

**SPECIAL NEEDS SCHOLARSHIP AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike Schultz**

Senate Sponsor: Lincoln Fillmore

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**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;
- ▶ prohibits a taxpayer from claiming more than one state income tax benefit from making the donation; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

29           None

30   **Other Special Clauses:**

31           This bill provides a special effective date.

32           This bill provides a coordination clause.

33   **Utah Code Sections Affected:**

34   AMENDS:

35           **53-10-108**, as last amended by Laws of Utah 2019, Chapters 136, 192, and 404

36           **53E-1-202**, as enacted by Laws of Utah 2019, Chapter 324 and last amended by  
37   Coordination Clause, Laws of Utah 2019, Chapter 223

38           **53E-8-403**, as last amended by Laws of Utah 2019, Chapter 314

39           **53F-4-303**, as last amended by Laws of Utah 2019, Chapter 186

40           **59-7-109**, as last amended by Laws of Utah 1995, Chapter 311

41   ENACTS:

42           **53E-7-401**, Utah Code Annotated 1953

43           **53E-7-402**, Utah Code Annotated 1953

44           **53E-7-403**, Utah Code Annotated 1953

45           **53E-7-404**, Utah Code Annotated 1953

46           **53E-7-405**, Utah Code Annotated 1953

47           **53E-7-406**, Utah Code Annotated 1953

48           **53E-7-407**, Utah Code Annotated 1953

49           **59-7-625**, Utah Code Annotated 1953

50           **59-10-1041**, Utah Code Annotated 1953

51   **Utah Code Sections Affected by Coordination Clause:**

52           **53E-1-202**, as enacted by Laws of Utah 2019, Chapter 324 and last amended by  
53   Coordination Clause, Laws of Utah 2019, Chapter 223

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) employees;

(ii) applicants for employment;

(iii) volunteers; and

(iv) contract employees;

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

(i) cabinet members;

(ii) judicial applicants; and

(iii) members of boards, committees, and commissions appointed by the governor;

(j) the office of the lieutenant governor for the purpose of conducting a background check on an individual applying to be a notary public under Section 46-1-3.

(k) agencies and individuals as the commissioner authorizes for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; ~~[and]~~

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

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

(3) An agreement under Subsection (2)(k) shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of

110 individuals to whom the information relates, and ensure the confidentiality and security of the  
111 data.

112 (4) (a) Before requesting information, a qualifying entity under Subsection (2)(c), state  
113 agency, or other agency or individual described in Subsections (2)(d) through (j) and (2)(l)  
114 shall obtain a signed waiver from the person whose information is requested.

115 (b) The waiver shall notify the signee:

116 (i) that a criminal history background check will be conducted;

117 (ii) who will see the information; and

118 (iii) how the information will be used.

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

123 (i) personal identifying information for the subject of the background check; and

124 (ii) the fee required by Subsection (15).

125 (d) A qualifying entity under Subsection (2)(c), state agency, or other agency or  
126 individual described in Subsections (2)(d) through (g) that submits a request for a WIN  
127 database check and a nationwide background check shall provide to the bureau:

128 (i) personal identifying information for the subject of the background check;

129 (ii) a fingerprint card for the subject of the background check; and

130 (iii) the fee required by Subsection (15).

131 (e) Information received by a qualifying entity under Subsection (2)(c), state agency, or  
132 other agency or individual described in Subsections (2)(d) through (j) may only be:

133 (i) available to individuals involved in the hiring or background investigation of the job  
134 applicant, employee, or notary applicant;

135 (ii) used for the purpose of assisting in making an employment appointment, selection,  
136 or promotion decision or for considering a notary applicant under Section 46-1-3; and

(iii) used for the purposes disclosed in the waiver signed in accordance with Subsection (4)(b).

(f) An individual who disseminates or uses information obtained from the division under Subsections (2)(c) through (j) for purposes other than those specified under Subsection (4)(e), in addition to any penalties provided under this section, is subject to civil liability.

(g) A qualifying entity under Subsection (2)(c), state agency, or other agency or individual described in Subsections (2)(d) through (j) that obtains background check information shall provide the subject of the background check an opportunity to:

(i) review the information received as provided under Subsection (9); and

(ii) respond to any information received.

