

**STUDENT OPPORTUNITY SCHOLARSHIPS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Howard A. Stephenson**

House Sponsor: Gregory H. Hughes

---

**LONG TITLE**

**General Description:**

This bill provides for nonrefundable tax credits for donations made to a scholarship organization to be used for scholarships for a qualifying student to attend a private school.

**Highlighted Provisions:**

This bill:

- ▶ creates the Student Opportunity Scholarship Act to award scholarships to students who meet any of the following qualifications to attend a private school:
  - the student's parents or legal guardians have an annual income that is less than or equal to 200% of the income eligibility guideline for reduced price meals;
  - the student, while in grades 1 through 2, scored below the expected reading level for the student's grade on a reading assessment administered at the end of the school year;
  - the student, while in grades 3 through 11, scored below the proficient level on a statewide summative assessment of language arts, mathematics, science, or writing achievement;
  - the student's school of residence has received a grade of "F" on the school grading system for two consecutive school years; or
  - the student received a scholarship for the previous school year;
- ▶ requires a scholarship organization to:



- 28           • allow a student to attend any eligible private school, and allow a parent to
- 29 transfer a scholarship during the school year to any other eligible private school;
- 30           • expend at least 90% of revenue received for scholarships and no more than 10%
- 31 of revenue received for administration of the scholarship program;
- 32           • return revenue not spent for scholarships within a certain period to the state
- 33 treasurer for deposit to the Education Fund;
- 34           • obtain an annual financial and compliance audit by an independent certified
- 35 public accountant; and
- 36           • submit a report to the State Tax Commission annually;
- 37       ▶ establishes the maximum amount of a scholarship;
- 38       ▶ establishes a maximum amount of tax credits that may be awarded annually under
- 39 Title 59, Chapter 7, Corporate Franchise and Income Taxes, for donations made to a
- 40 scholarship organization and provides procedures for the allocation of the maximum
- 41 amount;
- 42       ▶ allows the State Tax Commission to make certain rules;
- 43       ▶ requires a private school that enrolls a scholarship student to:
- 44           • contract with an independent certified public accountant to examine the
- 45 financial condition of the school and the expenditure of scholarship funds;
- 46           • annually assess the achievement of each student by administering a
- 47 norm-referenced achievement test and making test results available to the
- 48 student's parent and aggregated test results to others upon request; and
- 49           • conduct criminal background checks on school personnel;
- 50       ▶ provides for a nonrefundable tax credit under Title 59, Chapter 7, Corporate
- 51 Franchise and Income Taxes, for a donation to a scholarship organization;
- 52       ▶ provides for a nonrefundable tax credit under the Individual Income Tax Act up to a
- 53 certain amount for a donation to a scholarship organization; and
- 54       ▶ makes technical and conforming amendments.

**55 Money Appropriated in this Bill:**

56       None

**57 Other Special Clauses:**

58       This bill provides retrospective operation for a taxable year beginning on or after

59 January 1, 2012.

60 **Utah Code Sections Affected:**

61 AMENDS:

62 **53A-3-410**, as last amended by Laws of Utah 2010, Chapter 362

63 **59-10-1002.2**, as last amended by Laws of Utah 2011, Chapter 302

64 ENACTS:

65 **53A-1a-1101**, Utah Code Annotated 1953

66 **53A-1a-1102**, Utah Code Annotated 1953

67 **53A-1a-1103**, Utah Code Annotated 1953

68 **53A-1a-1104**, Utah Code Annotated 1953

69 **53A-1a-1105**, Utah Code Annotated 1953

70 **53A-1a-1106**, Utah Code Annotated 1953

71 **53A-1a-1107**, Utah Code Annotated 1953

72 **53A-1a-1108**, Utah Code Annotated 1953

73 **53A-1a-1109**, Utah Code Annotated 1953

74 **53A-1a-1110**, Utah Code Annotated 1953

75 **53A-1a-1111**, Utah Code Annotated 1953

76 **53A-1a-1112**, Utah Code Annotated 1953

77 **53A-1a-1113**, Utah Code Annotated 1953

78 **53A-1a-1114**, Utah Code Annotated 1953

79 **53A-1a-1115**, Utah Code Annotated 1953

80 **59-7-614.7**, Utah Code Annotated 1953

81 **59-10-1029**, Utah Code Annotated 1953



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

84 Section 1. Section **53A-1a-1101** is enacted to read:

85 **Part 11. Student Opportunity Scholarship Act**

86 **53A-1a-1101. Title.**

87 This part is known as the "Student Opportunity Scholarship Act."

88 Section 2. Section **53A-1a-1102** is enacted to read:

89 **53A-1a-1102. Definitions.**

90 As used in this part:

91 (1) "Board" means the State Board of Education.

