

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 to attend a private school;
- ▶ 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 100% of revenue received from donations eligible for a tax credit for scholarships;
 - 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



- 26 • submit a report to the State Board of Education annually;
- 27 ▶ establishes the maximum amount of a scholarship;
- 28 ▶ establishes a maximum amount of tax credits that may be awarded annually under
- 29 Title 59, Chapter 7, Corporate Franchise and Income Taxes, for donations made to a
- 30 scholarship organization and provides procedures for the allocation of the maximum
- 31 amount;
- 32 ▶ allows the State Tax Commission to make certain rules;
- 33 ▶ requires a private school that enrolls a scholarship student to:
 - 34 • contract with an independent certified public accountant to examine the
 - 35 financial condition of the school and the expenditure of scholarship funds;
 - 36 • annually assess the achievement of each student in the school by administering a
 - 37 norm-referenced achievement test and making test results available to the
 - 38 student's parent and aggregated test results to others upon request;
 - 39 • conduct criminal background checks on school personnel; and
 - 40 • arrange for certain statewide assessments to be administered to a scholarship
 - 41 student;
- 42 ▶ requires the State Board of Education to make an annual report on the performance
- 43 of scholarship students on certain statewide assessments;
- 44 ▶ provides for a nonrefundable tax credit under Title 59, Chapter 7, Corporate
- 45 Franchise and Income Taxes, for a donation to a scholarship organization; and
- 46 ▶ makes technical and conforming amendments.

47 **Money Appropriated in this Bill:**

48 None

49 **Other Special Clauses:**

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

51 January 1, 2012.

52 **Utah Code Sections Affected:**

53 AMENDS:

54 **53A-3-410**, as last amended by Laws of Utah 2010, Chapter 362

55 ENACTS:

56 **53A-1a-1101**, Utah Code Annotated 1953

- 57 **53A-1a-1102**, Utah Code Annotated 1953
- 58 **53A-1a-1103**, Utah Code Annotated 1953
- 59 **53A-1a-1104**, Utah Code Annotated 1953
- 60 **53A-1a-1105**, Utah Code Annotated 1953
- 61 **53A-1a-1106**, Utah Code Annotated 1953
- 62 **53A-1a-1107**, Utah Code Annotated 1953
- 63 **53A-1a-1108**, Utah Code Annotated 1953
- 64 **53A-1a-1109**, Utah Code Annotated 1953
- 65 **53A-1a-1110**, Utah Code Annotated 1953
- 66 **53A-1a-1111**, Utah Code Annotated 1953
- 67 **53A-1a-1112**, Utah Code Annotated 1953
- 68 **53A-1a-1113**, Utah Code Annotated 1953
- 69 **53A-1a-1114**, Utah Code Annotated 1953
- 70 **53A-1a-1115**, Utah Code Annotated 1953
- 71 **53A-1a-1116**, Utah Code Annotated 1953
- 72 **59-7-614.7**, Utah Code Annotated 1953



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

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

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

77 **53A-1a-1101. Title.**

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

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

80 **53A-1a-1102. Definitions.**

81 As used in this part:

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

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

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

87 (a) a person makes to a scholarship organization on or before the date prescribed by

88 Subsection 53A-1a-1107(4);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112 (c) awards scholarships to students who meet the qualifications of Section
113 53A-1a-1103 to attend eligible private schools.

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

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

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

- 119 (12) "Tax credit allocation certificate" means a certificate that:
- 120 (a) the State Tax Commission issues to a scholarship organization; and
- 121 (b) lists the total amount of tax credit the State Tax Commission allocates to the
- 122 scholarship organization for distribution only to one or more qualifying donors.
- 123 (13) "Tax credit donor certificate" means a certificate that:
- 124 (a) a scholarship organization issues to a qualifying donor; and
- 125 (b) states the information required by Subsection 53A-1a-1107(4).
- 126 (14) "Value of the weighted pupil unit" means the amount established each year in
- 127 statute that is multiplied by the number of weighted pupil units to yield the funding levels for
- 128 the kindergarten and grade 1 through 12 programs within the basic state-supported school
- 129 program.

