

SCHOLARSHIPS FOR SPECIAL NEEDS STUDENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: Mike Schultz

LONG TITLE

General Description:

This bill creates the Special Needs Opportunity Scholarship Program and related income tax credits.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Special Needs Opportunity Scholarship Program (program);
- ▶ establishes requirements for a scholarship recipient and a private school that accepts scholarship money;
- ▶ requires the State Board of Education to oversee the program, including selection of a scholarship granting organization;
- ▶ establishes the duties of a scholarship granting organization, including:
 - accepting program donations;
 - awarding scholarships; and
 - issuing tax credit certificates;
- ▶ creates a nonrefundable corporate income tax credit and a nonrefundable individual income tax credit for certain program donations; and
- ▶ prohibits a taxpayer from claiming more than one state income tax benefit from making the donation.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **53-10-108**, as last amended by Laws of Utah 2018, Chapters 417 and 427

34 **53F-4-303**, as last amended by Laws of Utah 2018, Chapter 168 and renumbered and
35 amended by Laws of Utah 2018, Chapter 2

36 **59-7-109**, as last amended by Laws of Utah 1995, Chapter 311

37 ENACTS:

38 **53E-7-401**, Utah Code Annotated 1953

39 **53E-7-402**, Utah Code Annotated 1953

40 **53E-7-403**, Utah Code Annotated 1953

41 **53E-7-404**, Utah Code Annotated 1953

42 **53E-7-405**, Utah Code Annotated 1953

43 **53E-7-406**, Utah Code Annotated 1953

44 **53E-7-407**, Utah Code Annotated 1953

45 **59-7-624**, Utah Code Annotated 1953

46 **59-10-1041**, Utah Code Annotated 1953

47

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

49 Section 1. Section **53-10-108** is amended to read:

50 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**
51 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**
52 **-- Missing children records -- Penalty for misuse of records.**

53 (1) As used in this section:

54 (a) "FBI Rap Back System" means the rap back system maintained by the Federal
55 Bureau of Investigation.

56 (b) "Rap back system" means a system that enables authorized entities to receive
57 ongoing status notifications of any criminal history reported on individuals whose fingerprints
58 are registered in the system.

59 (c) "WIN Database" means the Western Identification Network Database that consists
60 of eight western states sharing one electronic fingerprint database.

61 (2) Dissemination of information from a criminal history record, including information
62 obtained from a fingerprint background check, name check, warrant of arrest information, or
63 information from division files, is limited to:

64 (a) criminal justice agencies for purposes of administration of criminal justice and for
65 employment screening by criminal justice agencies;

66 (b) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
67 agency to provide services required for the administration of criminal justice;

68 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
69 purposes for which given, and ensure the security and confidentiality of the data;

70 (c) a qualifying entity for employment background checks for their own employees and
71 persons who have applied for employment with the qualifying entity;

72 (d) noncriminal justice agencies or individuals for any purpose authorized by statute,
73 executive order, court rule, court order, or local ordinance;

74 (e) agencies or individuals for the purpose of obtaining required clearances connected
75 with foreign travel or obtaining citizenship;

76 (f) agencies or individuals for the purpose of a preplacement adoptive study, in
77 accordance with the requirements of Sections 78B-6-128 and 78B-6-130;

78 (g) private security agencies through guidelines established by the commissioner for
79 employment background checks for their own employees and prospective employees;

80 (h) state agencies for the purpose of conducting a background check for the following
81 individuals:

82 (i) employees;

83 (ii) applicants for employment;

84 (iii) volunteers; and

85 (iv) contract employees;

86 (i) governor's office for the purpose of conducting a background check on the
87 following individuals:

88 (i) cabinet members;

89 (ii) judicial applicants; and

90 (iii) members of boards, committees, and commissions appointed by the governor;
91 (j) agencies and individuals as the commissioner authorizes for the express purpose of
92 research, evaluative, or statistical activities pursuant to an agreement with a criminal justice
93 agency; ~~[and]~~

94 (k) the State Board of Education for employment background checks of individuals in
95 accordance with Section 53E-7-404; and

96 ~~[(k)]~~ (l) other agencies and individuals as the commissioner authorizes and finds
97 necessary for protection of life and property and for offender identification, apprehension, and
98 prosecution pursuant to an agreement.

99 (3) An agreement under Subsection (2)(j) shall specifically authorize access to data,
100 limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of
101 individuals to whom the information relates, and ensure the confidentiality and security of the
102 data.

103 (4) (a) Before requesting information, a qualifying entity under Subsection (2)(c), state
104 agency, or other agency or individual described in Subsections (2)(d) through (i) shall obtain a
105 signed waiver from the person whose information is requested.

106 (b) The waiver shall notify the signee:

- 107 (i) that a criminal history background check will be conducted;
- 108 (ii) who will see the information; and
- 109 (iii) how the information will be used.

110 (c) A qualifying entity under Subsection (2)(c), state agency, or other agency or
111 individual described in Subsections (2)(d) through (g) that submits a request for a noncriminal
112 justice name based background check of local databases to the bureau shall provide to the
113 bureau:

- 114 (i) personal identifying information for the subject of the background check; and
- 115 (ii) the fee required by Subsection (15)(a)~~[(ii)]~~.

