

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: S3/20/13

A Bill

SENATE BILL 740

5 By: Senator J. English
6 By: Representatives Collins, Westerman
7

For An Act To Be Entitled

9 AN ACT TO PROVIDE KINDERGARTEN THROUGH TWELFTH GRADE
10 (K-12) SCHOLARSHIPS TO ECONOMICALLY DISADVANTAGED
11 STUDENTS BY PROVIDING A TAX CREDIT FOR CONTRIBUTIONS
12 TO NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS; TO
13 REGULATE THE PERSONS AND ENTITIES PARTICIPATING IN
14 THE PROGRAM TO PROVIDE K-12 SCHOLARSHIPS THAT ARE
15 SUBJECT TO THE TAX CREDIT; TO DECLARE AN EMERGENCY;
16 AND FOR OTHER PURPOSES.

Subtitle

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19 TO PROVIDE K-12 SCHOLARSHIPS TO
20 ECONOMICALLY DISADVANTAGED STUDENTS BY
21 PROVIDING A TAX CREDIT FOR CONTRIBUTIONS
22 TO NONPROFIT SCHOLARSHIP-FUNDING
23 ORGANIZATIONS; AND TO DECLARE AN
24 EMERGENCY.
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27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code Title 26, Chapter 51, is amended to add a new
31 subchapter to read as follows:

32 Subchapter 26 – K-12 Scholarship Contribution Tax Credit Act

33
34 26-51-2601. Title.

35 This subchapter shall be known and may be cited as the “K-12
36 Scholarship Contribution Tax Credit Act”.



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26-51-2602. Purpose.

The purpose of this subchapter is to:

- (1) Encourage private voluntary contributions to nonprofit scholarship-funding organizations;
- (2) Expand educational opportunities for children of families that have limited financial resources; and
- (3) Enable children in this state to achieve a higher level of excellence in their education.

26-51-2603. Definitions.

As used in this subchapter:

- (1) "Contribution" means a monetary contribution from an eligible taxpayer, subject to the restrictions provided in this subchapter, to a nonprofit scholarship-funding organization;
- (2) "Eligible private school" means a nonpublic school that:
 - (A) Provides education to elementary or secondary students;
 - (B) Has notified a nonprofit scholarship-funding organization of its intention to participate and comply with the requirements of this subchapter and the K-12 Scholarship Tax Credit Act, § 6-18-1901 et seq.;
 - (C) Is located in Arkansas; and
 - (D) Is not a home school as defined in § 6-15-501;
- (3)(A) "Eligible student" means a student who:
 - (i) Meets one (1) of the following criteria:
 - (a) Is a member of a household whose total annual income the year before he or she applies for an educational scholarship under this subchapter does not exceed an amount equal to two hundred fifty percent (250%) of the federal poverty level income standard;
 - (b) Received a scholarship from a nonprofit scholarship-funding organization or from the state during the previous school year and has not graduated from high school or reached twenty-one (21) years of age; or
 - (c) Is a sibling of a student who meets the requirement stated in subdivision (3)(A)(i)(b) of this section;

1 (ii) Is residentially zoned in a school district
2 with a student enrollment that exceeds one thousand (1,000) students; and

3 (iii) Meets one (1) of the following criteria:

4 (a) Is eligible to attend a public school in
5 Arkansas for the first time;

6 (b) For a student participating in the
7 scholarship program for the first time in the 2013-2014 school year, was
8 counted in public school enrollment in Arkansas through the fiscal year
9 three-quarter average daily membership of the 2011-2012 school year or the
10 2012-2013 school year;

11 (c) For a student participating in the
12 scholarship program for the first time in the 2013-2014 school year, was
13 eligible to enroll in an Arkansas public school for the first time in the
14 2012-2013 school year; or

15 (d) For a student participating in the
16 scholarship program for the first time after the 2013-2014 school year, was
17 enrolled in a public school in Arkansas through the fiscal year three-quarter
18 average daily membership of the preceding school year.

19 (B) "Eligible student" does not mean a student who:

20 (i) Receives a scholarship from another nonprofit
21 scholarship-funding organization under this subchapter;

22 (ii) Participates in a home school as defined in §
23 6-15-501;

24 (iii) Participates in a virtual school,
25 correspondence school, or distance learning program that receives state
26 funding pursuant to the student's participation unless the participation is
27 limited to no more than two (2) courses per school year; or

28 (iv) Is enrolled in the Arkansas School for the Deaf
29 or the Arkansas School for the Blind;

30 (4) "Eligible taxpayer" means a business or individual,
31 including without limitation a corporation, partnership, limited liability
32 company, and sole proprietorship;

33 (5) "Nonprofit scholarship-funding organization" means a
34 charitable organization that:

35 (A) Is exempt from federal income tax under 26 U.S.C. §
36 501(c)(3) of the Internal Revenue Code, as it existed on January 1, 2013;

1 (B) Is an Arkansas entity formed under § 4-28-101 et seq.
2 whose principal office is located in the state; and