92 (2) "Committed donation" means an eligible donation a listed donor commits to make  
93 to a scholarship organization as stated on an application for a tax credit allocation certificate  
94 the scholarship organization files with the State Tax Commission.

95 (3) "Eligible donation" means a monetary donation:

96 (a) a person makes to a scholarship organization on or before the date prescribed by  
97 Subsection 53A-1a-1107(4);

98 (b) that the person does not designate for the benefit of a particular student;

99 (c) with respect to which the person does not claim an exemption or tax credit or make  
100 a deduction or subtraction on the person's state or federal income tax return for the taxable  
101 year, other than a tax credit under Section 59-7-614.7; and

102 (d) to the extent the person does not receive property or a service in return for the  
103 donation.

104 (4) "Eligible private school" means a private school that meets the eligibility  
105 requirements of Section 53A-1a-1113.

106 (5) "Listed donor" means a person who:

107 (a) commits to make an eligible donation to a scholarship organization; and

108 (b) the scholarship organization lists as a donor who commits to make an eligible  
109 donation on an application for a tax credit allocation certificate the scholarship organization  
110 files with the State Tax Commission.

111 (6) "Qualifying donor" means a person:

112 (a) who makes an eligible donation to a scholarship organization; and

113 (b) to whom the scholarship organization issues a tax credit donor certificate in  
114 accordance with this part.

115 (7) "Revenue" means monetary donations a scholarship organization receives and  
116 earnings on the monetary donations.

117 (8) "Scholarship organization" means a charitable organization that:

118 (a) is organized and managed under Title 16, Chapter 6a, Utah Revised Nonprofit  
119 Corporation Act;

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

121 (c) awards scholarships to students who meet the qualifications of Section  
122 53A-1a-1103 to attend eligible private schools.

123 (9) "Scholarship student" means a student who receives a scholarship from a  
124 scholarship organization.

125 (10) "School of residence" means the school to which a student is assigned to attend  
126 based on the student's place of residence.

127 (11) "State fiscal year" means a fiscal year beginning July 1 and ending on June 30.

128 (12) "Tax credit allocation certificate" means a certificate that:

129 (a) the State Tax Commission issues to a scholarship organization; and

130 (b) lists the total amount of tax credit the State Tax Commission allocates to the  
131 scholarship organization for distribution only to one or more qualifying donors.

132 (13) "Tax credit donor certificate" means a certificate that:

133 (a) a scholarship organization issues to a qualifying donor; and

134 (b) states the information required by Subsection 53A-1a-1107(4).

135 (14) "Value of the weighted pupil unit" means the amount established each year in  
136 statute that is multiplied by the number of weighted pupil units to yield the funding levels for  
137 the kindergarten and grade 1 - 12 programs within the basic state-supported school program.

138 Section 3. Section **53A-1a-1103** is enacted to read:

139 **53A-1a-1103. Scholarship program created -- Qualifications.**

140 (1) The Student Opportunity Scholarship Act is created to award scholarships to  
141 students to attend a private school.

142 (2) To qualify for a scholarship:

143 (a) the student's parent or legal guardian shall reside within Utah;

144 (b) the student shall be at least five years of age before September 2 of the year in  
145 which admission to a private school is sought and under 19 years of age on the last day of the  
146 school year as determined by the private school;

147 (c) the student shall meet one or more of the following criteria:

148 (i) the student's parents or legal guardians had an annual income in the calendar year  
149 prior to the school year for which a scholarship is sought that is less than or equal to 200% of  
150 the income eligibility guideline to qualify for reduced price meals for the applicable household  
151 size, as published by the United States Department of Agriculture in the Federal Registrar;

152 (ii) the student, while in grades 1 through 2, scored below the expected reading level  
153 for the student's grade on a reading assessment administered at the end of the school year  
154 immediately preceding the school year in which a scholarship is sought;

155 (iii) the student, while in grades 3 through 11, scored below the proficient level on a  
156 statewide summative assessment of language arts, mathematics, science, or writing  
157 achievement administered in the school year immediately preceding the school year for which a  
158 scholarship is sought;

159 (iv) the student's school of residence has received a grade of "F" on the school grading  
160 system established under Chapter 1, Part 11, School Grading Act, for the two consecutive  
161 school years immediately preceding the school year for which a scholarship is sought; or

162 (v) the student received a scholarship under this part for the previous school year; and

163 (d) the student may not be a recipient of a scholarship awarded under Part 7, Carson  
164 Smith Scholarships for Students with Special Needs Act.

165 Section 4. Section **53A-1a-1104** is enacted to read:

166 **53A-1a-1104. Scholarship organization -- Requirements for the award of**  
167 **scholarships.**

168 (1) To receive a scholarship, the parent of a student shall submit an application to a  
169 scholarship organization.

170 (2) A scholarship organization shall award scholarships to students who meet the  
171 qualifications of Section 53A-1a-1103 to pay for a student's tuition and fees to attend an  
172 eligible private school.