116 (d) A qualifying entity under Subsection (2)(c), state agency, or other agency or
117 individual described in Subsections (2)(d) through (g) that submits a request for a WIN
118 database check to the bureau shall provide to the bureau:

- 119 (i) personal identifying information for the subject of the background check;
- 120 (ii) a fingerprint card for the subject of the background check; and

121 (iii) the fee required by Subsection (15)(a)[~~(f)~~].
122 (e) Information received by a qualifying entity under Subsection (2)(c), state agency, or
123 other agency or individual described in Subsections (2)(d) through (i) may only be:
124 (i) available to individuals involved in the hiring or background investigation of the job
125 applicant or employee;
126 (ii) used for the purpose of assisting in making an employment appointment, selection,
127 or promotion decision; and
128 (iii) used for the purposes disclosed in the waiver signed in accordance with Subsection
129 (4)(b).
130 (f) An individual who disseminates or uses information obtained from the division
131 under Subsections (2)(c) through (i) for purposes other than those specified under Subsection
132 (4)(e), in addition to any penalties provided under this section, is subject to civil liability.
133 (g) A qualifying entity under Subsection (2)(c), state agency, or other agency or
134 individual described in Subsections (2)(d) through (i) that obtains background check
135 information shall provide the subject of the background check an opportunity to:
136 (i) review the information received as provided under Subsection (9); and
137 (ii) respond to any information received.
138 (h) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
139 division may make rules to implement this Subsection (4).
140 (i) The division or its employees are not liable for defamation, invasion of privacy,
141 negligence, or any other claim in connection with the contents of information disseminated
142 under Subsections (2)(c) through (i).
143 (5) (a) Any criminal history record information obtained from division files may be
144 used only for the purposes for which it was provided and may not be further disseminated,
145 except under Subsection (5)(b), (c), or (d).
146 (b) A criminal history provided to an agency pursuant to Subsection (2)(f) may be
147 provided by the agency to the individual who is the subject of the history, another licensed
148 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an
149 adoption.
150 (c) A criminal history of a defendant provided to a criminal justice agency under
151 Subsection (2)(a) may also be provided by the prosecutor to a defendant's defense counsel,

152 upon request during the discovery process, for the purpose of establishing a defense in a
153 criminal case.

154 (d) A public transit district, as described in Title 17B, Chapter 2a, Part 8, Public
155 Transit District Act, that is under contract with a state agency to provide services may, for the
156 purposes of complying with Subsection 62A-5-103.5(5), provide a criminal history record to
157 the state agency or the agency's designee.

158 (6) The division may not disseminate criminal history record information to qualifying
159 entities under Subsection (2)(c) regarding employment background checks if the information is
160 related to charges:

161 (a) that have been declined for prosecution;

162 (b) that have been dismissed; or

163 (c) regarding which a person has been acquitted.

164 (7) (a) This section does not preclude the use of the division's central computing
165 facilities for the storage and retrieval of criminal history record information.

166 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
167 unauthorized agencies or individuals.

168 (8) Direct access through remote computer terminals to criminal history record
169 information in the division's files is limited to those agencies authorized by the commissioner
170 under procedures designed to prevent unauthorized access to this information.

171 (9) (a) The commissioner shall establish procedures to allow an individual right of
172 access to review and receive a copy of the individual's criminal history report.

173 (b) A processing fee for the right of access service, including obtaining a copy of the
174 individual's criminal history report under Subsection (9)(a) shall be set in accordance with
175 Section 63J-1-504.

176 (c) (i) The commissioner shall establish procedures for an individual to challenge the
177 completeness and accuracy of criminal history record information contained in the division's
178 computerized criminal history files regarding that individual.

179 (ii) These procedures shall include provisions for amending any information found to
180 be inaccurate or incomplete.

181 (10) The private security agencies as provided in Subsection (2)(g):

182 (a) shall be charged for access; and

183 (b) shall be registered with the division according to rules made by the division under
184 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

185 (11) Before providing information requested under this section, the division shall give
186 priority to criminal justice agencies needs.

187 (12) (a) It is a class B misdemeanor for a person to knowingly or intentionally access,
188 use, disclose, or disseminate a record created, maintained, or to which access is granted by the
189 division or any information contained in a record created, maintained, or to which access is
190 granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or
191 policy of a governmental entity.

192 (b) A person who discovers or becomes aware of any unauthorized use of records
193 created or maintained, or to which access is granted by the division shall inform the
194 commissioner and the director of the Utah Bureau of Criminal Identification of the
195 unauthorized use.

196 (13) (a) Subject to Subsection (13)(b), a qualifying entity or an entity described in
197 Subsection (2)(b) may request that the division register fingerprints taken for the purpose of
198 conducting current and future criminal background checks under this section with:

- 199 (i) the WIN Database rap back system, or any successor system;
- 200 (ii) the FBI Rap Back System; or
- 201 (iii) a system maintained by the division.

