

1                   **SPECIAL NEEDS OPPORTUNITY SCHOLARSHIP PROGRAM**

2   2018 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Daniel McCay**

5                                   Senate Sponsor: \_\_\_\_\_

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7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ enacts Title 53E, Chapter 7, Part 4, Special Needs Opportunity Scholarship
- 14 Program, including:
  - 15                   • defining terms;
  - 16                   • creating the Special Needs Opportunity Scholarship Program;
  - 17                   • establishing the requirements for qualifying schools;
  - 18                   • requiring the State Board of Education to oversee the Special Needs
  - 19 Opportunity Scholarship Program; and
  - 20                   • establishing the duties of the scholarship granting organizations that administer
  - 21 the program;
  - 22                   ▶ creates a nonrefundable corporate income tax credit and a nonrefundable individual
  - 23 income tax credit for donations to the program; and
  - 24                   ▶ prohibits a taxpayer from claiming more than one state income tax benefit from
  - 25 making the donation.

26 **Money Appropriated in this Bill:**

27                   None



28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **53-10-108**, as last amended by Laws of Utah 2015, Chapters 255 and 389

33 **59-7-109**, as last amended by Laws of Utah 1995, Chapter 311

34 **59-10-1018**, as last amended by Laws of Utah 2012, Chapter 295

35 ENACTS:

36 **53E-7-401**, Utah Code Annotated 1953

37 **53E-7-402**, Utah Code Annotated 1953

38 **53E-7-403**, Utah Code Annotated 1953

39 **53E-7-404**, Utah Code Annotated 1953

40 **53E-7-405**, Utah Code Annotated 1953

41 **53E-7-406**, Utah Code Annotated 1953

42 **53E-7-407**, Utah Code Annotated 1953

43 **59-7-623**, Utah Code Annotated 1953

44 **59-10-1041**, Utah Code Annotated 1953



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

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

48 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**  
49 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**  
50 **-- Missing children records -- Penalty for misuse of records.**

51 (1) As used in this section:

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

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

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

59 (2) Dissemination of information from a criminal history record or warrant of arrest  
60 information from division files is limited to:

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

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

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

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

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

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

73 (f) (i) agencies and individuals as the commissioner authorizes for the express purpose  
74 of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice  
75 agency; and

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

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

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

82 ~~(h)~~ (i) other agencies and individuals as the commissioner authorizes and finds  
83 necessary for protection of life and property and for offender identification, apprehension, and  
84 prosecution pursuant to an agreement.

85 (3) An agreement under Subsection (2)(f) or (2)~~(h)~~(i) shall specifically authorize  
86 access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the  
87 anonymity of individuals to whom the information relates, and ensure the confidentiality and  
88 security of the data.

89 (4) (a) Before requesting information under Subsection (2)(g), a qualifying entity must

90 obtain a signed waiver from the person whose information is requested.

91 (b) The waiver must notify the signee:

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

93 (ii) who will see the information; and

94 (iii) how the information will be used.

95 (c) Information received by a qualifying entity under Subsection (2)(g) may only be:

96 (i) available to persons involved in the hiring or background investigation of the  
97 employee; and

98 (ii) used for the purpose of assisting in making an employment or promotion decision.

99 (d) A person who disseminates or uses information obtained from the division under  
100 Subsection (2)(g) for purposes other than those specified under Subsection (4)(c), in addition to  
101 any penalties provided under this section, is subject to civil liability.

102 (e) A qualifying entity that obtains information under Subsection (2)(g) shall provide  
103 the employee or employment applicant an opportunity to:

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

105 (ii) respond to any information received.

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

108 (g) The division or its employees are not liable for defamation, invasion of privacy,  
109 negligence, or any other claim in connection with the contents of information disseminated  
110 under Subsection (2)(g).

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

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

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

121 criminal case.

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

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

129 (a) that have been declined for prosecution;

130 (b) that have been dismissed; or

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

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

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

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

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

141 (b) A processing fee for the right of access service, including obtaining a copy of the  
142 individual's criminal history report under Subsection (9)(a) is \$15. This fee remains in effect  
143 until changed by the commissioner through the process under Section [63J-1-504](#).