173 (3) (a) Except as provided in Subsection (3)(b), a scholarship organization shall award  
174 scholarships on a first come, first served basis.

175 (b) In awarding scholarships, a scholarship organization shall give priority to a student  
176 who received a scholarship in the previous school year.

177 (4) A scholarship organization shall allow:

178 (a) a student to attend any eligible private school; and

179 (b) a parent to transfer a scholarship during a school year to any other eligible private  
180 school.

181 (5) A scholarship organization may not:

182 (a) restrict or reserve scholarships for use at a particular private school; or

183 (b) provide a scholarship for a student to attend a private school that has paid staff or  
184 board members, or relatives of paid staff or board members, in common with the scholarship  
185 organization.

186 (6) A scholarship organization must, before awarding a scholarship for a school year,  
187 document the scholarship student's eligibility for that school year.

188 (7) (a) A scholarship organization shall expend at least 90% of the revenue the  
189 scholarship organization receives in a state fiscal year for scholarships for a student to attend an  
190 eligible private school.

191 (b) A scholarship organization may expend up to 10% of the total revenue the  
192 scholarship organization receives in a state fiscal year to administer the scholarship granting  
193 program.

194 (c) (i) A scholarship organization shall expend for scholarships an amount equal to or  
195 greater than 75% of the net revenue remaining after administrative expenses during the state  
196 fiscal year in which the revenue is collected.

197 (ii) No more than 25% of the net revenue may be carried forward to the following state  
198 fiscal year.

199 (iii) Any amounts carried forward shall be expended for scholarships in the following  
200 state fiscal year.

201 (iv) Net revenue remaining on June 30 of each year that is in excess of the 25% that  
202 may be carried forward, as described in Subsection (7)(c)(ii), shall be returned to the state  
203 treasurer for deposit in the Education Fund.

204 (8) A scholarship organization shall maintain separate accounts for scholarship funds  
205 and operating funds.

206 Section 5. Section **53A-1a-1105** is enacted to read:

207 **53A-1a-1105. Scholarship payments.**

208 (1) (a) For the 2012-13 school year, the maximum amount of a scholarship that a  
209 scholarship organization may award to a student for a school year is the lesser of:

210 (i) \$5,500; or

211 (ii) the amount of tuition and fees that are charged for the student's enrollment in the  
212 private school.

213 (b) Beginning with the 2013-14 school year, the amount provided in Subsection (1)(a)

214 shall be adjusted each year by the same percentage as the percentage change in the value of the  
215 weighted pupil unit.

216 (c) A scholarship organization may set the full scholarship amount at different levels  
217 for the different grade levels at a private school provided the maximum scholarship amount for  
218 a grade level complies with the requirements of Subsections (1)(a) and (1)(b).

219 (2) (a) A scholarship organization may award a full scholarship as provided in  
220 Subsection (1) or a partial scholarship.

221 (b) A student may receive a partial scholarship from two or more scholarship  
222 organizations provided the total amount awarded does not exceed the maximum scholarship  
223 amount established in Subsection (1).

224 (3) Upon review and documentation that verifies a student's admission to, or  
225 continuing enrollment and attendance at, a private school, a scholarship organization shall  
226 make scholarship payments at least quarterly of each school year in which a scholarship is in  
227 force.

228 (4) The parent of a student who is awarded a scholarship shall notify the scholarship  
229 organization that awarded the scholarship if the student does not have continuing enrollment  
230 and attendance at a private school.

231 (5) (a) A scholarship organization shall distribute scholarship payments as checks  
232 made out to a student's parent or guardian and mailed to the private school where the student is  
233 enrolled.

234 (b) The parent or guardian must endorse the check before it can be deposited.

235 Section 6. Section **53A-1a-1106** is enacted to read:

236 **53A-1a-1106. Allocation of tax credit to scholarship organization.**

237 (1) (a) Subject to the other provisions of this part, the State Tax Commission shall  
238 allocate to one or more scholarship organizations amounts designated under this Subsection (1)  
239 to fund the tax credit authorized under Section 59-7-614.7.

240 (b) Except as provided in Subsection 53A-1a-1109(2), for the taxable year beginning  
241 on or after January 1, 2012, but beginning on or before December 31, 2012, the State Tax  
242 Commission may allocate an amount not to exceed \$5,000,000 in tax credit under this section.

243 (c) For each taxable year beginning on or after January 1, 2013, the amount of tax  
244 credit the State Tax Commission may allocate under this section shall be increased by 20%



245 over the previous taxable year.

246 (2) In accordance with any rules the State Tax Commission makes as authorized under  
247 this part, each year a scholarship organization may apply to the State Tax Commission for an  
248 allocation of tax credit under this section by filing an application with the State Tax  
249 Commission:

250 (a) on or before June 1; and

251 (b) on a form provided by the State Tax Commission.