(h) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules to implement this Subsection (4).

(i) The division or its employees are not liable for defamation, invasion of privacy, negligence, or any other claim in connection with the contents of information disseminated under Subsections (2)(c) through (j).

(5) (a) Any criminal history record information obtained from division files may be used only for the purposes for which it was provided and may not be further disseminated, except under Subsection (5)(b), (c), or (d).

(b) A criminal history provided to an agency pursuant to Subsection (2)(f) may be provided by the agency to the individual who is the subject of the history, another licensed child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an adoption.

(c) A criminal history of a defendant provided to a criminal justice agency under Subsection (2)(a) may also be provided by the prosecutor to a defendant's defense counsel, upon request during the discovery process, for the purpose of establishing a defense in a criminal case.

(d) A public transit district, as described in Title 17B, Chapter 2a, Part 8, Public

Transit District Act, that is under contract with a state agency to provide services may, for the purposes of complying with Subsection 62A-5-103.5(5), provide a criminal history record to the state agency or the agency's designee.

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

(a) that have been declined for prosecution;

(b) that have been dismissed; or

(c) regarding which a person has been acquitted.

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

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

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

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

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

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

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

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

191 (a) shall be charged for access; and

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

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

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

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

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

208 (i) the WIN Database rap back system, or any successor system;

209 (ii) the FBI Rap Back System; or

210 (iii) a system maintained by the division.

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

213 (i) has the authority through state or federal statute or federal executive order;

214 (ii) obtains a signed waiver from the individual whose fingerprints are being registered;

215 and

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



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

(15) (a) The division shall impose fees set in accordance with Section 63J-1-504 for the applicant fingerprint card, name check, and to register fingerprints under Subsection (13)(a).

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

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

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

Section 2. Section 53E-1-202 is amended to read:

**53E-1-202. Reports to and action required of the Public Education Appropriations Subcommittee.**

(1) In accordance with applicable provisions and Section 68-3-14, the following recurring reports are due to the Public Education Appropriations Subcommittee:

(a) the report by the STEM Action Center Board described in Section 9-22-109, including the information described in Section 9-22-113 on the status of the computer science initiative;

~~[(a)]~~ (b) the State Superintendent's Annual Report by the state board described in Section 53E-1-203;

(c) beginning in 2021, the report described in Section 53E-7-404 by the State Board of

Education on the Special Needs Opportunity Scholarship Program; and

~~[(b)]~~ (d) the report described in Section 53E-10-703 by the Utah Leading through Effective, Actionable, and Dynamic Education director on research and other activities~~[-and]~~.

~~[(c) the report by the STEM Action Center Board described in Section 63N-12-208; including the information described in Section 63N-12-213 on the status of the computer science initiative.]~~

(2) (a) The one-time report by the state board regarding cost centers and implementing activity based costing is due to the Public Education Appropriations Subcommittee in accordance with Section 53E-3-520.

(b) The occasional report, described in Section 53F-2-502 by the state board on the program evaluation of the dual language immersion program, is due to the Public Education Appropriations Subcommittee and in accordance with Section 68-3-14.

(3) In accordance with applicable provisions, the Public Education Appropriations Subcommittee shall complete the following:

(a) the evaluation described in Section 53F-2-410 of funding for at-risk students;

(b) the reviews of related to basic school programs as described in Section 53F-2-414;

and

(c) if required, the study described in Section 53F-4-304 of scholarship payments.

Section 3. Section 53E-7-401 is enacted to read:

## CHAPTER 7. STUDENTS WITH DISABILITIES

### Part 4. Special Needs Opportunity Scholarship Program

#### 53E-7-401. Definitions.

As used in this part:

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

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

(b) is a resident of the state;

(c) (i) has an IEP;

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

(iii) is determined by a multidisciplinary evaluation team to be eligible for services under the Individuals with Disabilities Education Act, Subchapter II, 20 U.S.C. Secs. 1400 to 1419; and

(d) during the school year for which the student is applying for the scholarship, is not:

(i) a scholarship student in the Carson Smith Scholarship Program created in Section 53F-4-302; or

(ii) a public school student.