3 (C) Has notified the Department of Education of its
4 intention to participate and comply with the requirements of this subchapter
5 and the K-12 Scholarship Tax Credit Act, § 6-18-1901 et seq.;

6 (6) “Owner” or “operator” means:

7 (A) An owner, president, officer, or director of a
8 nonprofit scholarship-funding organization or a person with equivalent
9 decision-making authority over a nonprofit scholarship-funding organization;
10 or

11 (B) An owner, operator, superintendent, or principal of an
12 eligible private school or a person with equivalent decision-making authority
13 over an eligible private school;

14 (7) “Scholarship program” means a program that awards
15 scholarships that are funded by contributions made under this subchapter and
16 the K-12 Scholarship Tax Credit Act, § 6-18-1901 et seq.; and

17 (8) “Tuition expenses” means the tuition and fees required for
18 attendance at an eligible private school, including without limitation the
19 costs associated with transportation.

20
21 26-51-2604. Tax credit for contributions.

22 (a) Except as limited in subsection (b) of this section, there is
23 allowed an income tax credit against the income tax imposed by the Income Tax
24 Act of 1929, § 26-51-101 et seq., the premium tax imposed by § 23-75-119, or
25 the premium tax imposed by § 23-63-1614 for one hundred percent (100%) of a
26 contribution made by the eligible taxpayer for a tax year.

27 (b)(1) An income tax credit under this section may not exceed one
28 hundred percent (100%) of the tax due for the taxable year after the
29 application of any other allowable income tax credits by the eligible
30 taxpayer.

31 (2) An income tax credit under this section shall be reduced by
32 the difference between the amount of tax taking into account the income tax
33 credit under this section and the amount of tax without application of the
34 income tax credit under this section.

35 (3)(A) For the fiscal year beginning July 1, 2013, the total
36 amount of income tax credits and carry forward of income tax credits for the

1 state under this section is limited to ten million dollars (\$10,000,000).

2 (B)(i) For fiscal years beginning on and after July 1,
3 2014, the total amount of tax credits allowed under this section is the
4 amount for the preceding fiscal year.

5 (ii) However, the total amount of credits allowed
6 under subdivision (b)(3)(B)(i) of this section may be increased by up to
7 thirty-five percent (35%) if at least ninety percent (90%) of the total
8 amount of tax credits allowed for the preceding fiscal year was claimed.

9 (4) An eligible taxpayer that files an Arkansas consolidated
10 return as a member of an affiliated group under § 26-51-805 may be allowed
11 the income tax credit under this section on a consolidated return basis
12 subject to the limitation established under subdivisions (b)(1)–(3) of this
13 section.

14 (5)(A) An eligible taxpayer may rescind all or part of the
15 eligible taxpayer's allocated income tax credit under this section.

16 (B) The amount rescinded under subdivision (b)(5)(A) of
17 this section shall become available for purposes of the cap for the state
18 fiscal year under this section to an eligible taxpayer as approved by the
19 Department of Finance and Administration if:

20 (i) The eligible taxpayer receives notice from the
21 department that the rescission has been accepted by the department; and

22 (ii) The eligible taxpayer has not previously
23 rescinded any or all of the eligible taxpayer's allocated income tax credit
24 under this section more than one (1) time in the previous three (3) tax
25 years.

26 (C) Any amount rescinded under this subdivision (b)(5)
27 shall become available to an eligible taxpayer on a first-come, first-served
28 basis based on income tax credit applications received after the date the
29 rescission is accepted by the department.

30 (6)(A) For a contribution to be eligible for the income tax
31 credit allowed under this section:

32 (i) The eligible taxpayer shall make a pledge to the
33 nonprofit scholarship-funding organization for the contribution;

34 (ii) The nonprofit scholarship funding organization
35 shall submit each pledge for a contribution received under subdivision
36 (b)(6)(A)(i) of this section to the department within one (1) business day of

1 receiving the pledge;

2 (iii) The department shall determine whether a
3 pledge for a contribution is eligible under subdivision (b)(3) of this
4 section and shall notify the nonprofit scholarship-funding organization of
5 the approval or disapproval of the pledge for a contribution within ten (10)
6 business days of receiving the pledge for a contribution under subdivision
7 (b)(6)(A)(ii) of this section;

8 (iv) The nonprofit scholarship-funding organization
9 shall notify the eligible taxpayer of the department's determination under
10 subdivision (b)(6)(A)(iii) of this section within two (2) business days of
11 receiving notification from the department;

12 (v) The eligible taxpayer shall pay the amount of
13 the contribution pledged under subdivision (b)(6)(A)(i) of this section:

14 (a) Within sixty (60) days if the eligible
15 taxpayer is a business entity; or

16 (b) Within thirty (30) days if the eligible
17 taxpayer is an individual; and

18 (vi) The nonprofit scholarship-funding organization
19 shall notify the department of each contribution paid under subdivision
20 (b)(6)(A)(v) of this section within two (2) business days of receiving
21 payment of the contribution.