252 (3) (a) The application shall include:

253 (i) the name, address, and taxpayer identification number of the one or more listed  
254 donors to whom the scholarship organization seeks to provide a tax credit donor certificate;

255 (ii) the amount of the committed donation for each listed donor; and

256 (iii) a signed statement that the scholarship organization may provide a tax credit donor  
257 certificate only to a qualifying donor.

258 (b) The application may include other information the State Tax Commission requires  
259 by rule.

260 (4) The State Tax Commission shall determine on or before the July 1 immediately  
261 following the June 1 described in Subsection (2)(a) whether a scholarship organization's  
262 application to the State Tax Commission meets the requirements of Subsection (3).

263 (5) Subject to Subsection (6), the State Tax Commission shall allocate the amount of  
264 tax credit authorized under this section to one or more scholarship organizations:

265 (a) that meet the requirements of Subsections (2) and (3);

266 (b) in the order of the date each scholarship organization files the application required  
267 by Subsection (2) with the State Tax Commission until the amount designated in Subsection  
268 (1) to fund the tax credit authorized under Section 59-7-614.7 is expended;

269 (c) on or before the July 1 immediately following the June 1 described in Subsection  
270 (2)(a);

271 (d) in an amount that does not exceed the total amount of committed donations for a  
272 scholarship organization; and

273 (e) in a total amount that does not exceed the amount designated in Subsection (1) to  
274 fund the tax credit authorized under Section 59-7-614.7.

275 (6) The State Tax Commission shall, on or before the July 1 immediately following the

276 June 1 described in Subsection (2)(a), issue a tax credit allocation certificate:

277 (a) to each scholarship organization to which the State Tax Commission allocates tax  
278 credit under this section; and

279 (b) that states the total amount of tax credit allocated to the scholarship organization.

280 Section 7. Section **53A-1a-1107** is enacted to read:

281 **53A-1a-1107. Determination of maximum tax credit -- Issuance of tax credit**  
282 **donor certificates.**

283 (1) Within a 10-day period after the date the State Tax Commission issues a tax credit  
284 allocation certificate under Subsection 53A-1a-1106(6) to a scholarship organization, the  
285 scholarship organization shall calculate the eligible donation each listed donor is required to  
286 make to receive a tax credit donor certificate in accordance with Subsection (2).

287 (2) (a) If the total amount of tax credit listed on a scholarship organization's tax credit  
288 allocation certificate is equal to the total amount of the committed donations, the eligible  
289 donation a listed donor is required to make to receive a tax credit donor certificate is equal to  
290 the listed donor's committed donation.

291 (b) If the total amount of tax credit listed on a scholarship organization's tax credit  
292 allocation certificate is less than the total amount of the committed donations, the scholarship  
293 organization shall determine the eligible donation a listed donor is required to make to receive  
294 a tax credit donor certificate:

295 (i) in the order that each listed donor is listed on the scholarship organization's  
296 application for a tax credit allocation certificate; and

297 (ii) until the amount of tax credit listed on the tax credit allocation certificate is fully  
298 distributed to listed donors.

299 (3) (a) Within a five-day period after the date a scholarship organization makes the  
300 calculation required by Subsection (1), the scholarship organization shall provide written notice  
301 to a listed donor who the scholarship organization determines may receive a tax credit donor  
302 certificate.

303 (b) The written notice described in Subsection (3)(a) shall state:

304 (i) the eligible donation the listed donor is required to make to receive a tax credit  
305 donor certificate; and

306 (ii) that the eligible donation shall be made on or before August 1.

307 (4) If a listed donor who receives the written notice described in Subsection (3) makes  
308 an eligible donation on or before August 1, a scholarship organization shall provide the listed  
309 donor with a tax credit donor certificate:

310 (a) on a form provided by the commission; and

311 (b) that lists:

312 (i) the name, address, and taxpayer identification number of the listed donor;

313 (ii) the date the certificate is issued; and

314 (iii) the maximum tax credit that the listed donor may claim as calculated under

315 Subsection (5).

316 (5) For purposes of Subsection (4)(b)(iii), the maximum tax credit is the lesser of:

317 (a) the eligible donation the listed donor is required to make as stated on the written  
318 notice described in Subsection (3); or

319 (b) the eligible donation the listed donor actually makes to the scholarship  
320 organization.

321 (6) A scholarship organization shall each year, on or before October 1, provide to the  
322 State Tax Commission a copy of each tax credit donor certificate the scholarship organization  
323 provides to a qualifying donor.

324 Section 8. Section **53A-1a-1108** is enacted to read:

325 **53A-1a-1108. Qualified donor requirement to hold tax credit donor certificate.**

326 A qualifying donor may not claim or pass through a tax credit under Section 59-7-614.7  
327 unless the qualifying donor has received a tax credit donor certificate from a scholarship  
328 organization.