(2) (a) "Employee" means an individual working in a position in which the individual's salary, wages, pay, or compensation, including as a contractor, is paid from:

(i) program donations received by a scholarship granting organization; or

(ii) scholarship money allocated to a qualifying school by a scholarship granting organization under Section 53E-7-405.

(b) "Employee" does not include an individual who volunteers at the scholarship granting organization or qualifying school.

(3) "Officer" means:

(a) a member of the board of a scholarship granting organization or qualifying school;

or

(b) the chief administrative officer of a scholarship granting organization or qualifying school.

(4) "Program donations" means donations to the program under Section 53E-7-405.

(5) "Qualifying school" means a private school that:

(a) provides kindergarten, elementary, or secondary education;

(b) is approved by the state board under Section 53F-4-303; and

(c) meets the requirements described in Section 53E-7-403.

(6) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother,

uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,  
sister-in-law, son-in-law, or daughter-in-law.

(7) "Scholarship" means a grant awarded to an eligible student:

(a) by a scholarship granting organization out of program donations; and

(b) for the purpose of paying for a scholarship expense.

(8) "Scholarship expense" means:

(a) tuition, fees, or textbooks for a qualifying school;

(b) educational therapy, if the educational therapy is provided by a licensed physician  
or licensed practitioner, including occupational, behavioral, physical, or speech-language  
therapies;

(c) textbooks, curriculum, or other instructional materials, including supplemental  
materials or associated online instruction required by a curriculum;

(d) tuition and fees for an online learning course or program; or

(e) fees associated with a state-recognized industry certification exam, or any  
examination related to college or university admission.

(9) "Scholarship granting organization" means an organization that is:

(a) qualified as tax exempt under Section 501(c)(3), Internal Revenue Code; and

(b) recognized through an agreement with the state board as a scholarship granting  
organization, as described in Section [53E-7-404](#).

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

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

Section 4. Section **53E-7-402** is enacted to read:

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

(1) There is established the Special Needs Opportunity Scholarship Program under

which a parent may apply to a scholarship granting organization on behalf of the parent's student for a scholarship to help cover the cost of a scholarship expense.

(2) A scholarship granting organization shall:

(a) award, in accordance with this part, scholarships to eligible students; and

(b) determine the amount of a scholarship in accordance with Subsection (3).

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

(a) for an eligible student in grades 1 through 12 with an IEP, the value of the weighted pupil unit multiplied by two;

(b) for an eligible student in grades 1 through 12 who does not have an IEP, the value of the weighted pupil unit;

(c) for an eligible student in kindergarten with an IEP, the value of the weighted pupil unit; or

(d) for an eligible student in kindergarten who does not have an IEP, half the value of the weighted pupil unit.

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

(a) information on the program; and

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

(5) A scholarship granting organization shall distribute the information described in Subsection (4) to a parent who applies to the scholarship granting organization for a scholarship on behalf of the parent's student.

Section 5. Section **53E-7-403** is enacted to read:

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

(1) A qualifying school shall:

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

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

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

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

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

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

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

(4) If a scholarship granting organization determines that a qualifying school has violated a provision of this part, the scholarship granting organization may interrupt disbursement of or withhold scholarship money from the qualifying school.

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

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

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

Section 6. Section 53E-7-404 is enacted to read:

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

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

381 (2) The state board shall:

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

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

386 (ii) the date of the donation;

387 (iii) the amount of the donation;

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

389 (v) any other relevant information;

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

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

394 (d) establish uniform financial accounting standards for scholarship granting  
395 organizations;

396 (e) annually calculate the amount of the program donations cap described in Section  
397 53E-7-407; and

398 (f) beginning in 2021, in accordance with Section 53E-1-202, annually report to the  
399 Public Education Appropriations Subcommittee on the program.

400 (3) (a) In accordance with Subsection (4) and Title 63G, Chapter 6a, Utah Procurement  
401 Code, the state board shall issue a request for proposals and enter into at least one agreement  
402 with an organization that is qualified as tax exempt under Section 501(c)(3), Internal Revenue  
403 Code, to be recognized by the state board as a scholarship granting organization.