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

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

149 (10) The private security agencies as provided in Subsection (2)(f)(ii):

150 (a) shall be charged for access; and

151 (b) shall be registered with the division according to rules made by the division under

152 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

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

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

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

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

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

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

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

- 180 (15) (a) (i) The applicant fingerprint card fee under Subsection (2) is \$20.
- 181 (ii) The name check fee under Subsection (2) is \$15.
- 182 (iii) The fee to register fingerprints under Subsection (13)(a)(i) is \$5.

183 (iv) The fees described in this Subsection (15)(a) remain in effect until changed by the  
184 division through the process under Section [63J-1-504](#).

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

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

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

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

192 **53E-7-401. Definitions.**

193 As used in this part:

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

195 (2) "Eligible student" means an elementary or secondary student who:

196 (a) is a resident of the state; and

197 (b) (i) has an individualized education program, as defined in Section [53E-4-301](#);

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

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

202 (iv) has a Section 504 accommodation plan under Section 504 of the Rehabilitation  
203 Act of 1973, 29 U.S.C. Sec. 701 et seq.;

204 (v) is diagnosed with one or more of the following:

205 (A) an intellectual disability;

206 (B) a hearing impairment, including deafness;

207 (C) a speech or language impairment;

208 (D) a visual impairment, including blindness;

209 (E) a serious emotional disturbance;

210 (F) an orthopedic impairment;

211 (G) autism;

212 (H) a traumatic brain injury; or

213 (I) any other health impairment or specific disability; or

214 (vi) is a scholarship student, as defined in Section 53F-4-301, or has met the  
215 qualifications described in Subsection 53F-4-302(2) at any time within three years before the  
216 day on which the student applies for a scholarship in accordance with Section 53E-7-402.

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

219 (i) scholarship granting organization funds; or

220 (ii) qualifying school funds.

221 (b) "Employee" does not include a scholarship granting organization or qualifying  
222 school volunteer.

223 (4) "Officer" means:

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

225 or

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

228 (5) "Parent" means a parent or legal guardian.

229 (6) "Qualifying school" means a private school that provides elementary or secondary  
230 education and has notified a scholarship granting organization of the private school's intention  
231 to participate in the program and comply with program requirements.

232 (7) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother,  
233 uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,  
234 sister-in-law, son-in-law, or daughter-in-law.

235 (8) "Scholarship" means a grant for an eligible student that is:

236 (a) funded from a donation made under Section 53E-7-405; and

237 (b) used to pay for an expense described in Section 53E-7-402.

238 (9) "Scholarship granting organization" means an organization that is qualified as tax  
239 exempt under Section 501(c)(3), Internal Revenue Code.

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

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



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

246 **53E-7-402. Special Needs Opportunity Scholarship Program -- Scholarships.**

247 (1) There is established the Special Needs Opportunity Scholarship Program to which a  
248 parent may apply to a scholarship granting organization on behalf of the parent's eligible  
249 student for a scholarship for an expense described in Subsection (4).

250 (2) A scholarship granting organization:

251 (a) may award, in accordance with this part, a scholarship to an eligible student; and

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

253 (3) The scholarship granting organization shall award to an eligible student a full-year  
254 scholarship for an amount not to exceed 90% of the value of the weighted pupil unit multiplied  
255 by 2.5.

256 (4) A scholarship granting organization may award a scholarship to an eligible student  
257 for one or more of the following expenses:

258 (a) tuition, fees, textbooks, and uniforms at a qualifying school;

259 (b) educational therapy including, but not limited to, occupational, behavioral,  
260 physical, and speech-language therapies;

261 (c) textbooks, curriculum, or other instructional materials, including, but not limited to,  
262 supplemental materials or associated online instruction required by a curriculum;

263 (d) tuition and fees for an approved non-public online learning course or program; and

264 (e) fees for national norm-referenced examinations, advanced placement examinations,  
265 or similar courses, fees associated with state-recognized industry certification exams, and any  
266 examination related to college or university admission.