329 Section 9. Section **53A-1a-1109** is enacted to read:

330 **53A-1a-1109. State Tax Commission calculation of maximum tax credit on tax**  
331 **credit donor certificates -- Issuance of remaining tax credit.**

332 (1) The State Tax Commission shall each year, on or before December 1, calculate the  
333 total amount of maximum tax credit listed on tax credit donor certificates that scholarship  
334 organizations provide to the State Tax Commission during the calendar year in accordance with  
335 Subsection 53A-1a-1107(6).

336 (2) If the total amount of maximum tax credit the State Tax Commission calculates  
337 under Subsection (1) is less than the amount of tax credit the State Tax Commission may

338 allocate for the taxable year under Section 53A-1a-1106, the State Tax Commission may  
339 allocate the remaining amount of tax credit in a taxable year after the taxable year for which  
340 there is a remaining amount of tax credit.

341 Section 10. Section **53A-1a-1110** is enacted to read:

342 **53A-1a-1110. State Tax Commission to make rules.**

343 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
344 State Tax Commission may make rules consistent with this part:

345 (1) prescribing information that a scholarship organization shall include with an  
346 application for a tax credit allocation certificate under Section 53A-1a-1106; and

347 (2) establishing procedures that a scholarship organization shall employ to verify that a  
348 student:

349 (a) meets the qualifications for a scholarship provided in Section 53A-1a-1103; and

350 (b) has continuing enrollment and attendance at a private school before the scholarship  
351 organization issues a scholarship payment.

352 Section 11. Section **53A-1a-1111** is enacted to read:

353 **53A-1a-1111. Enforcement of scholarship organization requirements.**

354 (1) A scholarship organization shall provide to the State Tax Commission an annual  
355 audit conducted by an independent certified public accountant that includes:

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

357 (b) a compliance audit of the requirements under this part.

358 (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the  
359 commission may enjoin a scholarship organization that fails to comply with this part from  
360 accepting donations from taxpayers seeking to claim a tax credit under Section 59-7-614.7 or  
361 59-10-1029 for a period of up to one year.

362 Section 12. Section **53A-1a-1112** is enacted to read:

363 **53A-1a-1112. Scholarship organization report.**

364 By November 1 each year, a scholarship organization shall submit to the State Tax  
365 Commission a report prepared by an independent certified public accountant containing the  
366 following information:

367 (1) the name and address of the scholarship organization;

368 (2) the total number and total dollar amount of contributions received during the prior

369 state fiscal year;

370 (3) the total number and total dollar amount of scholarships awarded during the prior  
371 state fiscal year;

372 (4) the total number and total dollar amount of scholarships awarded during the prior  
373 state fiscal year to students whose parent or guardians had an annual income less than or equal  
374 to 100% of the income eligibility guideline allowed to qualify for reduced price meals; and

375 (5) the percentage of first time recipients of scholarships who were continuously  
376 enrolled in a public school during the prior school year.

377 Section 13. Section **53A-1a-1113** is enacted to read:

378 **53A-1a-1113. Private school requirements.**

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

380 (a) (i) obtain an audit and report from a licensed independent certified public  
381 accountant that conforms with the following requirements and submit the audit report to the  
382 board when the private school applies to accept scholarship students:

383 (A) the audit shall be performed in accordance with generally accepted auditing  
384 standards;

385 (B) the financial statements shall be presented in accordance with generally accepted  
386 accounting principles; and

387 (C) the audited financial statements shall be as of a period within the last 12 months; or

388 (ii) contract with a licensed independent certified public accountant to perform an  
389 agreed upon procedure as follows and submit the agreed upon procedure to the board when the  
390 private school applies to accept scholarship students:

391 (A) the agreed upon procedure shall be to determine that the private school has  
392 adequate working capital to maintain operations for the first full year; and

393 (B) working capital shall be calculated by subtracting current liabilities from current  
394 assets;

395 (b) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;

396 (c) meet state and local health and safety laws and codes;

397 (d) disclose to the parent of each prospective student, before the student is enrolled, the  
398 special education services that will be provided to the student, if any, including the cost of  
399 those services;

400 (e) (i) annually assess the achievement of each student by administering a  
401 norm-referenced test scored by an independent party that provides a comparison of the student's  
402 academic performance to other students on a national basis;

403 (ii) report the test results to the student's parents; and

404 (iii) upon request, make aggregated test results available to other persons;

405 (f) employ or contract with teachers who:

406 (i) hold baccalaureate or higher degrees; or

407 (ii) have special skills, knowledge, or expertise that qualifies them to provide  
408 instruction in the subjects taught;

409 (g) provide to parents the teaching credentials of the school's teachers;

410 (h) provide, upon request to any person, a statement indicating which, if any,  
411 organizations have accredited the private school; and

412 (i) comply with requirements to conduct criminal background checks on school  
413 personnel as provided in Section 53A-3-410.