22 (B) A pledge for a contribution is not considered in the
23 total amount of income tax credits for purposes of subdivision (b)(3) of this
24 section until the eligible taxpayer has paid the contribution to the
25 nonprofit scholarship funding organization under subdivision (b)(6)(A)(v) of
26 this section.

27 (c)(1)(A) If the income tax credit under this section is not fully
28 used in any one (1) year because of insufficient tax liability on the part of
29 the eligible taxpayer, the unused amount may be carried forward for a period
30 not to exceed ten (10) years.

31 (B) An eligible taxpayer that seeks to carry forward an
32 unused amount of the income tax credit under this section shall submit an
33 application for allocation of tax credits or carry-forward credits as
34 required in subsection (b) of this section in the year that the eligible
35 taxpayer intends to use the carry forward.

36 (C) This carry forward applies to all approved

1 contributions made after July 1, 2013.

2 (2) An eligible taxpayer may not convey, assign, or transfer the
3 income tax credit under this section to another entity unless all of the
4 assets of the eligible taxpayer are conveyed, assigned, or transferred in the
5 same transaction.

6 (d) An eligible taxpayer claiming a credit granted under this section
7 shall not take a deduction under the Arkansas income tax law or the premium
8 tax law for the same contribution.

9
10 26-51-2605. Department of Finance and Administration – Duties.

11 The Department of Finance and Administration shall:

12 (1) Annually verify the eligibility of expenditures as provided
13 in § 6-18-1904(4) using the audit required under § 6-18-1904(13);

14 (2) Determine the eligibility of each pledge for a contribution
15 to a nonprofit scholarship-funding organization on a first-come, first-served
16 basis within ten (10) days of receiving the pledge for a contribution from a
17 nonprofit scholarship-funding organization up to the limitation stated in §
18 26-51-2604(b)(3);

19 (3) Develop a system for tracking the order in which pledges for
20 contributions are received, including pledges for contributions that are
21 received after the limitation stated in § 26-51-2604(b)(3) has been reached;

22 (4) Notify each nonprofit scholarship-funding organization when
23 the limitation stated in § 26-51-2604(b)(3) has been reached;

24 (5) Adopt rules necessary to administer this subchapter,
25 including without limitation rules establishing application forms and
26 procedures and governing the allocation of tax credits and carry forward
27 credits under this section on a first-come, first-served basis; and

28 (6) In cooperation with the Department of Education, develop a
29 cooperative agreement to assist in the administration of this subchapter and
30 the K-12 Scholarship Tax Credit Act, § 6-18-1901 et seq.

31
32 26-51-2606. Limitations on scholarships – Payment of scholarships.

33 (a)(1)(A) The amount of a scholarship provided to a student for any
34 single school year by a nonprofit scholarship-funding organization from
35 contributions shall not exceed four thousand dollars (\$4,000) for a
36 scholarship awarded to a student enrolled in an eligible private school in

1 the first year of the scholarship program.

2 (B) An increase in foundation funding aid under § 6-20-
3 2305 shall result in an equal percentage increase in the maximum scholarship
4 amount.

5 (2)(A) Payment of the scholarship by the nonprofit scholarship-
6 funding organization shall be by an individual scholarship warrant made
7 payable to the student's parent or guardian.

8 (B) If the parent or guardian chooses to have his or her
9 child attend an eligible private school, the scholarship warrant shall be
10 delivered by the nonprofit scholarship-funding organization to the eligible
11 private school of the parent's or guardian's choice, and the parent or
12 guardian shall restrictively endorse the scholarship warrant to the eligible
13 private school.

14 (C) A nonprofit scholarship-funding organization shall
15 ensure that the parent or guardian to whom the scholarship warrant is made
16 restrictively endorses the scholarship warrant to the eligible private school
17 for deposit into the scholarship account of the eligible private school.

18 (b) A nonprofit scholarship-funding organization shall obtain
19 verification from the eligible private school of an eligible student's
20 continued attendance at the eligible private school before each scholarship
21 payment.

22 (c) Payment of the scholarship shall be made by the nonprofit
23 scholarship-funding organization at least monthly.

24 (d) An eligible taxpayer making a contribution may not designate a
25 specific child as the beneficiary of the contribution.

26
27 SECTION 2. Arkansas Code Title 6, Chapter 18, is amended to add an
28 additional subchapter to read as follows:

29 Subchapter 19 – K-12 Scholarship Tax Credit Act

30
31 6-18-1901. Title.

32 This chapter shall be known and may be cited as the “K-12 Scholarship
33 Tax Credit Act”.

34
35 6-18-1902. Purpose.

36 The purpose of this subchapter is to:

1 (1) Supplement the K-12 Scholarship Contribution Tax Credit Act,
2 § 26-51-2601 et seq.;

3 (2) Expand educational opportunities for children of families
4 that have limited financial resources; and

5 (3) Enable children in this state to achieve a higher level of
6 excellence in their education.

7
8 6-18-1903. Definitions.