404 (b) An organization that responds to a request for proposals described in Subsection  
405 (3)(a) shall submit the following information in the organization's response:

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

407 (ii) a copy of the organization's Internal Revenue Service determination letter  
408 qualifying the organization as being tax exempt under Section 501(c)(3), Internal Revenue  
409 Code;

410 (iii) a description of the methodology the organization will use to verify that a student  
411 is an eligible student under this part; and

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

413 (4) (a) The state board shall enter into an agreement described in Subsection (3)(a) with  
414 one scholarship granting organization on or before January 1, 2021.

415 (b) The state board may enter into an agreement described in Subsection (3)(a) with  
416 additional scholarship granting organizations after January 1, 2022, if the state board makes  
417 rules regarding how multiple scholarship granting organizations may issue tax credit  
418 certificates in accordance with Section [53E-7-407](#).

419 (c) (i) No later than 10 days after the day on which the state board enters into an  
420 agreement with a scholarship granting organization, the state board shall forward the name and  
421 contact information of the scholarship granting organization to the State Tax Commission.

422 (ii) If, under Subsection (5)(c)(i), the state board bars a scholarship granting  
423 organization from further participation in the program, the state board shall, no later than 10  
424 days after the day on which the state board bars the scholarship granting organization, forward  
425 the name and contact information of the barred scholarship granting organization to the State  
426 Tax Commission.

427 (5) (a) If the state board determines that a scholarship granting organization has  
428 violated a provision of this part or state board rule, the state board shall send written notice to  
429 the scholarship granting organization explaining the violation and the remedial action required  
430 to correct the violation.

431 (b) A scholarship granting organization that receives a notice described in Subsection  
432 (5)(a) shall, no later than 60 days after the day on which the scholarship granting organization  
433 receives the notice, correct the violation and report the correction to the state board.



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

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

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

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

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

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

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

(7) The state board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer the program, including rules for:

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

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

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

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

(e) if an eligible student does not continue in enrollment at a qualifying school:

(i) requiring the scholarship granting organization to:

(A) notify the state board; and

(B) obtain reimbursement of scholarship money from the qualifying school in which the eligible student is no longer enrolled; and

(ii) requiring the qualifying school in which the eligible student is no longer enrolled to reimburse scholarship money to the scholarship granting organization; and

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

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

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

(1) A person that makes a donation to a scholarship granting organization to help fund scholarships through the program may be eligible to receive a nonrefundable tax credit as described in Sections [59-7-624](#) and [59-10-1041](#).

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

(3) A scholarship granting organization shall:

(a) accept program donations;

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

(c) review scholarship applications and determine scholarship awards;

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

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

(f) ensure that:

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

(ii) no more than 5% of the scholarship granting organization's revenue from program

488 donations is spent on administration of the program; and

489 (iii) all revenue from program donations' interest or investments is spent on  
490 scholarships;

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

494 (h) at the end of a fiscal year, remit to the state treasurer donation amounts greater than  
495 the amount described in Subsection (3)(g), who shall deposit the money into the Education  
496 Fund;

497 (i) prohibit a scholarship granting organization employee or officer from handling,  
498 managing, or processing program donations, if, based on a criminal background check  
499 conducted by the state board in accordance with Section [53E-7-404](#), the state board identifies  
500 the employee or officer as posing a risk to the appropriate use of program donations;

501 (j) ensure that a scholarship can be transferred during the school year to a different  
502 qualifying school that accepts the scholarship recipient;

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

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

506 (ii) the total number and total dollar amount of program donations that the scholarship  
507 granting organization received during the previous calendar year;

508 (iii) the total number and total dollar amount of scholarships the scholarship granting  
509 organization awarded during the previous calendar year; and

510 (iv) the percentage of first-time scholarship recipients who were enrolled in a public  
511 school during the previous school year or who entered kindergarten or a higher grade for the  
512 first time in Utah;

513 (l) issue tax credit certificates as described in Section [53E-7-407](#); and

514 (m) require a parent to notify a scholarship granting organization if the parent's

515 scholarship recipient:

516 (i) receives scholarship money for tuition expenses; and

517 (ii) does not have continuing enrollment and attendance at a qualifying school.

