

SB0151S01 compared with SB0151

~~{deleted text}~~ shows text that was in SB0151 but was deleted in SB0151S01.

inserted text shows text that was not in SB0151 but was inserted into SB0151S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Senator Howard A. Stephenson proposes the following substitute bill:

STUDENT OPPORTUNITY SCHOLARSHIPS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: _____

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~~

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~~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};~~

▶ specifies qualifications for a student to receive a scholarship;

- ▶ requires a scholarship organization to:
 - allow a student to attend any eligible private school, and allow a parent to transfer a scholarship during the school year to any other eligible private school;
 - expend ~~{at least 90%}~~ 100% of revenue received from donations eligible for a tax credit for scholarships ~~{and no more than 10% of revenue received for administration of the scholarship program}~~;
 - return revenue not spent for scholarships within a certain period to the state treasurer for deposit to the Education Fund;
 - obtain an annual financial and compliance audit by an independent certified public accountant; and
 - submit a report to the State ~~{Tax Commission}~~ Board of Education annually;
- ▶ establishes the maximum amount of a scholarship;
- ▶ establishes a maximum amount of tax credits that may be awarded annually under Title 59, Chapter 7, Corporate Franchise and Income Taxes, for donations made to a scholarship organization and provides procedures for the allocation of the maximum amount;
- ▶ allows the State Tax Commission to make certain rules;
- ▶ requires a private school that enrolls a scholarship student to:
 - contract with an independent certified public accountant to examine the financial condition of the school and the expenditure of scholarship funds;
 - annually assess the achievement of each student in the school by administering a norm-referenced achievement test and making test results available to the student's parent and aggregated test results to others upon request; ~~{and}~~

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- conduct criminal background checks on school personnel; and
- arrange for certain statewide assessments to be administered to a scholarship student;
- ▶ requires the State Board of Education to make an annual report on the performance of scholarship students on certain statewide assessments;
- ▶ provides for a nonrefundable tax credit under Title 59, Chapter 7, Corporate Franchise and Income Taxes, for a donation to a scholarship organization;†
- ▶ ~~provides for a nonrefundable tax credit under the Individual Income Tax Act up to a certain amount for a donation to a scholarship organization;~~ and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation for a taxable year beginning on or after January 1, 2012.

Utah Code Sections Affected:

AMENDS:

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

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

†ENACTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53A-1a-1116, Utah Code Annotated 1953

59-7-614.7, Utah Code Annotated 1953

~~{ 59-10-1029, Utah Code Annotated 1953~~

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

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

Part 11. Student Opportunity Scholarship Act

53A-1a-1101. Title.

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

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

53A-1a-1102. Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

(6) "Qualifying donor" means a person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) "Value of the weighted pupil unit" means the amount established each year in statute that is multiplied by the number of weighted pupil units to yield the funding levels for

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the kindergarten and grade 1 ~~through~~ 12 programs within the basic state-supported school program.

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

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

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

(2) To qualify for a scholarship:

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

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

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

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

~~(ii) the student shall meet one of the following criteria:~~

~~(i) the student, while in grades 1 through 2, scored below the expected reading level for the student's grade on a reading assessment administered:~~

~~(A) pursuant to Section 53A-1-606.6; and~~

~~(B) at the end of the school year immediately preceding the school year in which a scholarship is sought;~~

~~(iii) 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 administered in the school year immediately preceding the school year for which a scholarship is sought;~~

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

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

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(iv) beginning with the 2014-15 school year, the student was a recipient of a scholarship awarded under Part 7, Carson Smith Scholarships for Students with Special Needs Act, in the school year immediately preceding the school year for which a scholarship is sought; and

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

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

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

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

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

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

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

(4) A scholarship organization shall allow:

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

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

(5) A scholarship organization may not:

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

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

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

(7) (a) A scholarship organization shall expend ~~at least 90%~~ 100% of the revenue the scholarship organization receives ~~in a state fiscal year~~ from eligible donations for

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scholarships for a student to attend an eligible private school.

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

~~(c) (i) A~~(i) Except as provided in Subsection (7)(c), a scholarship organization shall expend for scholarships an amount equal to or greater than 75% of the ~~{net}~~revenue ~~{remaining after administrative expenses}~~from eligible donations during the state fiscal year in which the revenue is collected.

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

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

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

~~(c) A scholarship organization shall expend 100% of the revenue collected from July 1, 2012 through June 30, 2013, from eligible donations for scholarships.~~

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

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

53A-1a-1105. Scholarship payments.