202 (b) A qualifying entity or an entity described in Subsection (2)(b) may only make a
203 request under Subsection (13)(a) if the entity:

- 204 (i) has the authority through state or federal statute or federal executive order;
 - 205 (ii) obtains a signed waiver from the individual whose fingerprints are being registered;
- 206 and

207 (iii) establishes a privacy risk mitigation strategy to ensure that the entity only receives
208 notifications for individuals with whom the entity maintains an authorizing relationship.

209 (14) The division is authorized to submit fingerprints to the FBI Rap Back System to
210 be retained in the FBI Rap Back System for the purpose of being searched by future
211 submissions to the FBI Rap Back System, including latent fingerprint searches.

212 (15) (a) The division shall impose fees set in accordance with Section [63J-1-504](#) for
213 the applicant fingerprint card, name check, and to register fingerprints under Subsection

214 (13)(a).

215 (b) Funds generated under this Subsection (15) shall be deposited into the General
216 Fund as a dedicated credit by the department to cover the costs incurred in providing the
217 information.

218 (c) The division may collect fees charged by an outside agency for services required
219 under this section.

220 (16) For the purposes of conducting a criminal background check authorized under
221 Subsection (2)(h) or [(2)](i), the Department of Human Resource Management, in accordance
222 with Title 67, Chapter 19, Utah State Personnel Management Act, and the governor's office
223 shall have direct access to criminal background information maintained under Title 53, Chapter
224 10, Part 2, Bureau of Criminal Identification.

225 Section 2. Section 53E-7-401 is enacted to read:

226 **CHAPTER 7. STUDENTS WITH DISABILITIES**

227 **Part 4. Special Needs Opportunity Scholarship Program**

228 **53E-7-401. Definitions.**

229 As used in this part:

230 (1) "Eligible student" means a student who:

231 (a) is eligible to participate in public school, in kindergarten or grades 1-12;

232 (b) is a resident of the state;

233 (c) (i) has an IEP;

234 (ii) has an individualized family service plan in accordance with the Individuals with
235 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., if entering kindergarten;

236 (iii) is determined by a multidisciplinary evaluation team to be eligible for services
237 under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; or

238 (iv) is diagnosed with at least one of the following:

239 (A) an intellectual disability;

240 (B) a hearing impairment, including deafness;

241 (C) a speech or language impairment;

242 (D) a visual impairment, including blindness;

243 (E) a serious emotional disturbance;

244 (F) an orthopedic impairment;

- 245 (G) autism;
246 (H) a traumatic brain injury; or
247 (I) any other health impairment or specific disability; and
248 (d) during the school year for which the student is applying for the scholarship, is not:
249 (i) a scholarship student in the Carson Smith Scholarship Program created in Section
250 53F-4-302; or
251 (ii) a public school student.
252 (2) (a) "Employee" means an individual working in a position in which the individual's
253 salary, wages, pay, or compensation, including as a contractor, is paid from:
254 (i) program donations received by a scholarship granting organization; or
255 (ii) scholarship money allocated to a qualifying school by a scholarship granting
256 organization under Section 53E-7-405.
257 (b) "Employee" does not include an individual who volunteers at the scholarship
258 granting organization or qualifying school.
259 (3) "Officer" means:
260 (a) a member of the board of a scholarship granting organization or qualifying school;
261 or
262 (b) the chief administrative officer of a scholarship granting organization or qualifying
263 school.
264 (4) "Qualifying school" means a private school that:
265 (a) provides kindergarten, elementary, or secondary education;
266 (b) is approved by the state board under Section 53F-4-303; and
267 (c) meets the requirements described in Section 53E-7-403.
268 (5) "Program donations" means donations to the program under Section 53E-7-405.
269 (6) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother,
270 uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,
271 sister-in-law, son-in-law, or daughter-in-law.
272 (7) "Scholarship" means a grant awarded to an eligible student:
273 (a) by a scholarship granting organization out of program donations; and
274 (b) for the purpose of paying for a scholarship expense.
275 (8) "Scholarship expense" means:

- 276 (a) tuition, fees, textbooks, or uniforms for a qualifying school;
277 (b) educational therapy, if the educational therapy is provided by a licensed physician
278 or licensed practitioner, including occupational, behavioral, physical, and speech-language
279 therapies;
280 (c) textbooks, curriculum, or other instructional materials, including supplemental
281 materials or associated online instruction required by a curriculum;
282 (d) tuition and fees for an online learning course or program; or
283 (e) fees for a national norm-referenced examination, advanced placement examination,
284 or similar course, fees associated with a state-recognized industry certification exam, or any
285 examination related to college or university admission.

- 286 (9) "Scholarship granting organization" means an organization that is:
287 (a) qualified as tax exempt under Section 501(c)(3), Internal Revenue Code; and
288 (b) recognized through an agreement with the state board as a scholarship granting
289 organization, as described in Section [53E-7-404](#).

- 290 (10) "Special Needs Opportunity Scholarship Program" or "program" means the
291 program established in Section [53E-7-402](#).

- 292 (11) "Value of the weighted pupil unit" means the amount established each year in the
293 enacted public education budget that is multiplied by the number of weighted pupil units to
294 yield the funding level for the basic state-supported school program.