267 (5) The board shall prepare and disseminate to a scholarship granting organization for  
268 distribution to a parent applying to the program on behalf of an eligible student:

269 (a) information on the program;

270 (b) an explanation of local obligations under 20 U.S.C. Sec. 1412(a)(10)(A) for a  
271 student who attends a private school;

272 (c) information on how a parent may enroll the parent's child in a public school; and

273 (d) any other information that the board determines is useful to a parent of an eligible  
274 student.

275 (6) Before the beginning of the school year immediately following a school year in

276 which a qualifying school receives scholarship payments equal to or more than \$100,000, the  
277 qualifying school shall file with the scholarship granting organization that recognizes the  
278 qualifying school:

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

281 (b) the financial information that demonstrates the financial viability of the qualifying  
282 school.

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

284 **53E-7-403. Qualifying school.**

285 To be eligible to be a qualifying school, a private school shall:

286 (1) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d; and

287 (2) meet state and local health and safety laws and codes.

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

289 **53E-7-404. Administration by the board -- Duties -- Agreement.**

290 (1) The board shall administer the program.

291 (2) The board shall:

292 (a) provide a standardized tax credit certificate to be issued by a scholarship granting  
293 organization to a taxpayer that includes:

294 (i) the name and address of the person that makes a donation under Section [53E-7-405](#);

295 (ii) the date of the donation;

296 (iii) the amount of the donation; and

297 (iv) any other information required by the board;

298 (b) conduct a financial review or audit of a scholarship granting organization, if the  
299 board receives evidence of fraudulent practices by the scholarship granting organization;

300 (c) (i) conduct a criminal background check on each scholarship granting organization  
301 employee and scholarship granting organization officer; and

302 (ii) have direct access to criminal background information maintained by the Bureau of  
303 Criminal Identification under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification,  
304 for individuals described in Subsection (2)(c)(i); and

305 (d) establish uniform financial accounting standards for scholarship granting  
306 organizations.

307 (3) (a) Subject to Subsection (4), the board shall, in accordance with Title 63G,  
308 Chapter 6a, Utah Procurement Code, issue a request for proposals and enter into an agreement  
309 with an organization to be recognized as a scholarship granting organization.

310 (b) A scholarship granting organization that responds to a request for proposals under  
311 Subsection (3)(a) shall disclose in the response the following information:

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

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

316 (iii) a description of the methodology the organization will use to evaluate whether a  
317 student is an eligible student;

318 (iv) a description of the scholarship application process the organization will use for  
319 eligible students; and

320 (v) an acknowledgment that the organization will comply with antidiscrimination  
321 provisions of 42 U.S.C. Sec. 200d.

322 (4) The board shall enter into an agreement under Subsection (3)(a) with:

323 (a) only one scholarship granting organization on or before January 1, 2021; and

324 (b) additional scholarship granting organizations after January 1, 2021.

325 (5) (a) If the board determines that a scholarship granting organization has violated a  
326 provision of this part or board rule, the board shall send written notice to the scholarship  
327 granting organization explaining the violation and mandatory remedial action.

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

331 (c) (i) If a scholarship granting organization that has received notice fails to correct a  
332 violation in the time period described in Subsection (5)(b), the board may bar the scholarship  
333 granting organization from participating in the program.

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

336 (d) A scholarship granting organization may not accept donations for purposes of the  
337 program if:

- 338 (i) the organization is barred from participating in the program under Subsection  
339 (5)(c)(i); or
- 340 (ii) an appeal of the board's decision under Subsection (5)(c)(ii) is pending.
- 341 (e) A scholarship granting organization that has an appeal pending under Subsection  
342 (5)(c)(ii) may continue to administer scholarships from previously donated funds until a final  
343 determination of the appeal.
- 344 (6) The board shall provide a standardized format for a scholarship granting  
345 organization to report the information required under Section [53E-7-405](#).
- 346 (7) The board shall make rules in accordance with Title 63G, Chapter 3, Utah  
347 Administrative Rulemaking Act, for:
- 348 (a) a scholarship granting organization's acceptance of donations;
- 349 (b) the administration of scholarships to a qualifying school receiving scholarship  
350 payments from a scholarship granting organization that is barred from participating in the  
351 program under Subsection (5)(c)(i);
- 352 (c) the process by which a scholarship granting organization may appeal a decision of  
353 the board under Subsection (5)(c); and
- 354 (d) audit and report requirements as described in Section [53E-7-405](#).
- 355 Section 6. Section **53E-7-405** is enacted to read:
- 356 **53E-7-405. Scholarship donation -- Scholarship granting organization --**  
357 **Application -- Duties -- Regulated transactions and relationships.**
- 358 (1) A person may make a donation to a scholarship granting organization to fund a  
359 scholarship.
- 360 (2) An organization may enter into an agreement with the board to be a scholarship  
361 granting organization in accordance with Section [53E-7-404](#).
- 362 (3) A scholarship granting organization shall:
- 363 (a) allocate periodic scholarship payments to an eligible student's parent or, on the  
364 parent's behalf, to the qualifying school in which the eligible student is enrolled;
- 365 (b) create a board-approved process to allow a parent to pay for a non-tuition service  
366 described in Subsection [53E-7-402\(4\)](#);
- 367 (c) ensure that:
- 368 (i) at least 90% of the scholarship granting organization's revenue from donations is

369 spent on scholarships; and  
370 (ii) all revenue from donation interest or investments is spent on scholarships;  
371 (d) carry forward no more than 40% of the scholarship granting organization's  
372 donations from the state fiscal year in which the scholarship granting organization received the  
373 donations to the following state fiscal year;  
374 (e) based on a criminal background check conducted by the board in accordance with  
375 Section 53E-7-404, prohibit a scholarship granting organization employee or officer identified  
376 by the board who poses a risk to the appropriate use of donation funds from handling,  
377 managing, or processing donation funds;  
378 (f) ensure that a scholarship is portable throughout the year and available for use at a  
379 qualifying school that accepts an eligible student;  
380 (g) report to the board on or before June 1 each year the following information  
381 prepared by a certified public accountant:  
382 (i) the name and address of the scholarship granting organization;  
383 (ii) the total number and total dollar amount of donations the scholarship granting  
384 organization received during the previous calendar year;  
385 (iii) the total number and total dollar amount of scholarships the scholarship granting  
386 organization awarded during the previous calendar year; and  
387 (iv) the percentage of first-time eligible student scholarship recipients who were  
388 enrolled in a public school during the previous school year or who entered school for the first  
389 time; and  
390 (h) issue a tax credit certificate in accordance with Section 53E-7-407.  
391 (4) A scholarship granting organization shall demonstrate the scholarship granting  
392 organization's financial accountability by submitting to the board an annual financial  
393 information report that:  
394 (a) complies with the uniform financial accounting standards adopted by the board  
395 under Section 53E-7-404; and  
396 (b) is prepared by a certified public accountant.  
397 (5) (a) If a scholarship granting organization distributes \$500,000 or more in  
398 scholarships annually through the program, the scholarship organization shall:  
399 (i) contract for an annual audit, conducted by an independent certified public

400 accountant, independent of the scholarship granting organization or the scholarship granting  
401 organization's accounts and records pertaining to program donations; and

402 (ii) report the results of the audit to the board for review.

403 (b) For the report described in Subsection (5)(a)(ii), the scholarship granting  
404 organization shall:

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

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

409 (c) The independent certified public accountant shall conduct the audit described in  
410 Subsection (5)(a)(i) in accordance with generally accepted auditing standards and rules made  
411 by the board.

412 (d) (i) The board:

413 (A) shall review a report submitted under this section; and

414 (B) may request that the scholarship granting organization revise or supplement the  
415 report if the report is not in compliance with the provisions of this Subsection (5) or rules  
416 adopted by the board.