414 (2) The following are not eligible to enroll scholarship students:

415 (a) a school with an enrollment of fewer than 40 students;

416 (b) a school that operates in a residence;

417 (c) a school that encourages illegal conduct; or

418 (d) a residential treatment facility licensed by the state.

419 (3) (a) Except as provided in Subsection (3)(b), a private school intending to enroll  
420 scholarship students shall submit an application to the board by April 1 of the school year  
421 preceding the school year in which it intends to enroll scholarship students.

422 (b) A private school intending to enroll scholarship students in the 2012-13 school year  
423 shall submit an application by June 15, 2012.

424 (4) The board shall:

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

427 (b) make available to the public a list of the eligible private schools:

428 (i) for the 2013-14 school year and each school year thereafter, by the April 30  
429 preceding the school year; and

430 (ii) for the 2012-13 school year, by July 1, 2012.

431 Section 14. Section **53A-1a-1114** is enacted to read:

432 **53A-1a-1114. Enforcement of private school requirements.**

433 (1) (a) The board shall require private schools to submit signed affidavits assuring the  
434 private school will comply with the requirements of Section 53A-1a-1113.

435 (b) If a school fails to submit a signed affidavit after having an opportunity to provide  
436 explanations and request delays, the board may deny the private school permission to enroll  
437 scholarship students.

438 (2) The board may investigate complaints and convene administrative hearings for an  
439 alleged violation of Section 53A-1a-1113.

440 (3) Upon finding that Section 53A-1a-1113 was violated, the board may deny a private  
441 school permission to enroll scholarship students.

442 Section 15. Section **53A-1a-1115** is enacted to read:

443 **53A-1a-1115. Limitation on regulation of private schools.**

444 Nothing in this part grants additional authority to any state agency to regulate private  
445 schools except as expressly set forth in this part.

446 Section 16. Section **53A-3-410** is amended to read:

447 **53A-3-410. Criminal background checks on school personnel -- Notice -- Payment**  
448 **of costs -- Request for review.**

449 (1) As used in this section:

450 (a) "Administrator" means an administrator at a school district, charter school, or  
451 private school that requests the Criminal Investigations and Technical Services Division of the  
452 Department of Public Safety to conduct a criminal background check on an applicant or  
453 employee.

454 (b) "Applicant" means a person under consideration for:

455 (i) an offer of employment at a school district, charter school, or private school; or  
456 (ii) appointment as a volunteer for a school district, charter school, or private school  
457 who will be given significant unsupervised access to a student in connection with the  
458 volunteer's assignment.

459 (c) "Contract employee" means an employee of a staffing service who works at a  
460 public or private school under a contract between the staffing service and a school district,  
461 charter school, or private school.

462 (d) "Division" means the Criminal Investigations and Technical Services Division of  
463 the Department of Public Safety.

464 (2) A school district superintendent, the superintendent's designee, or the chief  
465 administrative officer of a charter school:

466 (a) shall require an applicant to submit to a criminal background check as a condition  
467 for employment or appointment;

468 (b) shall require an employee to periodically submit to a criminal background check in  
469 accordance with rules of the State Board of Education or policies of the local school board or  
470 charter school governing board; and

471 (c) where reasonable cause exists, may require an existing employee or volunteer to  
472 submit to a criminal background check.

473 (3) The chief administrative officer of a private school may require, and the chief  
474 administrative officer of a private school that enrolls scholarship students under Chapter 1a,  
475 Part 7, Carson Smith Scholarships for Students with Special Needs Act or Chapter 1a, Part 11,  
476 Student Opportunity Scholarship Act, shall require:

477 (a) an applicant to submit to a criminal background check as a condition for  
478 employment or appointment; and

479 (b) where reasonable cause exists, an existing employee or volunteer to submit to a  
480 criminal background check.

481 (4) An applicant, volunteer, or employee shall receive written notice that a criminal  
482 background check has been requested.

483 (5) (a) (i) Fingerprints of the applicant, volunteer, or employee shall be taken, and the  
484 Criminal Investigations and Technical Services Division of the Department of Public Safety,  
485 established in Section 53-10-103, shall release the applicant's, volunteer's, or employee's full  
486 criminal history record to the administrator requesting the information.

487 (ii) The division shall maintain a separate file of fingerprints submitted under  
488 Subsection (5)(a)(i) and notify the administrator when a new entry is made against an employee  
489 or volunteer whose fingerprints are held in the file regarding:

490 (A) any matters involving an alleged sexual offense;

491 (B) any matters involving an alleged drug-related offense;

492 (C) any matters involving an alleged alcohol-related offense; or



493 (D) any matters involving an alleged offense against the person under Title 76, Chapter  
494 5, Offenses Against the Person.