295 Section 3. Section **53E-7-402** is enacted to read:

296 **53E-7-402. Special Needs Opportunity Scholarship Program.**

- 297 (1) There is established the Special Needs Opportunity Scholarship Program to which a
298 parent may apply to a scholarship granting organization on behalf of the parent's student for a
299 scholarship to help cover the cost of a scholarship expense.

- 300 (2) A scholarship granting organization shall:

- 301 (a) award, in accordance with this part, scholarships to eligible students; and
302 (b) determine the amount of a scholarship in accordance with Subsection (3).

- 303 (3) A scholarship granting organization shall determine a full-year scholarship award to
304 pay for the cost of one or more scholarship expenses in an amount not more than:

- 305 (a) for an eligible student with an IEP, the value of the weighted pupil unit multiplied
306 by two; or

307 (b) for an eligible student who does not have an IEP, the value of the weighted pupil
308 unit.

309 (4) The state board shall prepare and disseminate to a scholarship granting organization
310 for distribution to a parent applying for a scholarship on behalf of a student:

311 (a) information on the program; and

312 (b) information on how a parent may enroll the parent's child in a public school.

313 (5) A scholarship granting organization shall distribute the information described in

314 Subsection (4) to a parent who applies to the scholarship granting organization for a

315 scholarship on behalf of the parent's student.

316 Section 4. Section **53E-7-403** is enacted to read:

317 **53E-7-403. Qualifying school requirements.**

318 (1) A qualifying school shall:

319 (a) notify a scholarship granting organization of the qualifying school's intention to
320 participate in the program;

321 (b) submit evidence to the scholarship granting organization that the qualifying school
322 has been approved by the state board under Section [53F-4-303](#); and

323 (c) submit a signed affidavit to the scholarship granting organization that the qualifying
324 school will comply with the requirements of this part.

325 (2) A qualifying school shall comply with 42 U.S.C. Sec. 1981, as well as meet state
326 and local health and safety laws and codes.

327 (3) Before the beginning of the school year immediately following a school year in
328 which a qualifying school receives scholarship money equal to or more than \$100,000, the
329 qualifying school shall file with a scholarship granting organization that allocates scholarship
330 money to the qualifying school:

331 (a) a surety bond payable to the scholarship granting organization in an amount equal
332 to the aggregate amount of scholarship money expected to be received during the school year;

333 or

334 (b) financial information that demonstrates the financial viability of the qualifying
335 school, as required by the scholarship granting organization.

336 (4) If a scholarship granting organization determines that a qualifying school has
337 violated a provision of this part, the scholarship granting organization may interrupt

338 disbursement of or withhold scholarship money from the qualifying school.

339 (5) (a) If the state board determines that a qualifying school no longer meets the
340 eligibility requirements described in Section 53F-4-303, the state board may withdraw the state
341 board's approval of the school.

342 (b) A private school that does not have the state board's approval under Section
343 53F-4-303 may not accept scholarship money under this part.

344 (6) A qualifying school shall, when administering an annual assessment required under
345 Section 53F-4-303, ensure that the qualifying school uses a norm-referenced assessment.

346 Section 5. Section 53E-7-404 is enacted to read:

347 **53E-7-404. Program administration by the state board.**

348 (1) The state board shall administer the program.

349 (2) The state board shall:

350 (a) provide a tax credit certificate form, for use by a scholarship granting organization
351 as described in Section 53E-7-407, that includes:

352 (i) the name, address, and social security number or federal employer identification
353 number of the person that makes a donation under Section 53E-7-405;

354 (ii) the date of the donation;

355 (iii) the amount of the donation;

356 (iv) the amount of the tax credit; and

357 (v) any other relevant information;

358 (b) conduct a financial review or audit of a scholarship granting organization, if the
359 state board receives evidence of fraudulent practice by the scholarship granting organization;

360 (c) conduct a criminal background check on each scholarship granting organization
361 employee and scholarship granting organization officer;

362 (d) establish uniform financial accounting standards for scholarship granting
363 organizations; and

364 (e) annually calculate the amount of the program donations cap described in Section
365 53E-7-407.

366 (3) (a) In accordance with Subsection (4) and Title 63G, Chapter 6a, Utah Procurement
367 Code, the state board shall issue a request for proposals and enter into at least one agreement
368 with an organization that is qualified as tax exempt under Section 501(c)(3), Internal Revenue

369 Code, to be recognized by the state board as a scholarship granting organization.

370 (b) An organization that responds to a request for proposals described in Subsection

371 (3)(a) shall submit the following information in the organization's response:

372 (i) a copy of the organization's incorporation documents;

373 (ii) a copy of the organization's Internal Revenue Service determination letter

374 qualifying the organization as being tax exempt under Section 501(c)(3), Internal Revenue

375 Code;

376 (iii) a description of the methodology the organization will use to evaluate whether a

377 student is an eligible student; and

378 (iv) a description of the organization's proposed scholarship application process.

379 (4) (a) The state board shall enter into an agreement described in Subsection (3)(a) with

380 one scholarship granting organization on or before January 1, 2020.

381 (b) The state board may enter into an agreement described in Subsection (3)(a) with

382 additional scholarship granting organizations after January 1, 2021, if the state board makes

383 rules regarding how multiple scholarship granting organizations may issue tax credit

384 certificates in accordance with Section [53E-7-407](#).