417 (ii) A scholarship granting organization shall provide a revised report or supplement to  
418 the report no later than 45 days after the day on which the board makes a request described in  
419 Subsection (5)(d)(i)(B).

420 (6) A scholarship granting organization may not distribute funds to a qualifying school  
421 if:

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

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

425 (c) the qualifying school routinely fails to provide eligible students with promised  
426 educational goods or services.

427 (7) If an eligible student transfers to another qualifying school during the school year,  
428 the scholarship granting organization may prorate the eligible student's scholarship amount.

429 (8) A scholarship granting organization may not award a scholarship under this part to:

430 (a) a relative of the scholarship granting organization officer or employee; or

431 (b) a qualifying school at which the eligible student has a relative who is an officer or  
432 an employee of the qualifying school.

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

434 **53E-7-406. Limitation on regulation of private schools -- Student records.**

435 (1) Nothing in this part:

436 (a) grants additional authority to any state agency or local education agency to regulate  
437 private schools except as expressly set forth in this part; or

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

441 (2) A qualifying school shall be given the maximum freedom to provide for the  
442 educational needs of eligible students without governmental control.

443 (3) A qualifying school may not be required to alter the qualifying school's creed,  
444 practices, admission policy, or curriculum in order to accept a scholarship payment.

445 (4) A school, school district, or the Utah Schools for the Deaf and the Blind, in which a  
446 student was previously enrolled, shall provide to a qualifying school in which the student is  
447 enrolled as an eligible student under the program a complete copy of the eligible student's  
448 records subject to:

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

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

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

452 **53E-7-407. Tax credit certificate -- Cap on donations eligible for tax credit.**

453 (1) Subject to the other provisions of this section, a scholarship granting organization  
454 shall provide a tax credit certificate to any person that makes a donation to the program during  
455 the calendar year.

456 (2) (a) The scholarship granting organization shall issue the tax credit certificate  
457 described in Subsection (1) on a form created by the board in accordance with Section  
458 53E-7-404.

459 (b) The scholarship granting organization shall provide the information from the tax  
460 credit certificate to the commission electronically and in a manner prescribed by the  
461 commission.

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

464 (3) (a) The scholarship granting organizations may not issue a tax credit certificate for  
465 a calendar year once the aggregate amount of the tax credit certificates issued for the calendar  
466 year exceed the cap amount described in Subsection (4).

467 (b) The scholarship granting organizations shall provide a person, prior to the person  
468 making a donation to the program, with notice:

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

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

471 (iii) of the amount of tax credit certificates that the scholarship granting organizations  
472 have issued for the calendar year.

473 (c) If a scholarship granting organization receives donations to the program in amounts  
474 that exceed the total aggregate amount of tax credit certificates the scholarship granting  
475 organization may issue under this Subsection (3), the scholarship granting organizations shall  
476 issue a tax credit certificate for a donation to the program:

477 (i) in the order that the scholarship granting organizations receive the donations to the  
478 program until the total aggregate amount is met; and

479 (ii) for the final person to receive a tax credit certificate, in an amount equal to the  
480 difference between the cap amount described in Subsection (4) and the aggregate dollar amount  
481 of the tax credit certificates that the scholarship granting organizations have already issued for  
482 the calendar year.

483 (4) (a) Subject to Subsection (4)(b), the cap amount is \$12,000,000.

484 (b) If the scholarship granting organizations collectively receive donations for the  
485 calendar year that equal or exceed 90% of the cap described in Subsection (4)(a), the cap  
486 amount described in Subsection (4)(a) automatically increases by 10% for the next calendar  
487 year.

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

491 Section 9. Section **59-7-109** is amended to read:

492 **59-7-109. Charitable contributions.**



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

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

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

500 (3) Any charitable contribution made in a taxable year [~~beginning on or after January 1,~~  
 501 ~~1994, which~~] that is in excess of the amount allowed as a deduction under Subsection (2) may  
 502 be carried over to the five succeeding taxable years in the same manner as allowed under  
 503 federal law.