495 (iii) The cost of maintaining the separate file shall be paid by the school district, charter  
496 school, or private school from fees charged to those submitting fingerprints.

497 (b) Information received by the division from entities other than agencies or political  
498 subdivisions of the state may not be released to a private school unless the release is  
499 permissible under applicable laws or regulations of the entity providing the information.

500 (6) The superintendent, local school board, or their counterparts at a charter school or  
501 private school shall consider only those convictions, pleas in abeyance, or arrests which are  
502 job-related for the employee, applicant, or volunteer.

503 (7) (a) A school district, charter school, or private school may require an applicant to  
504 pay the costs of a background check as a condition for consideration for employment or  
505 appointment, if the applicant:

506 (i) has passed an initial review; and

507 (ii) is one of a pool of no more than five candidates for a position.

508 (b) A school district or charter school may require an employee to pay the cost of a  
509 periodic criminal background check required pursuant to rules of the State Board of Education  
510 or policies of the local school board or charter school governing board.

511 (8) The Criminal Investigations and Technical Services Division shall, upon request,  
512 seek additional information from regional or national criminal data files in responding to  
513 inquiries under this section.

514 (9) (a) An applicant, volunteer, or employee shall have an opportunity to respond to  
515 any information received as a result of a criminal background check.

516 (b) A public agency shall resolve any request for review by an applicant, volunteer, or  
517 employee through administrative procedures established by the agency.

518 (10) (a) If a person is denied employment or is dismissed from employment because of  
519 information obtained through a criminal background check, the person shall receive written  
520 notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons.

521 (b) A school district or charter school shall resolve any request for a review of a denial  
522 of or dismissal from employment through administrative procedures established by the school  
523 district or charter school.

524 (11) Information obtained under this part is confidential and may only be disclosed as  
525 provided in this section.

526 (12) (a) A school district, charter school, or private school that enrolls scholarship  
527 students under Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs  
528 Act, may contract with a staffing service to provide a contract employee if:

529 (i) the school district, charter school, or private school requests the Criminal  
530 Investigations and Technical Services Division of the Department of Public Safety to conduct a  
531 criminal background check on the contract employee that is placed at the school district,  
532 charter school, or private school;

533 (ii) fingerprints of the contract employee are submitted to the division;

534 (iii) the division releases the contract employee's full criminal history record to the  
535 school district, charter school, or private school requesting the criminal background check; and

536 (iv) the school district, charter school, or private school requesting the criminal  
537 background check determines whether the contract employee is suitable for employment based  
538 on the standard established in Subsection (6).

539 (b) The division shall maintain a separate file of fingerprints submitted under  
540 Subsection (12)(a) and notify the administrator when a new entry is made against a contract  
541 employee whose fingerprints are held in the file regarding a matter listed in Subsection  
542 (5)(a)(ii).

543 (c) A school district, charter school, or private school may require a contract employee  
544 to pay the costs of a criminal background check, including the costs of the division to maintain  
545 the file required under Subsection (12)(b).

546 (d) (i) A contract employee who applies for a license issued by the State Board of  
547 Education shall submit to a criminal background check as provided in Section 53A-6-401.

548 (ii) A contract employee who works at a public school and does not hold a license  
549 issued by the State Board of Education shall submit to a criminal background check every six  
550 years, or within a shorter period, if required by rules of the State Board of Education or policies  
551 of a local school board or charter school governing board.

552 Section 17. Section **59-7-614.7** is enacted to read:

553 **59-7-614.7. Nonrefundable tax credit for donation to scholarship organization.**

554 (1) As used in this section:

- 555 (a) "Pass-through entity" is as defined in Section 59-10-1402.
- 556 (b) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.
- 557 (c) "Qualifying donor" is as defined in Section 53A-1a-1102.
- 558 (d) "Scholarship organization" is as defined in Section 53A-1a-1102.
- 559 (e) "Tax credit donor certificate" is as defined in Section 53A-1a-1102.
- 560 (2) Subject to the other provisions of this section, a qualifying donor to a scholarship  
561 organization may:
- 562 (a) claim a nonrefundable tax credit as provided in this section; or
- 563 (b) if the qualifying donor is a pass-through entity, pass through to one or more  
564 pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part  
565 14, Pass-through Entities and Pass-through Entity Taxpayers Act, a nonrefundable tax credit  
566 that the qualifying donor could otherwise claim under this section.
- 567 (3) A qualifying donor may only claim or pass through a tax credit under this section if  
568 the qualifying donor obtains a tax credit donor certificate under Section 53A-1a-1107.
- 569 (4) The maximum amount of the tax credit a qualifying donor may claim or pass  
570 through is the amount listed as the maximum tax credit on a tax credit donor certificate under  
571 Subsection 53A-1a-1107(4).
- 572 (5) A qualifying donor or a pass-through entity taxpayer may carry forward a tax credit  
573 under this section for a period that does not exceed the next three taxable years if:
- 574 (a) the qualifying donor or pass-through entity taxpayer is allowed to claim a tax credit  
575 under this section for a taxable year; and
- 576 (b) the amount of the tax credit exceeds the qualifying donor's or pass-through entity  
577 taxpayer's tax liability under this chapter for that taxable year.
- 578 Section 18. Section **59-10-1002.2** is amended to read:
- 579 **59-10-1002.2. Apportionment of tax credits.**
- 580 (1) A nonresident individual or a part-year resident individual that claims a tax credit  
581 in accordance with Section 59-10-1017, 59-10-1018, 59-10-1019, 59-10-1021, 59-10-1022,  
582 59-10-1023, 59-10-1024, [or] 59-10-1028, or 59-10-1029 may only claim an apportioned  
583 amount of the tax credit equal to:
- 584 (a) for a nonresident individual, the product of:
- 585 (i) the state income tax percentage for the nonresident individual; and