9 As used in this chapter:

10 (1) "Contribution" means a monetary contribution from an
11 eligible taxpayer, subject to the restrictions provided in the K-12
12 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq., to a nonprofit
13 scholarship-funding organization;

14 (2) "Eligible private school" means a nonpublic school that:

15 (A) Provides education to elementary or secondary
16 students;

17 (B) Has notified the Department of Education of its
18 intention to participate and comply with the requirements of this subchapter
19 and the K-12 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq.;

20 (C) Is located in Arkansas; and

21 (D) Is not a home school as defined in § 6-15-501;

22 (3)(A) "Eligible student" means a student who:

23 (i) Meets one (1) of the following criteria:

24 (a) Is a member of a household whose total
25 annual income the year before he or she applies for an educational
26 scholarship under the K-12 Scholarship Contribution Tax Credit Act, § 26-51-
27 2601 et seq., does not exceed an amount equal to two hundred fifty percent
28 (250%) of the federal poverty level income standard;

29 (b) Received a scholarship from a nonprofit
30 scholarship-funding organization or from the state during the previous school
31 year and has not graduated from high school or reached twenty-one (21) years
32 of age; or

33 (c) Is a sibling of a student who meets the
34 requirement stated in subdivision (3)(A)(i)(b) of this section;

35 (ii) Is residentially zoned in a school district
36 with a student enrollment that exceeds one thousand (1,000) students; and

1 (iii) Meets one (1) of the following criteria:

2 (a) Is eligible to attend a public school in
3 Arkansas for the first time;

4 (b) For a student participating in the
5 scholarship program for the first time in the 2013-2014 school year, was
6 counted in public school enrollment in Arkansas through the fiscal year
7 three-quarter average daily membership of the 2011-2012 school year or the
8 2012-2013 school year;

9 (c) For a student participating in the
10 scholarship program for the first time in the 2013-2014 school year, was
11 eligible to enroll in an Arkansas public school for the first time in the
12 2012-2013 school year; or

13 (d) For a student participating in the
14 scholarship program for the first time after the 2013-2014 school year, was
15 enrolled in a public school in Arkansas through the fiscal year three-quarter
16 average daily membership of the preceding school year.

17 (B) "Eligible student" does not mean a student who:

18 (i) Receives a scholarship from another nonprofit
19 scholarship-funding organization under this subchapter;

20 (ii) Participates in a home school as defined in §
21 6-15-501;

22 (iii) Participates in a virtual school,
23 correspondence school, or distance learning program that receives state
24 funding pursuant to the student's participation unless the participation is
25 limited to no more than two (2) courses per school year; or

26 (iv) Is enrolled in the Arkansas School for the Deaf
27 or the Arkansas School for the Blind;

28 (4) "Nonprofit scholarship-funding organization" means a
29 charitable organization that:

30 (A) Is exempt from federal income tax under 26 U.S.C. §
31 501(c)(3) of the Internal Revenue Code, as it existed on January 1, 2013;

32 (B) Is an Arkansas entity formed under § 4-28-101 et seq.
33 whose principal office is located in the state; and

34 (C) Has notified the Department of Education of its
35 intention to participate and comply with the requirements of this subchapter
36 and the K-12 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq.;

1 (5) "Owner" or "operator" means:

2 (A) An owner, president, officer, or director of a
3 nonprofit scholarship-funding organization or a person with equivalent
4 decision-making authority over a nonprofit scholarship-funding organization;
5 or

6 (B) An owner, operator, superintendent, or principal of an
7 eligible private school or a person with equivalent decision-making authority
8 over an eligible private school;

9 (6) "Scholarship program" means a program that awards
10 scholarships that are funded by contributions made under this subchapter and
11 the K-12 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq.; and

12 (7) "Tuition expenses" means the tuition and fees required for
13 attendance at an eligible private school, including without limitation the
14 costs associated with transportation.

15
16 6-18-1904. Nonprofit scholarship-funding organization – Requirements.

17 A nonprofit scholarship-funding organization:

18 (1) Shall comply with the antidiscrimination provisions of 42
19 U.S.C. § 2000d, as it existed on January 1, 2013;

20 (2) Shall comply with the following background check
21 requirements:

22 (A)(i) All owners and operators, upon employment or
23 engagement to provide services, shall undergo fingerprinting and a background
24 check through the Department of Arkansas State Police and the Federal Bureau
25 of Investigation.

26 (ii) The nonprofit scholarship-funding organization
27 shall provide the results of the state and national criminal history check to
28 the Department of Education for screening;

29 (B) Every five (5) years following employment with,
30 engagement to provide services for, or association with a nonprofit
31 scholarship-funding organization, each owner or operator shall comply with
32 another background check through the Department of Arkansas State Police and
33 the Federal Bureau of Investigation;

34 (C)(i) All fingerprints submitted to the Department of
35 Arkansas State Police as required by this subdivision (2) shall be retained
36 by the Department of Arkansas State Police in a manner approved by rule and

1 entered into the statewide automated fingerprint identification system.

2 (ii) The fingerprints shall be available for all
3 purposes and uses authorized by law for arrest fingerprint cards entered into
4 the statewide automated fingerprint identification system;

5 (D)(i) The Department of Arkansas State Police shall
6 search all arrest fingerprint cards against the fingerprints retained in the
7 statewide automated fingerprint identification system.