504 (4) A taxpayer may not deduct a charitable contribution that meets the requirements of  
 505 this section to the extent that the taxpayer claims a tax credit under Section 59-7-623 for the  
 506 same charitable contribution.

507 Section 10. Section **59-7-623** is enacted to read:

508 **59-7-623. Nonrefundable tax credit for donation to Special Needs Opportunity**  
 509 **Scholarship Program.**

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

513 (2) (a) A taxpayer may carry forward for the next three taxable years the amount of the  
 514 tax credit that exceeds the taxpayer's tax liability for the taxable year.

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

517 Section 11. Section **59-10-1018** is amended to read:

518 **59-10-1018. Definitions -- Nonrefundable taxpayer tax credits.**

519 (1) As used in this section:

520 (a) "Dependent adult with a disability" means an individual who:

521 (i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the  
 522 claimant's federal individual income tax return for the taxable year;

523 (ii) is not the claimant or the claimant's spouse; and

524 (iii) is:  
525 (A) 18 years of age or older;  
526 (B) eligible for services under Title 62A, Chapter 5, Services for People with  
527 Disabilities; and  
528 (C) not enrolled in an education program for students with disabilities that is  
529 authorized under Section [53A-15-301](#).  
530 (b) "Dependent child with a disability" means an individual 21 years of age or younger  
531 who:  
532 (i) a claimant claims as a dependent under Section 151, Internal Revenue Code, on the  
533 claimant's federal individual income tax return for the taxable year;  
534 (ii) is not the claimant or the claimant's spouse; and  
535 (iii) is:  
536 (A) an eligible student with a disability; or  
537 (B) identified under guidelines of the Department of Health as qualified for Early  
538 Intervention or Infant Development Services.  
539 (c) "Eligible student with a disability" means an individual who is:  
540 (i) diagnosed by a school district representative under rules the State Board of  
541 Education adopts in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
542 Act, as having a disability classified as autism, deafness, preschool developmental delay, dual  
543 sensory impairment, hearing impairment, intellectual disability, multidisability, orthopedic  
544 impairment, other health impairment, traumatic brain injury, or visual impairment;  
545 (ii) not receiving residential services from the Division of Services for People with  
546 Disabilities created under Section [62A-5-102](#) or a school established under [~~Title 53A, Chapter~~  
547 ~~25b~~] Title 53E, Chapter 8, Utah Schools for the Deaf and the Blind; and  
548 (iii) (A) enrolled in an education program for students with disabilities that is  
549 authorized under Section [~~53A-15-301~~] [53E-7-202](#); or  
550 (B) a recipient of a scholarship awarded under [~~Title 53A, Chapter 1a, Part 7~~] Title  
551 53F, Chapter 4, Part 3, Carson Smith [Scholarships for Students with Special Needs Act]  
552 Scholarship Program.  
553 (d) "Head of household filing status" means a head of household, as defined in Section  
554 2(b), Internal Revenue Code, who files a single federal individual income tax return for the

555 taxable year.

556 (e) "Joint filing status" means:

557 (i) a husband and wife who file a single return jointly under this chapter for a taxable  
558 year; or

559 (ii) a surviving spouse, as defined in Section 2(a), Internal Revenue Code, who files a  
560 single federal individual income tax return for the taxable year.

561 (f) "Single filing status" means:

562 (i) a single individual who files a single federal individual income tax return for the  
563 taxable year; or

564 (ii) a married individual who:

565 (A) does not file a single federal individual income tax return jointly with that married  
566 individual's spouse for the taxable year; and

567 (B) files a single federal individual income tax return for the taxable year.