385 (c) (i) No later than 10 days after the day on which the state board enters into an

386 agreement with a scholarship granting organization, the state board shall forward the name and

387 contact information of the scholarship granting organization to the State Tax Commission.

388 (ii) If under Subsection (5)(c)(i), the state board bars a scholarship granting

389 organization from further participation in the program, the state board shall, no later than 10

390 days after the day on which the state board bars the scholarship granting organization, forward

391 the name and contact information of the barred scholarship granting organization to the State

392 Tax Commission.

393 (5) (a) If the state board determines that a scholarship granting organization has

394 violated a provision of this part or state board rule, the state board shall send written notice to

395 the scholarship granting organization explaining the violation and the remedial action required

396 to correct the violation.

397 (b) A scholarship granting organization that receives a notice described in Subsection

398 (5)(a) shall, no later than 60 days after the day on which the scholarship granting organization

399 receives the notice, correct the violation and report the correction to the state board.

400 (c) (i) If a scholarship granting organization that received a notice described in
401 Subsection (5)(a) fails to correct a violation in the time period described in Subsection (5)(b),
402 the state board may bar the scholarship granting organization from further participation in the
403 program.

404 (ii) A scholarship granting organization may appeal a decision made by the state board
405 under Subsection (5)(c)(i) in accordance with Title 63G, Chapter 4, Administrative Procedures
406 Act.

407 (d) A scholarship granting organization may not accept program donations while the
408 scholarship granting organization:

409 (i) is barred from participating in the program under Subsection (5)(c)(i); or

410 (ii) has an appeal pending under Subsection (5)(c)(ii).

411 (e) A scholarship granting organization that has an appeal pending under Subsection
412 (5)(c)(ii) may continue to administer scholarships from previously donated program donations
413 during the pending appeal.

414 (6) The state board shall provide for a process for a scholarship granting organization
415 to report information as required under Section [53E-7-405](#).

416 (7) The state board shall make rules to administer the program, including rules for:

417 (a) a scholarship granting organization's acceptance of program donations;

418 (b) the administration of scholarships to a qualifying school receiving scholarship
419 money from a scholarship granting organization that is barred from participating in the
420 program under Subsection (5)(c)(i);

421 (c) payment of scholarship money to qualifying schools by a scholarship granting
422 organization;

423 (d) granting scholarship awards and disbursing scholarship money for nontuition
424 scholarship expenses by a scholarship granting organization; and

425 (e) audit and report requirements as described in Section [53E-7-405](#).

426 Section 6. Section **53E-7-405** is enacted to read:

427 **53E-7-405. Program donations -- Scholarship granting organization**

428 **requirements.**

429 (1) A person may make a donation to a scholarship granting organization to help fund
430 scholarships through the program and potentially receive a nonrefundable tax credit as

431 described in Sections 59-7-624 and 59-10-1041.

432 (2) In accordance with Section 53E-7-404, an organization may enter into an
433 agreement with the state board to be a scholarship granting organization.

434 (3) A scholarship granting organization shall:

435 (a) accept program donations;

436 (b) adopt an application process in accordance with Subsection (4);

437 (c) review scholarship applications and determine scholarship awards;

438 (d) allocate scholarship money to a scholarship recipient's parent or, on the parent's
439 behalf, to a qualifying school in which the scholarship recipient is enrolled;

440 (e) adopt a process, with state board approval, that allows a parent to use a scholarship
441 to pay for a nontuition scholarship expense for the scholarship recipient;

442 (f) ensure that:

443 (i) at least 90% of the scholarship granting organization's revenue from program
444 donations is spent on scholarships;

445 (ii) no more than 10% of the scholarship granting organization's revenue from program
446 donations is spent on administration of the program; and

447 (iii) all revenue from program donations interest or investments is spent on
448 scholarships;

449 (g) carry forward no more than 40% of the scholarship granting organization's program
450 donations from the state fiscal year in which the scholarship granting organization received the
451 program donations to the following state fiscal year;

452 (h) prohibit a scholarship granting organization employee or officer from handling,
453 managing, or processing program donations, if, based on a criminal background check
454 conducted by the state board in accordance with Section 53E-7-404, the state board identifies
455 the employee or officer as posing a risk to the appropriate use of programs donations;

456 (i) ensure that a scholarship can be transferred during the school year to a different
457 qualifying school that accepts the scholarship recipient;

458 (j) report to the state board on or before June 1 of each year the following information,
459 prepared by a certified public accountant:

460 (i) the name and address of the scholarship granting organization;

461 (ii) the total number and total dollar amount of program donations that the scholarship