8 (ii) An arrest record that is identified with an
9 owner's or operator's fingerprints shall be reported to the Department of
10 Education.

11 (iii) The Department of Arkansas State Police may
12 adopt a rule setting the amount of the annual fee to be paid by the
13 Department of Education for performing the services under this subdivision
14 (2) and establishing the procedures for the retention of owner and operator
15 fingerprints and the dissemination of search results; and

16 (E) A nonprofit scholarship-funding organization is not
17 eligible to provide scholarships under this subchapter if:

18 (i) The owner or operator of the nonprofit
19 scholarship-funding organization does not provide a satisfactory background
20 check; or

21 (ii) In the last seven (7) years, the owner or
22 operator of the nonprofit scholarship-funding organization has has filed for
23 personal bankruptcy or corporate bankruptcy in a corporation of which he or
24 she owned more than twenty percent (20%);

25 (3) Shall not have an owner or operator who owns or operates an
26 eligible private school that is participating in a scholarship program
27 operated by a nonprofit scholarship-funding organization;

28 (4) Shall provide scholarships from contributions to eligible
29 students for the lesser of the maximum scholarship amount or the full cost of
30 tuition expenses;

31 (5) Shall give priority to an eligible student who previously
32 received a scholarship from a nonprofit scholarship-funding organization;

33 (6) Shall give priority to the sibling or siblings of an
34 eligible student who has received a scholarship under the scholarship program
35 and is currently enrolled in a private school through the scholarship
36 program;

1 (7) Shall provide a scholarship to an eligible student through a
2 random and anonymous student selection method unless the eligible student
3 qualifies for priority under subdivision (5) or (6) of this section;

4 (8) Shall not restrict or reserve scholarships for use at a
5 particular private school;

6 (9) Shall allow an eligible student to attend any eligible
7 private school and shall allow a parent or guardian of an eligible student to
8 transfer a scholarship during a school year to any other eligible private
9 school of the parent's or guardian's choice if the eligible student was
10 excused by the current eligible private school for illness or other good
11 cause;

12 (10)(A) Except as otherwise provided in this section, shall
13 obligate one hundred percent (100%) of the contributions to provide full-year
14 or partial-year scholarships to eligible private schools in the fiscal year
15 in which the contribution was received.

16 (B) Up to twenty-five percent (25%) of the total
17 contribution may be carried forward for expenditure in the following state
18 fiscal year.

19 (C) A nonprofit scholarship-funding organization, before
20 granting a scholarship for an academic year, shall document each eligible
21 student's scholarship eligibility for that academic year.

22 (D) A nonprofit scholarship-funding organization shall not
23 grant multiyear scholarships in one (1) approval process.

24 (E) Up to eight percent (8%) of contributions may be used
25 for administrative expenses of the nonprofit scholarship-funding
26 organization.

27 (F) All interest accrued from contributions shall be used
28 for scholarships;

29 (11) Shall maintain separate accounts for scholarship funds and
30 operating funds;

31 (12)(A) With the prior approval of the Department of Finance and
32 Administration, may transfer funds to another nonprofit scholarship-funding
33 organization if additional funds are required to meet scholarship demand at
34 the receiving nonprofit scholarship-funding organization.

35 (B) A transfer under subdivision (12)(A) of this section
36 shall be limited to the greater of five hundred thousand dollars (\$500,000)

1 or twenty percent (20%) of the total contributions received by the nonprofit
2 scholarship-funding organization making the transfer.

3 (C) All funds transferred under subdivision (12)(A) of
4 this section shall be deposited by the receiving nonprofit scholarship-
5 funding organization into its scholarship accounts.

6 (D) All transferred amounts received by a nonprofit
7 scholarship-funding organization shall be disclosed separately in the annual
8 financial and compliance audit required under subdivision (13) of this
9 section;

10 (13)(A) Shall provide to the Department of Finance and
11 Administration an annual financial and compliance audit of its accounts and
12 records conducted by an independent certified public accountant.

13 (B) The audit required under subdivision (13)(A) of this
14 section shall be conducted in compliance with generally accepted auditing
15 standards and shall include the following:

16 (i) A report on financial statements presented in
17 accordance with generally accepted accounting principles set forth by the
18 American Institute of Certified Public Accountants for not-for-profit
19 organizations; and

20 (ii) A determination of compliance with the
21 statutory eligibility and expenditure requirements stated in this section.

22 (C) Each audit required under subdivision (13)(A) of this
23 section shall be provided to the Department of Finance and Administration
24 within one hundred eighty (180) days after completion of the nonprofit
25 scholarship-funding organization's fiscal year;

26 (14) Shall prepare and submit quarterly reports to the
27 Department of Finance and Administration;

28 (15)(A) Shall submit in a timely manner any information
29 requested by the Department of Education relating to the scholarship program.