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

(i) \$5,~~500~~000; or

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

(b) Beginning with the 2013-14 school year, the amount provided in Subsection (1)(a) shall be adjusted each year by the same percentage as the percentage change in the value of the weighted pupil unit.

(c) A scholarship organization may set the full scholarship amount at different levels for the different grade levels at a private school provided the maximum scholarship amount for

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a grade level complies with the requirements of Subsections (1)(a) and (1)(b).

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

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

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

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

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

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

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

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

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

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

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

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

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Commission:

(a) on or before June 1; and

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

(3) (a) The application shall include:

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

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

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

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

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

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

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

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

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

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

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

(6) The State Tax Commission shall, on or before the July 1 immediately following the June 1 described in Subsection (2)(a), issue a tax credit allocation certificate:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) on a form provided by the ~~commission~~ State Tax Commission; and

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(b) that lists:

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

(ii) the date the certificate is issued; and

(iii) the maximum tax credit that the listed donor may claim as calculated under Subsection (5).

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

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

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

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

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

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

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

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

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

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

(2) If the total amount of maximum tax credit the State Tax Commission calculates under Subsection (1) is less than the amount of tax credit the State Tax Commission may allocate for the taxable year under Section 53A-1a-1106, the State Tax Commission may allocate the remaining amount of tax credit in a taxable year after the taxable year for which there is a remaining amount of tax credit.

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

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

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

- ~~(1) prescribing information that a scholarship organization shall include with an application for a tax credit allocation certificate under Section 53A-1a-1106; and~~
- ~~(2) establishing procedures that a scholarship organization shall employ to verify that a student:~~
 - ~~(a) meets the qualifications for a scholarship provided in Section 53A-1a-1103; and~~
 - ~~(b) has continuing enrollment and attendance at a private school before the scholarship organization issues a scholarship payment.~~

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

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

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

- (a) a financial audit of its accounts and records; and
- (b) a compliance audit of the requirements under this part.

(2) The State Board of Education shall notify the State Tax Commission of a scholarship organization's failure to comply with this part.

~~(2)3~~ (3) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the commission may enjoin a scholarship organization that fails to comply with this part from accepting donations from taxpayers seeking to claim a tax credit under Section 59-7-614.7 ~~or 59-10-1029~~ for a period of up to one year.

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

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

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

- (1) the name and address of the scholarship organization;
- (2) the total number and total dollar amount of contributions received during the prior state fiscal year;

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

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

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

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

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

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

~~(a)~~ be located in Utah;

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

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

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

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

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

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

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

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

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

~~(d)~~(e) disclose to the parent of each prospective student, before the student is enrolled, the special education services that will be provided to the student, if any, including the cost of

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those services:

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

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

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

(~~f~~~~f~~~~g~~) employ or contract with teachers who:

(i) hold baccalaureate or higher degrees; or

(ii) have special skills, knowledge, or expertise that qualifies them to provide

instruction in the subjects taught;

(~~f~~~~g~~~~h~~) provide to parents the teaching credentials of the school's teachers;

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

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

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

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

(b) a school that operates in a residence;

(c) a school that encourages illegal conduct; or

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

(3) (a) (i) Scholarship students shall take end-of-course criterion-referenced tests or computer adaptive tests in language arts, mathematics, and science, and the online writing assessments that are administered to public school students in the state.

(ii) A scholarship student shall take the tests that correspond with the scholarship student's grade level or the courses taken by the scholarship student.

(b) A private school shall:

(i) make arrangements with the State Board of Education for the online administration of a test specified in Subsection (3)(a); and

(ii) proctor the administration of an online test.

(~~f~~~~3~~~~4~~) (a) Except as provided in Subsection (~~f~~~~3~~~~4~~)(b), a private school intending to enroll scholarship students shall submit an application to the board by April 1 of the school

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year preceding the school year in which it intends to enroll scholarship students.

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

~~(445)~~ The board shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~53A-1a-1116~~ is enacted to read:

53A-1a-1116. State Board of Education to report on academic achievement and learning gains of scholarship students.

(1) The State Board of Education shall annually submit a report to the Education Interim Committee by October 1 on the academic achievement and learning gains of

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scholarship students based on the end-of-course criterion-referenced tests or computer adaptive tests or the online writing assessments administered to scholarship students as required by Section 53A-1a-1113.

(2) The State Board of Education shall aggregate test score data so that the identity of a scholarship student is not revealed.

Section 17. Section 53A-3-410 is amended to read:

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

(1) As used in this section:

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

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

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

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

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

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

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

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

(c) where reasonable cause exists, may require an existing employee or volunteer to

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submit to a criminal background check.