462 granting organization received during the previous calendar year;
463 (iii) the total number and total dollar amount of scholarships the scholarship granting
464 organization awarded during the previous calendar year; and
465 (iv) the percentage of first-time scholarship recipients who were enrolled in a public
466 school during the previous school year or who entered kindergarten or a higher grade for the
467 first time in Utah;
468 (k) issue tax credit certificates as described in Section 53E-7-407; and
469 (l) require a parent to notify a scholarship granting organization if the parent's
470 scholarship recipient:
471 (i) receives scholarship money for tuition expenses; and
472 (ii) does not have continuing enrollment and attendance at a qualifying school.
473 (4) (a) An application for a scholarship shall contain an acknowledgment by the
474 applicant's parent that the qualifying school selected by the parent for the applicant to attend
475 using a scholarship is capable of providing the level of disability services required for the
476 student.
477 (b) A scholarship application form shall contain the following statement:
478 "I acknowledge that (1) A private school may not provide the same level of disability
479 services that are provided in a public school;
480 (2) I will assume full financial responsibility for the education of my scholarship
481 recipient if I accept this scholarship;
482 (3) Acceptance of this scholarship has the same effect as a parental refusal to consent
483 to evaluation or services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals
484 with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; and
485 (4) My child may return to a public school at any time."
486 (c) Upon acceptance of a scholarship, the parent assumes full financial responsibility
487 for the education of the scholarship recipient.
488 (d) Acceptance of a scholarship has the same effect as a parental refusal to consent to
489 evaluation or services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals with
490 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.
491 (e) The creation of the program or granting of a scholarship does not:
492 (i) imply that a public school did not provide a free and appropriate public education

493 for a student; or

494 (ii) constitute a waiver or admission by the state.

495 (5) A scholarship granting organization shall demonstrate the scholarship granting
496 organization's financial accountability by annually submitting to the state board a financial
497 information report that:

498 (a) complies with the uniform financial accounting standards described in Section
499 53E-7-404; and

500 (b) is prepared by a certified public accountant.

501 (6) (a) If a scholarship granting organization allocates \$500,000 or more in
502 scholarships annually through the program, the scholarship organization shall:

503 (i) contract for an annual audit, conducted by a certified public accountant who is
504 independent from:

505 (A) the scholarship granting organization; and

506 (B) the scholarship granting organization's accounts and records pertaining to program
507 donations; and

508 (ii) in accordance with Subsection (6)(b), report the results of the audit to the state
509 board for review.

510 (b) For the report described in Subsection (6)(a)(ii), the scholarship granting
511 organization shall:

512 (i) include the scholarship granting organization's financial statements in a format that
513 meets generally accepted accounting standards; and

514 (ii) submit the report to the state board no later than 180 days after the last day of a
515 scholarship granting organization's fiscal year.

516 (c) The certified public accountant shall conduct an audit described in Subsection
517 (6)(a)(i) in accordance with generally accepted auditing standards and rules made by the state
518 board.

519 (d) (i) The state board shall review a report submitted under this section and may
520 request that the scholarship granting organization revise or supplement the report if the report
521 is not in compliance with the provisions of this Subsection (6) or rules adopted by the state
522 board.

523 (ii) A scholarship granting organization shall provide a revised report or supplement to

524 the report no later than 45 days after the day on which the state board makes a request
525 described in Subsection (6)(d)(i).

526 (7) (a) A scholarship granting organization may not allocate scholarship money to a
527 qualifying school if:

528 (i) the scholarship granting organization determines that the qualifying school
529 intentionally or substantially misrepresented information on overpayment;

530 (ii) the qualifying school fails to refund an overpayment in a timely manner; or

531 (iii) the qualifying school routinely fails to provide scholarship recipients with
532 promised educational goods or services.

533 (b) A scholarship granting organization shall notify a scholarship recipient if the
534 scholarship granting organization stops allocation of the recipient's scholarship money to a
535 qualifying school under Subsection (7)(a).

536 (8) If a scholarship recipient transfers to another qualifying school during the school
537 year, the scholarship granting organization may prorate scholarship money between the
538 qualifying schools according to the time the scholarship recipient spends at each school.

539 (9) A scholarship granting organization may not:

540 (a) award a scholarship to a relative of the scholarship granting organization's officer or
541 employee; or

542 (b) allocate scholarship money to a qualifying school at which the scholarship recipient
543 has a relative who is an officer or an employee of the qualifying school.

544 Section 7. Section **53E-7-406** is enacted to read:

545 **53E-7-406. Private school regulation -- Student records.**

546 (1) Nothing in this part:

547 (a) grants additional authority to any state agency or LEA to regulate private schools
548 except as expressly set forth in this part; or

549 (b) shall be construed to expand the regulatory authority of the state, a state office
550 holder, or a local school district to impose any additional regulation of a qualifying school
551 beyond those necessary to enforce the requirements of the program.

552 (2) A qualifying school shall be given the maximum freedom to provide for the
553 educational needs of a scholarship recipient who attends the qualifying school without
554 unlawful governmental control.

555 (3) Except as provided in Section 53E-7-403, a qualifying school may not be required
556 to alter the qualifying school's creed, practices, admission policy, or curriculum in order to
557 accept scholarship money.

558 (4) A local education agency or school in a local education agency in which a
559 scholarship recipient was previously enrolled shall provide to a qualifying school in which the
560 scholarship recipient is currently enrolled a copy of all requested school records relating to the
561 scholarship recipient, subject to:

562 (a) Title 53E, Chapter 9, Student Privacy and Data Protection; and

563 (b) Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g.

564 Section 8. Section 53E-7-407 is enacted to read:

565 **53E-7-407. Tax credit certificates issued by a scholarship granting organization.**

566 (1) In accordance with this section and subject to Subsection (3), a scholarship granting
567 organization shall provide a tax credit certificate to a person that makes a donation as described
568 in Section 53E-7-405.