30 (B) Information submitted to the Department of Education
31 under subdivision (15)(A) of this section shall be made available on the
32 website maintained by the nonprofit scholarship-funding organization;

33 (16) Shall establish a website that provides parents, guardians,
34 and private schools with information on participation in the scholarship
35 program;

36 (17) Shall not provide scholarships to a child of an owner or

1 operator;

2 (18) Shall provide annually to the parent or guardian of each
3 eligible student who participates in a scholarship program a copy of the
4 results of the nationally recognized norm-referenced test taken by the
5 student;

6 (19) Shall report eligible student information to the Department
7 of Education that would allow the Department of Education to aggregate
8 student data by grade level, gender, family income level, and race;

9 (20) Shall publish the graduation rates of eligible students who
10 participate in a scholarship program;

11 (21)(A) Shall provide to the Department of Education by August 1
12 each year the name of each eligible student who received a scholarship for
13 the upcoming school year and the name of the eligible student's previous
14 school district or charter school.

15 (B) The nonprofit scholarship-funding organization shall
16 provide verification to the Department of Education that each eligible
17 student has been awarded a scholarship under the scholarship program and has
18 enrolled in an eligible private school for the upcoming school year;

19 (22) Shall require and retain an annual notarized and sworn
20 compliance statement by each participating eligible private school,
21 certifying compliance with state laws;

22 (23) Shall cross-check the list of participating scholarship
23 students with the public school enrollment lists to avoid duplication;

24 (24) Shall annually verify the eligibility of private schools
25 under § 6-18-1906;

26 (25)(A) Shall establish a process by which individuals may
27 notify the nonprofit scholarship-funding organization of a violation of this
28 subchapter by a parent, guardian, eligible private school, or school
29 district.

30 (B)(i) The nonprofit scholarship-funding organization
31 shall conduct an inquiry of any written complaint of a violation of this
32 subchapter or make a referral to the appropriate agency for an investigation
33 if the complaint is signed by the complainant and is legally sufficient.

34 (ii) A complaint is legally sufficient if it alleges
35 facts that constitute a violation of this section.

36 (iii) In order to determine legal sufficiency, the

1 nonprofit scholarship-funding organization may require supporting information
2 or documentation from the complainant;

3 (26)(A) Shall conduct unscheduled site visits to eligible
4 private schools participating in a scholarship program.

5 (B) The purpose of an unscheduled site visit under
6 subdivision (26)(A) of this section is solely to verify the information
7 reported by an eligible private school concerning the enrollment and
8 attendance of students, background screening of teachers, and teachers'
9 fingerprinting results.

10 (C) The nonprofit scholarship-funding organization shall
11 not make more than one (1) unscheduled site visit each year to the same
12 eligible private school.

13 (27) Shall report annually by December 15 to the Governor, the
14 President Pro Tempore of the Senate, and the Speaker of the House of
15 Representatives the nonprofit scholarship-funding organization's actions with
16 respect to the following:

17 (A) The nonprofit scholarship-funding organization's
18 implementation of accountability standards in the scholarship program under
19 this section; and

20 (B) Any substantiated allegations of a violation of law or
21 rule by an eligible private school under this subchapter concerning the
22 enrollment and attendance of students, background screening of teachers, or
23 teachers' fingerprinting results and the corrective action taken by the
24 nonprofit scholarship-funding organization;

25 (28)(A)(i) Shall deny, suspend, or revoke an eligible private
26 school's participation in the scholarship program according to the policies
27 and procedures adopted by the nonprofit scholarship-funding organization if
28 the nonprofit scholarship-funding organization determines that the eligible
29 private school has failed to comply with this subchapter.

30 (ii) However, if the noncompliance is correctable
31 within a reasonable amount of time and the health, safety, or welfare of the
32 students is not threatened, the nonprofit scholarship-funding organization
33 may issue a notice of noncompliance that provides the eligible private school
34 with a deadline by which to provide evidence of compliance before the
35 nonprofit scholarship-funding organization takes action to suspend or revoke
36 the eligible private school's participation in a scholarship program.

1 (B) The nonprofit scholarship-funding organization's
2 determination is subject to the following:

3 (i)(a) If the nonprofit scholarship-funding
4 organization intends to deny, suspend, or revoke an eligible private school's
5 participation in a scholarship program, the nonprofit scholarship-funding
6 organization shall notify the eligible private school of the proposed action
7 in writing by certified mail to the eligible private school's address of
8 record with the nonprofit scholarship-funding organization.

9 (b) The notification shall include the reasons
10 for the proposed action and notice of the timelines and procedures stated in
11 this subdivision (28); and

12 (ii) The eligible private school that is adversely
13 affected by the proposed action may appeal the decision to the Department of
14 Finance and Administration.

15 (C) The nonprofit scholarship-funding organization may
16 suspend payment of scholarship funds if it is determined that there is cause
17 to believe that there is:

18 (i) An imminent threat to the health, safety, or
19 welfare of the students; or

20 (ii) Fraudulent activity on the part of the eligible
21 private school.

