
