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

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

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

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

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

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

(A) any matters involving an alleged sexual offense;

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

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

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

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

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

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

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

- (i) has passed an initial review; and
- (ii) is one of a pool of no more than five candidates for a position.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~{17}~~18. Section **59-7-614.7** is enacted to read:

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

(1) As used in this section:

~~{~~ (a) "Pass-through entity" is as defined in Section 59-10-1402.

~~——~~ (b) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

~~‡~~ (~~f~~~~c~~)a "Qualifying donor" is as defined in Section 53A-1a-1102.

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

(~~f~~~~e~~)c "Tax credit donor certificate" is as defined in Section 53A-1a-1102.

(2) Subject to the other provisions of this section, a qualifying donor to a scholarship organization may~~‡~~:

~~——~~ (a) ‡ claim a nonrefundable tax credit as provided in this section~~‡~~ or

~~——~~ (b) if the qualifying donor is a pass-through entity, pass through to one or more pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part

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~~14, Pass-through Entities and Pass-through Entity Taxpayers Act, a nonrefundable tax credit that the qualifying donor could otherwise claim under this section}.~~

~~(3) A qualifying donor may only claim ~~for pass through~~ a tax credit under this section if:~~

~~(a) the qualifying donor obtains a tax credit donor certificate under Section 53A-1a-1107; and~~

~~(b) the qualifying donor does not claim an exemption or tax credit or make a deduction or subtraction with respect to the eligible donation on the qualifying donor's federal income tax return for the taxable year, other than a tax credit under this section.~~

~~(4) The maximum amount of the tax credit a qualifying donor may claim ~~for pass through~~ is the amount listed as the maximum tax credit on a tax credit donor certificate under Subsection 53A-1a-1107(4).~~

~~(5) A qualifying donor ~~for a pass-through entity taxpayer~~ may carry forward a tax credit under this section for a period that does not exceed the next three taxable years if:~~

~~(a) the qualifying donor ~~for pass-through entity taxpayer~~ is allowed to claim a tax credit under this section for a taxable year; and~~

~~(b) the amount of the tax credit exceeds the qualifying donor's ~~for pass-through entity taxpayer's~~ tax liability under this chapter for that taxable year.~~

~~Section 18. Section 59-10-1002.2 is amended to read:~~

~~**59-10-1002.2. Apportionment of tax credits:**~~

~~(1) A nonresident individual or a part-year resident individual that claims a tax credit in accordance with Section 59-10-1017, 59-10-1018, 59-10-1019, 59-10-1021, 59-10-1022, 59-10-1023, 59-10-1024, ~~[or] 59-10-1028, or 59-10-1029~~ may only claim an apportioned amount of the tax credit equal to:~~

~~(a) for a nonresident individual, the product of:~~

~~(i) the state income tax percentage for the nonresident individual; and~~

~~(ii) the amount of the tax credit that the nonresident individual would have been allowed to claim but for the apportionment requirements of this section; or~~

~~(b) for a part-year resident individual, the product of:~~

~~(i) the state income tax percentage for the part-year resident individual; and~~

~~(ii) the amount of the tax credit that the part-year resident individual would have been~~

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allowed to claim but for the apportionment requirements of this section:

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

~~—— (a) the state income tax percentage for the nonresident estate or trust; and~~

~~—— (b) the amount of the tax credit that the nonresident estate or trust would have been allowed to claim but for the apportionment requirements of this section.~~

~~—— Section 19. Section 59-10-1029 is enacted to read:~~

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

~~—— (1) As used in this section:~~

~~—— (a) "Eligible donation" means a donation:~~

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

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

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

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

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

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

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

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

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

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

~~—— (2) Except as provided in Section 59-10-1002.2 and subject to the other provisions of this section, a claimant, estate, or trust who makes an eligible donation to a scholarship organization may:~~

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

~~—— (b) if the claimant, estate, or trust is a pass-through entity, pass through to one or more pass-through entity taxpayers of the pass-through entity, in accordance with Chapter 10, Part~~

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~~14, Pass-through Entities and Pass-through Entity Taxpayers Act, a nonrefundable tax credit that the claimant, estate, or trust could otherwise claim under this section:~~

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

~~—— (a) the eligible donation; or~~

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

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

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

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

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

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

~~—— Section 20} **19. Retrospective operation.**~~

~~{Sections} **Section** 59-7-614.7{, 59-10-1002.2, and 59-10-1029 have} **has** retrospective operation for a taxable year beginning on or after January 1, 2012.~~

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Legislative Review Note

~~—— as of 1-27-12 11:31 AM~~

~~—— Office of Legislative Research and General Counsel}~~