569 (2) (a) The scholarship granting organization shall issue a tax credit certificate
570 described in Subsection (1) on the tax credit certificate form described in Section 53E-7-404.

571 (b) The scholarship granting organization shall provide the information from a
572 completed tax credit certificate to the State Tax Commission electronically and in a manner
573 prescribed by the State Tax Commission.

574 (c) A scholarship granting organization shall issue a tax credit certificate within 30
575 days after the day on which a person makes a donation to the program.

576 (3) (a) A scholarship granting organization may not issue a tax credit certificate for a
577 calendar year once the total amount of the tax credit certificates issued for the calendar year
578 exceed the program donations cap amount described in Subsection (4).

579 (b) Before accepting a donation to the program from a person, the scholarship granting
580 organization shall provide the person with notice:

581 (i) that the donation may not be eligible for a tax credit;

582 (ii) of the process described in Subsection (3)(c); and

583 (iii) of the total amount of tax credit certificates that the scholarship granting
584 organization has issued for the calendar year.

585 (c) During a calendar year, a scholarship granting organization shall:

586 (i) issue tax credit certificates in the order that the scholarship granting organization
587 received a corresponding donation; and

588 (ii) track the total amount of program donations received during the year as
589 corresponding tax credit certificates are issued.

590 (d) If a scholarship granting organization accepts a donation that, when added to the
591 current total amount of program donations received that year will exceed the program
592 donations cap described in Subsection (4), the scholarship granting organization shall issue a
593 tax credit certificate in the amount that is the difference between the program donations cap
594 and the total amount of program donations received before the donation was received.

595 (4) (a) The program donations cap for the 2020 calendar year is \$12,000,000.

596 (b) For a calendar year after 2020, the state board shall calculate the program donations
597 cap as follows:

598 (i) if the total program donations for the previous calendar year exceed 90% of the cap
599 amount for that calendar year, the cap for the current calendar year is the cap amount for the
600 previous calendar year increased by 10%; or

601 (ii) if the total program donations for the previous calendar year did not exceed 90% of
602 the cap amount for that calendar year, the cap for the current calendar year is the same as the
603 cap amount for the previous calendar year.

604 (5) A person that receives a tax credit certificate in accordance with this section shall
605 retain the certificate for the same time period a person is required to keep books and records
606 under Section [59-1-1406](#).

607 Section 9. Section **53F-4-303** is amended to read:

608 **53F-4-303. Eligible private schools.**

609 (1) For purposes of this section, "scholarship student" includes an eligible student who
610 is a scholarship recipient as described in Title 53E, Chapter 7, Part 4, Special Needs
611 Opportunity Scholarship Program.

612 ~~[(1)]~~ (2) To be eligible to enroll a scholarship student, a private school shall:

613 (a) have a physical location in Utah where the scholarship students attend classes and
614 have direct contact with the school's teachers;

615 (b) (i) (A) obtain an audit and report from a licensed independent certified public
616 accountant that conforms with the following requirements:

- 617 (I) the audit shall be performed in accordance with generally accepted auditing
618 standards;
- 619 (II) the financial statements shall be presented in accordance with generally accepted
620 accounting principles; and
- 621 (III) the audited financial statements shall be as of a period within the last 12 months;
622 or
- 623 (B) contract with an independent licensed certified public accountant to conduct an
624 Agreed Upon Procedures engagement, as adopted by the board; and
- 625 (ii) submit the audit report or report of the agreed upon procedure to the board when
626 the private school applies to accept scholarship students;
- 627 (c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;
- 628 (d) meet state and local health and safety laws and codes;
- 629 (e) provide a written disclosure to the parent of each prospective student, before the
630 student is enrolled of:
- 631 (i) the special education services that will be provided to the student, including the cost
632 of those services;
- 633 (ii) tuition costs;
- 634 (iii) additional fees a parent will be required to pay during the school year; and
- 635 (iv) the skill or grade level of the curriculum that the student will be participating in;
- 636 (f) (i) administer an annual assessment of each scholarship student's academic
637 progress;
- 638 (ii) report the results of the assessment described in Subsection [~~(1)~~] (2)(f)(i) to the
639 student's parent; and
- 640 (iii) for a student who receives a scholarship under this part, make the results available
641 to the assessment team evaluating the student pursuant to Subsection [53F-4-302\(6\)](#);
- 642 (g) employ or contract with teachers who:
- 643 (i) hold baccalaureate or higher degrees;
- 644 (ii) have at least three years of teaching experience in public or private schools; or
- 645 (iii) have the necessary special skills, knowledge, or expertise that qualifies them to
646 provide instruction:
- 647 (A) in the subjects taught; and

648 (B) to the special needs students taught;

649 (h) maintain documentation demonstrating that teachers at the private school meet the
650 qualifications described in Subsection ~~[(1)]~~ (2)(g);

651 (i) require the following individuals to submit to a nationwide, fingerprint-based
652 criminal background check and ongoing monitoring, in accordance with Section 53G-11-402,
653 as a condition for employment or appointment, as authorized by the Adam Walsh Child
654 Protection and Safety Act of 2006, Pub. L. No. 109-248:

655 (i) an employee who does not hold a current Utah educator license issued by the board
656 under Title 53E, Chapter 6, Education Professional Licensure;

657 (ii) a contract employee; and

658 (iii) a volunteer who is given significant unsupervised access to a student in connection
659 with the volunteer's assignment; and

660 (j) provide to parents the relevant credentials of the teachers who will be teaching their
661 students.

