

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

*As Engrossed: S3/20/13*  
**A Bill**

SENATE BILL 740

By: Senator J. English  
By: Representatives Collins, Westerman

### **For An Act To Be Entitled**

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

### **Subtitle**

TO PROVIDE K-12 SCHOLARSHIPS TO ECONOMICALLY DISADVANTAGED STUDENTS BY PROVIDING A TAX CREDIT FOR CONTRIBUTIONS TO NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS; AND TO DECLARE AN EMERGENCY.

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

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

Subchapter 26 – K-12 Scholarship Contribution Tax Credit Act

26-51-2601. Title.

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



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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Has notified the Department of Education 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.;

(6) “Owner” or “operator” means:

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

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

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

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

26-51-2604. Tax credit for contributions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

receiving the pledge;

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

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

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

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

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

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

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

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

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

(C) This carry forward applies to all approved

contributions made after July 1, 2013.

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

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

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

The Department of Finance and Administration shall:

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

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

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

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

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

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

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

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

the first year of the scholarship program.

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

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

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

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

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

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

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

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

Subchapter 19 – K-12 Scholarship Tax Credit Act

6-18-1901. Title.

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

6-18-1902. Purpose.

The purpose of this subchapter is to:

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

(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.

6-18-1903. Definitions.

As used in this chapter:

(1) "Contribution" means a monetary contribution from an eligible taxpayer, subject to the restrictions provided in the K-12 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq., 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 the Department of Education of its intention to participate and comply with the requirements of this subchapter and the K-12 Scholarship Contribution Tax Credit Act, § 26-51-2601 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 the K-12 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq., 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A nonprofit scholarship-funding organization:

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

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

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

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

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

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

entered into the statewide automated fingerprint identification system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

operator;

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

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

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

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

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

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

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

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

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

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

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

(iii) In order to determine legal sufficiency, the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Department of Education shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Make the data and methodology from the study

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

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

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

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

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

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

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

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

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

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

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

*/s/J. English*