22 (D) In incidents of alleged fraudulent activity, the
23 nonprofit scholarship-funding organization may release personally
24 identifiable records or reports of students to the following persons or
25 organizations:

26 (i) A court of competent jurisdiction in compliance
27 with an order of that court or the attorney of record in accordance with a
28 lawfully issued subpoena, consistent with the Family Educational Rights and
29 Privacy Act, 20 U.S.C. § 1232g, as it existed on January 1, 2013;

30 (ii) A person or entity authorized by a court of
31 competent jurisdiction in compliance with an order of that court or the
32 attorney of record under a lawfully issued subpoena, consistent with the
33 Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, as it existed
34 on January 1, 2013; and

35 (iii) Any person, entity, or authority issuing a
36 subpoena for law enforcement purposes when the court or other issuing agency

1 has ordered that the existence or the contents of the subpoena or the
2 information furnished in response to the subpoena not be disclosed,
3 consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. §
4 1232g, as in effect of January 1, 2013, and 34 C.F.R. § 99.31, as it existed
5 January 1, 2013.

6 (E) The nonprofit scholarship-funding organization's order
7 suspending payment under this subdivision (28) may be appealed under the
8 policies and procedures adopted by the nonprofit scholarship-funding
9 organization;

10 (29) Shall accept pledges for contributions under § 26-51-2604;

11 (30) Within one (1) business day of receiving a pledge for a
12 contribution under § 26-51-2604, shall submit the pledge for a contribution
13 to the Department of Finance and Administration in the order in which the
14 pledge was received;

15 (31) Shall notify each eligible taxpayer of the Department of
16 Finance and Administration's determination as to the eligibility of a pledge
17 for a contribution in writing within two (2) business days of receiving
18 notice from the Department of Finance and Administration concerning the
19 eligibility of the pledge for a contribution;

20 (32) Shall notify the Department of Finance and Administration
21 of the receipt of contributions under § 26-51-2604(b)(6)(A)(v) within one (1)
22 business day of receiving the contribution; and

23 (33) Shall adopt policies and procedures as necessary to perform its
24 duties under this subchapter.

25
26 6-18-1905. Requirements for eligible students and parents and
27 guardians of eligible students.

28 (a)(1) To qualify a child for a scholarship from a nonprofit
29 scholarship-funding organization, a parent or guardian shall select an
30 eligible private school and apply for the admission of his or her child.

31 (2) The parent or guardian shall inform the child's school
32 district when the parent or guardian withdraws his or her child to attend an
33 eligible private school.

34 (b)(1) Upon receipt of a scholarship warrant from the nonprofit
35 scholarship-funding organization under § 26-51-2606, the parent or guardian
36 to whom the scholarship warrant is issued shall restrictively endorse the

1 scholarship warrant to the eligible private school for deposit into the
2 scholarship account of the eligible private school.

3 (2) The parent or guardian shall not designate an entity or
4 individual associated with the participating eligible private school as the
5 parent's or guardian's attorney-in-fact to endorse a scholarship warrant.

6 (3) A parent or guardian who fails to comply with this
7 subsection forfeits the scholarship on behalf of the eligible student.

8 (c) A student participating in the scholarship program shall remain in
9 attendance throughout the school year unless excused by the eligible private
10 school for illness or other good cause.

11 (d) Each parent or guardian and each eligible student shall comply
12 with the eligible private school's published policies.

13
14 6-18-1906. Eligible private school – Requirements.

15 (a) An eligible private school may be sectarian or nonsectarian and
16 shall:

17 (1) Comply with all requirements for private schools
18 participating in state school choice scholarship programs;

19 (2) Provide to the nonprofit scholarship-funding organization,
20 upon request, all documentation required for the student's participation,
21 including the eligible private school's and student's fee schedules;

22 (3) Identify and select the nationally recognized norm-
23 referenced tests that measure learning gains in math and language arts for
24 the students in the grades that require testing under the Arkansas
25 Comprehensive Testing, Assessment, and Accountability Program Act, § 6-15-401
26 et seq.;

27 (4) Be academically accountable to the parent or guardian for
28 meeting the educational needs of the student by:

29 (A) Annually providing to the parent or guardian a written
30 explanation of the student's progress; and

31 (B)(i) Annually administering or making provision for
32 students participating in the scholarship program to take a nationally
33 recognized norm-referenced test.

34 (ii)(a) A student with a disability for whom
35 standardized testing is not appropriate as stated in the student's
36 individualized education plan is exempt from the requirement under

1 subdivision (a)(4)(B)(i) of this section.

2 (b) However, if a student is exempt under
3 subdivision (a)(4)(B)(ii)(a) of this section, the participating eligible
4 private school shall prepare annually a portfolio that provides information
5 regarding the student's progress to the parent or guardian.