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

131 **53A-1a-1103. Scholarship program created -- Qualifications.**

- 132 (1) The Student Opportunity Scholarship Act is created to award scholarships to
- 133 students to attend a private school.
- 134 (2) To qualify for a scholarship:
- 135 (a) the student's parent or legal guardian shall reside within Utah;
- 136 (b) the student shall be at least five years of age before September 2 of the year in
- 137 which admission to a private school is sought and under 19 years of age on the last day of the
- 138 school year as determined by the private school;
- 139 (c) the student's parents' or legal guardians' annual income in the calendar year prior to
- 140 the first school year for which a scholarship is sought must be less than or equal to the income
- 141 eligibility guideline to qualify for reduced price meals for the applicable household size, as
- 142 published by the United States Department of Agriculture in the Federal Registrar;
- 143 (d) the student shall meet one of the following criteria:
- 144 (i) the student, while in grades 1 through 2, scored below the expected reading level for
- 145 the student's grade on a reading assessment administered:
- 146 (A) pursuant to Section 53A-1-606.6; and
- 147 (B) at the end of the school year immediately preceding the school year in which a
- 148 scholarship is sought;
- 149 (ii) the student, while in grades 3 through 11, scored below the proficient level on a

150 statewide summative assessment of language arts, mathematics, science, or writing
151 achievement administered in the school year immediately preceding the school year for which a
152 scholarship is sought;

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

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

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

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

161 **53A-1a-1104. Scholarship organization -- Requirements for the award of**
162 **scholarships.**

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

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

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

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

172 (4) A scholarship organization shall allow:

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

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

176 (5) A scholarship organization may not:

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

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

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

183 (7) (a) A scholarship organization shall expend 100% of the revenue the scholarship
184 organization receives from eligible donations for scholarships for a student to attend an eligible
185 private school.

186 (b) (i) Except as provided in Subsection (7)(c), a scholarship organization shall expend
187 for scholarships an amount equal to or greater than 75% of the revenue from eligible donations
188 during the state fiscal year in which the revenue is collected.

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

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

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

196 (c) A scholarship organization shall expend 100% of the revenue collected from July 1,
197 2012 through June 30, 2013, from eligible donations for scholarships.

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

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

201 **53A-1a-1105. Scholarship payments.**

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

204 (i) \$5,000; or

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

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

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

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

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

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

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

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

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

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

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

230 **53A-1a-1106. Allocation of tax credit to scholarship organization.**

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

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

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

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

243 Commission:

244 (a) on or before June 1; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

275 **53A-1a-1107. Determination of maximum tax credit -- Issuance of tax credit**
276 **donor certificates.**

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

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

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

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

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

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

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

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

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

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

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

305 (b) that lists:
306 (i) the name, address, and taxpayer identification number of the listed donor;
307 (ii) the date the certificate is issued; and
308 (iii) the maximum tax credit that the listed donor may claim as calculated under
309 Subsection (5).

310 (5) For purposes of Subsection (4)(b)(iii), the maximum tax credit is the lesser of:
311 (a) the eligible donation the listed donor is required to make as stated on the written
312 notice described in Subsection (3); or
313 (b) the eligible donation the listed donor actually makes to the scholarship
314 organization.

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

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

319 **53A-1a-1108. Qualified donor requirement to hold tax credit donor certificate.**

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

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

324 **53A-1a-1109. State Tax Commission calculation of maximum tax credit on tax**
325 **credit donor certificates -- Issuance of remaining tax credit.**

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

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

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

336 **53A-1a-1110. State Tax Commission to make rules.**

337 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
338 State Tax Commission may make rules consistent with this part prescribing information that a
339 scholarship organization shall include with an application for a tax credit allocation certificate
340 under Section 53A-1a-1106.

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

342 **53A-1a-1111. Enforcement of scholarship organization requirements.**

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

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

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

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

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

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

354 **53A-1a-1112. Scholarship organization report.**

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

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

359 (2) the total number and total dollar amount of contributions received during the prior
360 state fiscal year;

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

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

366 (5) the percentage of first time recipients of scholarships who were continuously

367 enrolled in a public school during the prior school year.