662 ~~[(2)]~~ (3) A private school is not eligible to enroll scholarship students if:

663 (a) the private school requires a student to sign a contract waiving the student's rights
664 to transfer to another eligible private school during the school year;

665 (b) the audit report submitted under Subsection ~~[(1)]~~ (2)(b) contains a going concern
666 explanatory paragraph; or

667 (c) the report of the agreed upon procedure submitted under Subsection ~~[(1)]~~ (2)(b)
668 shows that the private school does not have adequate working capital to maintain operations for
669 the first full year, as determined under Subsection ~~[(1)]~~ (2)(b).

670 ~~[(3)]~~ (4) A home school is not eligible to enroll scholarship students.

671 ~~[(4)]~~ (5) Residential treatment facilities licensed by the state are not eligible to enroll
672 scholarship students.

673 ~~[(5)]~~ (6) A private school intending to enroll scholarship students shall submit an
674 application to the board by May 1 of the school year preceding the school year in which it
675 intends to enroll scholarship students.

676 ~~[(6)]~~ (7) The board shall:

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

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

680 ~~[(7)]~~ (8) An approved eligible private school that changes ownership shall submit a
681 new application to the board and demonstrate that it continues to meet the eligibility
682 requirements of this section.

683 Section 10. Section **59-7-109** is amended to read:

684 **59-7-109. Charitable contributions.**

685 (1) Except as provided in ~~[Subsection]~~ Subsections (2) and (4), a subtraction is allowed
686 for charitable contributions made within the taxable year to organizations described in Section
687 170(c), Internal Revenue Code.

688 (2) (a) The aggregate amount of charitable contributions deductible under this section
689 may not exceed 10% of the taxpayer's apportionable income.

690 (b) The limitation imposed in this ~~[subsection]~~ Subsection (2) shall be calculated on a
691 combined basis in a combined report.

692 (3) Any charitable contribution made in a taxable year ~~[beginning on or after January 1,~~
693 ~~1994, which]~~ that is in excess of the amount allowed as a deduction under Subsection (2) may
694 be carried over to the five succeeding taxable years in the same manner as allowed under
695 federal law.

696 (4) A taxpayer may not subtract a charitable contribution that meets the requirements
697 of this section to the extent that the taxpayer claims a tax credit under Section 59-7-624 for the
698 same charitable contribution.

699 Section 11. Section **59-7-624** is enacted to read:

700 **59-7-624. Nonrefundable tax credit for donation to Special Needs Opportunity**
701 **Scholarship Program.**

702 (1) A taxpayer that makes a donation to the Special Needs Opportunity Scholarship
703 Program established in Section 53E-7-402 may claim a nonrefundable tax credit equal to 100%
704 of the amount stated on a tax credit certificate issued in accordance with Section 53E-7-407.

705 (2) (a) If the amount of a tax credit listed on the tax credit certificate exceeds a
706 taxpayer's liability under this chapter for a taxable year, the taxpayer may carry forward the
707 amount of the tax credit exceeding the liability for a period that does not exceed the next three
708 taxable years.

709 (b) A taxpayer may not carry back the amount of the tax credit that exceeds the

710 taxpayer's tax liability for the taxable year.

711 Section 12. Section **59-10-1041** is enacted to read:

712 **59-10-1041. Nonrefundable tax credit for donation to Special Needs Opportunity**
713 **Scholarship Program.**

714 (1) Except as provided in Subsection (3), a claimant, estate, or trust that makes a
715 donation to the Special Needs Opportunity Scholarship Program established in Section
716 53E-7-402, may claim a nonrefundable tax credit equal to 100% of the amount stated on a tax
717 credit certificate issued in accordance with Section 53E-7-407.

718 (2) (a) If the amount of a tax credit listed on the tax credit certificate exceeds a
719 claimant's, estate's, or trust's tax liability under this chapter for a taxable year, the claimant,
720 estate, or trust may carry forward the amount of the tax credit exceeding the liability for a
721 period that does not exceed the next three taxable years.

722 (b) A claimant, estate, or trust may not carry back the amount of the tax credit that
723 exceeds the claimant's, estate's, or trust's tax liability for the taxable year.

724 (3) A claimant, estate, or trust may not claim a credit described in Subsection (1) to the
725 extent the claimant, estate, or trust claims a donation described in Subsection (1) as an itemized
726 deduction on the claimant's, estate's, or trust's federal individual income tax return for that
727 taxable year.

728 Section 13. **Effective date.**

729 (1) Except as provided in Subsection (2), this bill takes effect on January 1, 2020.

730 (2) The amendments to Section 59-7-109 and the enactment of Sections 59-7-624 and
731 59-10-1041 take effect for a taxable year beginning on or after January 1, 2020.