518 (4) (a) An application for a scholarship shall contain an acknowledgment by the  
519 applicant's parent that the qualifying school selected by the parent for the applicant to attend  
520 using a scholarship is capable of providing the level of disability services required for the  
521 student.

522 (b) A scholarship application form shall contain the following statement:

523 "I acknowledge that:

524 (1) A private school may not provide the same level of disability services that are  
525 provided in a public school;

526 (2) I will assume full financial responsibility for the education of my scholarship  
527 recipient if I accept this scholarship;

528 (3) Acceptance of this scholarship has the same effect as a parental refusal to consent  
529 to evaluation or services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals  
530 with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; and

531 (4) My child may return to a public school at any time."

532 (c) Upon acceptance of a scholarship, the parent assumes full financial responsibility  
533 for the education of the scholarship recipient.

534 (d) Acceptance of a scholarship has the same effect as a parental refusal to consent to  
535 evaluation or services as described in 24 C.F.R. Sec. 300.300, issued under the Individuals with  
536 Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

537 (e) The creation of the program or granting of a scholarship does not:

538 (i) imply that a public school did not provide a free and appropriate public education  
539 for a student; or

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

541 (5) A scholarship granting organization shall demonstrate the scholarship granting

organization's financial accountability by annually submitting to the state board a financial information report that:

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

(b) is prepared by a certified public accountant.

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

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

(A) the scholarship granting organization; and

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

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

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

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

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

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

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

(ii) A scholarship granting organization shall provide a revised report or supplement to the report no later than 45 days after the day on which the state board makes a request described in Subsection (6)(d)(i).

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

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

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

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

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

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

(9) A scholarship granting organization may not:

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

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

Section 8. Section **53E-7-406** is enacted to read:

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

(1) Nothing in this part:

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

(b) expands the regulatory authority of the state, a state office holder, or a local school

district to impose any additional regulation of a qualifying school beyond those necessary to enforce the requirements of the program.

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

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

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

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

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

Section 9. Section **53E-7-407** is enacted to read:

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

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

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

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

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

(3) (a) A scholarship granting organization may not issue a tax credit certificate for a

calendar year if issuing the tax credit certificate will cause the total amount of the tax credit certificates issued for the calendar year to exceed the program donations cap amount described in Subsection (4).

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

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

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

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

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

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

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

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

(4) (a) The program donations cap for the 2021 calendar year is \$6,000,000.

(b) For a calendar year after 2021, the state board shall calculate the program donations cap as follows:

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

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



cap amount for the previous calendar year.

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

Section 10. Section **53E-8-403** is amended to read:

**53E-8-403. Educational programs.**

(1) The Utah Schools for the Deaf and the Blind shall provide an educational program for a student:

(a) based on assessments of the student's abilities; and

(b) in accordance with the student's IEP or Section 504 accommodation plan.

(2) If a student's ability to access the core curriculum is impaired primarily due to a severe sensory loss and requires intensive sensory-based instruction or services, the Utah Schools for the Deaf and the Blind shall provide an educational program that will enable the student, with accommodations, to access the core curriculum.

(3) The Utah Schools for the Deaf and the Blind shall provide instruction in Braille to students who are blind [~~as required by Chapter 7, Part 3, Braille Requirements for Blind Students~~].

Section 11. Section **53F-4-303** is amended to read:

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

(1) As used in this section, "scholarship student" means:

(a) a student who receives a scholarship under this part; or

(b) an eligible student who receives a scholarship under Title 53E, Chapter 7, Part 4, Special Needs Opportunity Scholarship Program.