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

369 **53A-1a-1113. Private school requirements.**

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

371 (a) be located in Utah;

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

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

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

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

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

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

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

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

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

389 (e) disclose to the parent of each prospective student, before the student is enrolled, the
390 special education services that will be provided to the student, if any, including the cost of
391 those services;

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

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

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

397 (g) employ or contract with teachers who:

- 398 (i) hold baccalaureate or higher degrees; or
399 (ii) have special skills, knowledge, or expertise that qualifies them to provide
400 instruction in the subjects taught;
401 (h) provide to parents the teaching credentials of the school's teachers;
402 (i) provide, upon request to any person, a statement indicating which, if any,
403 organizations have accredited the private school; and
404 (j) comply with requirements to conduct criminal background checks on school
405 personnel as provided in Section 53A-3-410.
406 (2) The following are not eligible to enroll scholarship students:
407 (a) a school with an enrollment of fewer than 40 students;
408 (b) a school that operates in a residence;
409 (c) a school that encourages illegal conduct; or
410 (d) a residential treatment facility licensed by the state.
411 (3) (a) (i) Scholarship students shall take end-of-course criterion-referenced tests or
412 computer adaptive tests in language arts, mathematics, and science, and the online writing
413 assessments that are administered to public school students in the state.
414 (ii) A scholarship student shall take the tests that correspond with the scholarship
415 student's grade level or the courses taken by the scholarship student.
416 (b) A private school shall:
417 (i) make arrangements with the State Board of Education for the online administration
418 of a test specified in Subsection (3)(a); and
419 (ii) proctor the administration of an online test.
420 (4) (a) Except as provided in Subsection (4)(b), a private school intending to enroll
421 scholarship students shall submit an application to the board by April 1 of the school year
422 preceding the school year in which it intends to enroll scholarship students.
423 (b) A private school intending to enroll scholarship students in the 2012-13 school year
424 shall submit an application by June 15, 2012.
425 (5) The board shall:
426 (a) approve a private school's application to enroll scholarship students if the private
427 school meets the eligibility requirements of this section; and
428 (b) make available to the public a list of the eligible private schools;

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

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

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

433 **53A-1a-1114. Enforcement of private school requirements.**

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

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

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

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

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

444 **53A-1a-1115. Limitation on regulation of private schools.**

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

447 Section 16. Section **53A-1a-1116** is enacted to read:

448 **53A-1a-1116. State Board of Education to report on academic achievement and**
449 **learning gains of scholarship students.**

450 (1) The State Board of Education shall annually submit a report to the Education
451 Interim Committee by October 1 on the academic achievement and learning gains of
452 scholarship students based on the end-of-course criterion-referenced tests or computer adaptive
453 tests or the online writing assessments administered to scholarship students as required by
454 Section 53A-1a-1113.

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

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

458 **53A-3-410. Criminal background checks on school personnel -- Notice -- Payment**
459 **of costs -- Request for review.**

460 (1) As used in this section:

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

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

466 (i) an offer of employment at a school district, charter school, or private school; or

467 (ii) appointment as a volunteer for a school district, charter school, or private school

468 who will be given significant unsupervised access to a student in connection with the
469 volunteer's assignment.

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

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

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

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

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

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

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

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

490 (b) where reasonable cause exists, an existing employee or volunteer to submit to a

491 criminal background check.

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

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

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

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

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

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

504 (D) any matters involving an alleged offense against the person under Title 76, Chapter
505 5, Offenses Against the Person.

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

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

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

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

517 (i) has passed an initial review; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

553 (5)(a)(ii).

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

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

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

563 Section 18. Section ~~59-7-614.7~~ is enacted to read:

564 **59-7-614.7. Nonrefundable tax credit for donation to scholarship organization.**

565 (1) As used in this section:

566 (a) "Qualifying donor" is as defined in Section 53A-1a-1102.

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

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

569 (2) Subject to the other provisions of this section, a qualifying donor to a scholarship
570 organization may claim a nonrefundable tax credit as provided in this section.

571 (3) A qualifying donor may only claim a tax credit under this section if:

572 (a) the qualifying donor obtains a tax credit donor certificate under Section
573 53A-1a-1107; and

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

577 (4) The maximum amount of the tax credit a qualifying donor may claim is the amount
578 listed as the maximum tax credit on a tax credit donor certificate under Subsection
579 53A-1a-1107(4).

580 (5) A qualifying donor may carry forward a tax credit under this section for a period
581 that does not exceed the next three taxable years if:

582 (a) the qualifying donor is allowed to claim a tax credit under this section for a taxable
583 year; and

584 (b) the amount of the tax credit exceeds the qualifying donor's tax liability under this
585 chapter for that taxable year.

586 Section 19. **Retrospective operation.**

587 Section 59-7-614.7 has retrospective operation for a taxable year beginning on or after
588 January 1, 2012.