568 (2) Except as provided in Section [59-10-1002.2](#), and subject to Subsections (3) through  
569 (5), a claimant may claim a nonrefundable tax credit against taxes otherwise due under this part  
570 equal to the sum of:

571 (a) (i) for a claimant that deducts the standard deduction on the claimant's federal  
572 individual income tax return for the taxable year, 6% of the amount the claimant deducts as  
573 allowed as the standard deduction on the claimant's federal individual income tax return for  
574 that taxable year; or

575 (ii) for a claimant that itemizes deductions on the claimant's federal individual income  
576 tax return for the taxable year, the ~~[product of]~~ 6% of the amount calculated by subtracting the  
577 following from the amount the claimant deducts as allowed as an itemized deduction on the  
578 claimant's federal individual income tax return for that taxable year:

579 ~~[(A) the difference between:]~~

580 ~~[(f) the amount the claimant deducts as allowed as an itemized deduction on the~~  
581 ~~claimant's federal individual income tax return for that taxable year; and]~~

582 ~~[(H)]~~ (A) any amount of state or local income taxes the claimant deducts as allowed as  
583 an itemized deduction on the claimant's federal individual income tax return for that taxable  
584 year; and

585 (B) the amount of a donation made in accordance with Section [53F-7-405](#) that the

586 claimant deducts as allowed as an itemized deduction on the claimant's federal individual  
587 income tax return for that taxable year, to the extent that the claimant claims a tax credit under  
588 Section 59-10-1041 for the same donation; and

589 [~~(B) 6%; and~~]

590 (b) the product of:

591 (i) 75% of the total amount the claimant deducts as allowed as a personal exemption  
592 deduction on the claimant's federal individual income tax return for that taxable year, plus an  
593 additional 75% of the amount the claimant deducts as allowed as a personal exemption  
594 deduction on the claimant's federal individual income tax return for that taxable year with  
595 respect to each dependent adult with a disability or dependent child with a disability; and

596 (ii) 6%.

597 (3) A claimant may not carry forward or carry back a tax credit under this section.

598 (4) The tax credit allowed by Subsection (2) shall be reduced by \$.013 for each dollar  
599 by which a claimant's state taxable income exceeds:

600 (a) for a claimant who has a single filing status, \$12,000;

601 (b) for a claimant who has a head of household filing status, \$18,000; or

602 (c) for a claimant who has a joint filing status, \$24,000.

603 (5) (a) For taxable years beginning on or after January 1, 2009, the commission shall  
604 increase or decrease the following dollar amounts by a percentage equal to the percentage  
605 difference between the consumer price index for the preceding calendar year and the consumer  
606 price index for calendar year 2007:

607 (i) the dollar amount listed in Subsection (4)(a); and

608 (ii) the dollar amount listed in Subsection (4)(b).

609 (b) After the commission increases or decreases the dollar amounts listed in Subsection  
610 (5)(a), the commission shall round those dollar amounts listed in Subsection (5)(a) to the  
611 nearest whole dollar.

612 (c) After the commission rounds the dollar amounts as required by Subsection (5)(b),  
613 the commission shall increase or decrease the dollar amount listed in Subsection (4)(c) so that  
614 the dollar amount listed in Subsection (4)(c) is equal to the product of:

615 (i) the dollar amount listed in Subsection (4)(a); and

616 (ii) two.

617 (d) For purposes of Subsection (5)(a), the commission shall calculate the consumer  
618 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

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

620 **59-10-1041. Nonrefundable tax credit for donation to Special Needs Opportunity**  
621 **Scholarship Program.**

622 (1) A claimant, estate, or trust that makes a donation to the Special Needs Opportunity  
623 Scholarship Program established in Section 53E-7-402 may claim a nonrefundable tax credit  
624 equal to 100% of the amount stated on a tax credit certificate issued in accordance with Section  
625 53E-7-407.

626 (2) (a) A claimant, estate, or trust may carry forward for the next three taxable years the  
627 amount of the tax credit that exceeds the claimant's, estate's, or trust's tax liability for the  
628 taxable year.

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

631 Section 13. **Effective date.**

632 (1) Except as provided in Subsection (2), this bill takes effect on January 1, 2019.

633 (2) The amendments to Sections 59-7-109 and 59-10-1018 and the enactment of  
634 Sections 59-7-623 and 59-10-1041 take effect for a taxable year beginning on or after January  
635 1, 2019.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**