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

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

(b) (i) (A) obtain an audit and report from a licensed independent certified public

677 accountant that conforms with the following requirements:

678 (I) the audit shall be performed in accordance with generally accepted auditing  
679 standards;

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

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

684 (B) contract with an independent licensed certified public accountant to conduct an  
685 Agreed Upon Procedures engagement, as adopted by the state board; and

686 (ii) submit the audit report or report of the agreed upon procedure to the state board  
687 when the private school applies to accept scholarship students;

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

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

690 (e) provide a written disclosure to the parent of each prospective student, before the  
691 student is enrolled of:

692 (i) the special education services that will be provided to the student, including the cost  
693 of those services;

694 (ii) tuition costs;

695 (iii) additional fees a parent will be required to pay during the school year; and

696 (iv) the skill or grade level of the curriculum that the student will be participating in;

697 (f) (i) administer an annual assessment of each scholarship student's academic  
698 progress;

699 (ii) report the results of the assessment described in Subsection ~~[(1)(f)(i)]~~ (2)(f)(i) to  
700 the student's parent; and

701 (iii) for a student who receives a scholarship under this part, make the results available  
702 to the assessment team evaluating the student pursuant to Subsection 53F-4-302(6);

703 (g) employ or contract with teachers who:

704 (i) hold baccalaureate or higher degrees;  
705 (ii) have at least three years of teaching experience in public or private schools; or  
706 (iii) have the necessary special skills, knowledge, or expertise that qualifies them to  
707 provide instruction:  
708 (A) in the subjects taught; and  
709 (B) to the special needs students taught;  
710 (h) maintain documentation demonstrating that teachers at the private school meet the  
711 qualifications described in Subsection ~~[(1)(g)]~~ (2)(g);  
712 (i) require the following individuals to submit to a nationwide, fingerprint-based  
713 criminal background check and ongoing monitoring, in accordance with Section [53G-11-402](#),  
714 as a condition for employment or appointment, as authorized by the Adam Walsh Child  
715 Protection and Safety Act of 2006, Pub. L. No. 109-248:  
716 (i) an employee who does not hold a current Utah educator license issued by the state  
717 board under Title 53E, Chapter 6, Education Professional Licensure;  
718 (ii) a contract employee; and  
719 (iii) a volunteer who is given significant unsupervised access to a student in connection  
720 with the volunteer's assignment; and  
721 (j) provide to parents the relevant credentials of the teachers who will be teaching their  
722 students.  
723 ~~[(2)]~~ (3) A private school is not eligible to enroll scholarship students if:  
724 (a) the private school requires a student to sign a contract waiving the student's rights  
725 to transfer to another eligible private school during the school year;  
726 (b) the audit report submitted under Subsection ~~[(1)(b)]~~ (2)(b) contains a going concern  
727 explanatory paragraph; or  
728 (c) the report of the agreed upon procedure submitted under Subsection ~~[(1)(b)]~~ (2)(b)  
729 shows that the private school does not have adequate working capital to maintain operations for  
730 the first full year, as determined under Subsection ~~[(1)(b)]~~ (2)(b).

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

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

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

~~[(6)]~~ (7) The state 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.

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

Section 12. Section **59-7-109** is amended to read:

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

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

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

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

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

(4) A taxpayer may not subtract a charitable contribution that meets the requirements

of this section to the extent that the taxpayer claims a tax credit under Section [59-7-625](#) for the same charitable contribution.

Section 13. Section **59-7-625** is enacted to read:

**59-7-625. Nonrefundable tax credit for donation to Special Needs Opportunity Scholarship Program.**

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

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

(b) A taxpayer may not carry back the amount of the tax credit that exceeds the taxpayer's tax liability for the taxable year.

Section 14. Section **59-10-1041** is enacted to read:

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

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

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

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

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

789           Section 15. **Effective date.**

790           (1) Except as provided in Subsection (2), this bill takes effect on January 1, 2021.

791           (2) The amendments to Section [59-7-109](#) and the enactment of Sections [59-7-625](#) and  
792 [59-10-1041](#) take effect for a taxable year beginning on or after January 1, 2021.

793           Section 16. **Coordinating H.B. 332 with S.B. 72 -- Superseding technical and**  
794 **substantive amendments.**

795           If this H.B. 332 and S.B. 72, Revisor's Technical Corrections to Utah Code, both pass  
796 and become law, it is the intent of the Legislature that the amendments to Section [53E-1-202](#) in  
797 H.B. 332 supersede the amendments to Section [53E-1-202](#) in S.B. 72, when the Office of  
798 Legislative Research and General Counsel prepares the Utah Code database for publication.