6 (iii) A participating eligible private school shall
7 report a student's standardized test scores to the parent or guardian and to
8 the qualified researcher selected by the Department of Education as described
9 in § 6-18-1907(1) under the Family Educational Rights and Privacy Act, 20
10 U.S.C. § 1232g, as it existed on January 1, 2013;

11 (5) Comply with all requirements and laws for private schools in
12 Arkansas; and

13 (6) Demonstrate financial viability if the eligible private
14 school is to receive contributions of at least fifty thousand dollars
15 (\$50,000) during a school year by filing with the nonprofit scholarship-
16 funding organization before the beginning of the school year:

17 (A) A surety bond payable to the nonprofit scholarship-
18 funding organization in an amount equal to the aggregate amount of
19 contributions received the prior year; or

20 (B) Financial information that demonstrates the financial
21 viability of the eligible private school.

22 (b) The inability of an eligible private school to meet the
23 requirements of this section constitutes a basis for the revocation of the
24 private school's eligibility to participate in a scholarship program by the
25 nonprofit scholarship-funding organization.

26
27 6-18-1907. Department of Education – Duties.

28 The Department of Education shall:

29 (1)(A) Contract and cooperate with one (1) or more qualified
30 researchers who have previous experience evaluating school choice programs to
31 study the scholarship program created under this subchapter and the K-12
32 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq.

33 (B) The Department of Education may use any funds
34 available to it to fund the study required under this subdivision (1).

35 (C) The study required under this subdivision (1) shall
36 assess the following:

1 (i) Parents' and guardians' satisfaction with the
2 scholarship program;

3 (ii) Socioeconomic data for the families of the
4 eligible students participating in the scholarship program;

5 (iii) The fiscal impact of the scholarship program
6 in relation to the state and to the families of the eligible students
7 participating in the scholarship program;

8 (iv) The impact of the scholarship program on public
9 school districts, public school students, and the quality of life in the
10 relevant communities;

11 (v) The impact of the scholarship program on the
12 capacity, availability, and quality of public and private schools; and

13 (vi) The academic performance and graduation rate of
14 the eligible students participating in the scholarship program.

15 (D) The qualified researchers conducting the study
16 required under this subdivision (1) shall:

17 (i) Apply appropriate analytical and behavioral
18 science methodologies to promote and ensure public confidence in the study;

19 (ii) When possible, develop the comparison group of
20 eligible students participating in the scholarship program based on random
21 assignment methodology, which is feasible if the scholarship program receives
22 a significant number of applications over the number of available
23 scholarships or openings in eligible private schools;

24 (iii) If the random assignment methodology is not
25 feasible, measure the performance of the eligible students participating in
26 the scholarship program against the performance of similar students with
27 respect to academic achievement and, when possible, demographic factors,
28 including without limitation poverty level, race, and ethnicity;

29 (iv) Protect the identity of the participating
30 schools and students by taking appropriate measures, including without
31 limitation maintaining the anonymity of disaggregated data other than grade
32 level, gender, race, and ethnicity;

33 (v) Provide a final copy of the study required under
34 this subdivision (2) to the General Assembly and each nonprofit scholarship-
35 funding organization; and

36 (vi) Make the data and methodology from the study

1 available for public review subject to the requirements of the Family
2 Educational Rights and Privacy Act, 20 U.S.C. § 1232g, as it existed on
3 January 1, 2013.

4 (E) The General Assembly may require periodic reports from
5 the qualified researchers conducting the study required under this
6 subdivision (2).

7 (2) Remove the eligible students from the list provided by a
8 nonprofit scholarship-funding organization under § 6-18-1904(21) from the
9 fiscal year three-quarter average daily membership used to determine school
10 funding under § 6-20-2305;

11 (3) By July 15, 2013, and by March 15 each year thereafter, list
12 the nonprofit scholarship-funding organizations;

13 (4) Verify annually the eligibility of nonprofit scholarship-
14 funding organizations;

15 (5) Notify a nonprofit scholarship-funding organization of any
16 of the nonprofit scholarship-funding organization's identified students who
17 are receiving corporate income tax credit scholarships from other nonprofit
18 scholarship-funding organizations;

19 (6) Require quarterly reports by a nonprofit scholarship-funding
20 organization regarding the number of students participating in the
21 scholarship program and the eligible private schools at which the students
22 are enrolled;

23 (7) Adopt rules necessary to administer this subchapter; and

24 (8) In cooperation with the Department of Finance and
25 Administration, develop a cooperative agreement to assist in the
26 administration of this subchapter and the K-12 Scholarship Contribution Tax
27 Credit Act, § 26-51-2601 et seq.

28
29 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
30 General Assembly of the State of Arkansas that attendance at a private school
31 is often cost prohibitive for many Arkansas children; that these children
32 should be allowed to attend the school that best meets their educational
33 needs; that providing scholarships would allow many children to attend
34 private schools who are not currently financially able to do so; that
35 allowing an income tax credit would encourage donations that could be used
36 for scholarships for these children; and that this act is necessary to

1 provide the relevant state agencies, private schools, and scholarship-funding
2 organizations with sufficient time to adequately prepare to establish
3 scholarships for the 2013-2014 school year. Therefore, an emergency is
4 declared to exist, and this act being necessary for the preservation of the
5 public peace, health, and safety shall become effective on July 1, 2013.

6
7 */s/J. English*
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