586 (ii) the amount of the tax credit that the nonresident individual would have been  
587 allowed to claim but for the apportionment requirements of this section; or  
588 (b) for a part-year resident individual, the product of:  
589 (i) the state income tax percentage for the part-year resident individual; and  
590 (ii) the amount of the tax credit that the part-year resident individual would have been  
591 allowed to claim but for the apportionment requirements of this section.

592 (2) A nonresident estate or trust that claims a tax credit in accordance with Section  
593 59-10-1017, 59-10-1020, 59-10-1022, 59-10-1024, [~~or~~] 59-10-1028, or 59-10-1029 may only  
594 claim an apportioned amount of the tax credit equal to the product of:

595 (a) the state income tax percentage for the nonresident estate or trust; and  
596 (b) the amount of the tax credit that the nonresident estate or trust would have been  
597 allowed to claim but for the apportionment requirements of this section.

598 Section 19. Section **59-10-1029** is enacted to read:

599 **59-10-1029. Nonrefundable tax credit for donation to scholarship organization.**

600 (1) As used in this section:

601 (a) "Eligible donation" means a donation:

602 (i) a claimant, estate, or trust makes to a scholarship organization during a taxable year;

603 (ii) that the claimant, estate, or trust does not designate for the benefit of a particular  
604 student;

605 (iii) with respect to which the claimant, estate, or trust does not claim an exemption or  
606 tax credit or make a deduction or subtraction on the claimant's, estate's, or trust's state or  
607 federal income tax return for the taxable year, other than a tax credit under this section; and

608 (iv) to the extent the claimant, estate, or trust does not receive property or a service in  
609 return for the donation.

610 (b) "Head of household filing status" is as defined in Section 59-10-1018.

611 (c) "Joint filing status" is as defined in Section 59-10-1018.

612 (d) "Pass-through entity" is as defined in Section 59-10-1402.

613 (e) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

614 (f) "Scholarship organization" is as defined in Section 53A-1a-1102.

615 (g) "Single filing status" is as defined in Section 59-10-1018.

616 (2) Except as provided in Section 59-10-1002.2 and subject to the other provisions of

617 this section, a claimant, estate, or trust who makes an eligible donation to a scholarship  
618 organization may:

619 (a) claim a nonrefundable tax credit as provided in this section; or

620 (b) if the claimant, estate, or trust is a pass-through entity, pass through to one or more  
621 pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part  
622 14, Pass-through Entities and Pass-through Entity Taxpayers Act, a nonrefundable tax credit  
623 that the claimant, estate, or trust could otherwise claim under this section.

624 (3) A tax credit under this section may not exceed the lesser of:

625 (a) the eligible donation; or

626 (b) (i) \$500 for a claimant, estate, trust, or pass-through entity taxpayer that has a  
627 single filing status;

628 (ii) \$750 for a claimant, estate, trust, or pass-through entity taxpayer that has a head of  
629 household filing status; or

630 (iii) \$1,000 for a claimant, estate, trust, or pass-through entity taxpayer that has a joint  
631 filing status.

632 (4) A claimant, estate, trust, or pass-through entity taxpayer may carry forward a tax  
633 credit under this section for a period that does not exceed the next three taxable years if:

634 (a) the claimant, estate, trust, or pass-through entity taxpayer is allowed to claim a tax  
635 credit under this section for a taxable year; and

636 (b) the amount of the tax credit exceeds the claimant's, estate's, trust's, or pass-through  
637 entity taxpayer's tax liability under this chapter for that taxable year.

638 **Section 20. Retrospective operation.**

639 Sections 59-7-614.7, 59-10-1002.2, and 59-10-1029 have retrospective operation for a  
640 taxable year beginning on or after January 1, 2012.

---

---

**Legislative Review Note**  
**as of 1-27-12 11:31 AM**

**Office of Legislative Research and General Counsel**