

**STATE OF MICHIGAN  
101ST LEGISLATURE  
REGULAR SESSION OF 2021**

**Introduced by Reps. Posthumus, Maddock, Bellino, Roth, Green, O'Malley, Bezotte, Allor, Fink,  
Bollin, Lightner, Outman, Markkanen, Griffin, Meerman and Hornberger**

## **ENROLLED HOUSE BILL No. 5404**

AN ACT to establish a student opportunity scholarship program for eligible students; to provide for the certification of scholarship-granting organizations; to provide for student opportunity scholarship accounts; to prescribe conditions for use of the funds in the scholarship accounts; to provide for the administration of the student opportunity scholarship program; to prescribe certain powers and duties of certain state officers, agencies, and departments; and to allow certain tax credits and deductions.

*The People of the State of Michigan enact:*

Sec. 1. This act may be cited as the “student opportunity scholarship act” or “SOS act”.

Sec. 3. As used in this act:

(a) “Career and technical education” means organized, systemic instruction designed to prepare an eligible student for useful employment in a recognized occupation.

(b) “Contribution” means a donation in the form of cash or marketable securities that is eligible for the tax credit under section 279 or 679 of the income tax act of 1967, 1967 PA 281, MCL 206.279 and 206.679.

(c) “Curriculum” means a complete course of study for a particular content area or grade level.

(d) “Department” means the department of treasury.

(e) “Education service provider” means a person or organization that receives payments from an SOS account to provide educational materials and services to SOS students.

(f) “Eligible student” means a resident of this state who is 5 years of age or older or is enrolled in a public school or nonpublic school in any of grades kindergarten to 12 and who satisfies at least 1 of the following:

(i) Is a member of a household with an annual household income at the time of initially applying for an SOS from an SGO under this act of not more than 200% of the amount of household income necessary to meet the income eligibility criteria for the federal free or reduced-price lunch program, as determined under the Richard B. Russell national school lunch act, 42 USC 1751 to 1769j.

(ii) Is a child with a disability as defined under the individuals with disabilities education act, Public Law 108-446.

(iii) Is a child in foster care as defined in section 2 of the foster care and adoption services act, 1994 PA 203, MCL 722.952.

(iv) Is a member of the household of an eligible student that currently has an SOS from an SGO under this act.

(g) "High school equivalency certificate" means that term as defined in section 4 of the state school aid act of 1979, 1979 PA 94, MCL 388.1604.

(h) "Minimum foundation allowance" means the minimum foundation allowance established under section 20 of the state school aid act of 1979, 1979 PA 94, MCL 388.1620.

(i) "Nonpublic school" means that term as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(j) "Parent" means a biological or adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of an SOS student.

(k) "Person" means an individual or a partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

(l) "Public school" means that term as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(m) "Scholarship-granting organization" or "SGO" means a nonprofit organization that complies with the requirements of this act and that receives contributions, allocates funds, and administers SOS accounts.

(n) "School fiscal year" means that term as defined in section 6 of the state school aid act of 1979, 1979 PA 94, MCL 388.1606.

(o) "SOS student" means an eligible student who is participating in the student opportunity scholarship program.

(p) "State fiscal year" means a fiscal year that commences October 1 and continues through September 30.

(q) "Student opportunity scholarship" or "SOS" or "program" means the student opportunity scholarship program established in this act.

(r) "Student opportunity scholarship account" or "SOS account" means the account to which funds are allocated by an SGO to the parent of an SOS student in order to pay for the student's qualifying education expenses in accordance with the requirements of this act.

Sec. 5. (1) The department shall establish a student opportunity scholarship program in this state to give more flexibility and choices in education to residents of this state and to address disparities in educational options available to students.

(2) Each scholarship-granting organization shall create a uniform process for determining the amount to be allocated to each eligible student's SOS account with the following limitations:

(a) For eligible students currently enrolled at a public school, except for eligible students who are nonresident pupils admitted to a school operated by a school district that collects tuition for the pupil under section 1401 of the revised school code, 1976 PA 451, MCL 380.1401, for those students, the total SOS funds for a single school fiscal year must not exceed the following:

(i) \$500.00 for an eligible student, other than an eligible student who is a child with a disability as defined under the individuals with disabilities education act, Public Law 108-446.

(ii) \$1,100.00 for an eligible student who is a child with a disability as defined under the individuals with disabilities education act, Public Law 108-446.

(b) For eligible students not described in subdivision (a), including those who intend to use the funds in the SOS account to pay tuition as described in subsection (3)(a), the total SOS funds for a single school fiscal year must not exceed 90% of the minimum foundation allowance for the immediately preceding state fiscal year reduced by the percentage equal to  $\frac{3}{8}$  of the percentage by which the applicant's household income exceeds the applicable income eligibility criteria for the federal free or reduced-price lunch program, as determined under the Richard B. Russell national school lunch act, 42 USC 1751 to 1769j. A child with a disability as defined under the individuals with disabilities education act, Public Law 108-446, may receive up to 90% of the minimum foundation allowance for the immediately preceding state fiscal year, regardless of household income.

(c) For eligible students in foster care, the SGO shall assume that the student's parents have no income or ability to pay for educational services for the purposes of prioritizing the students and determining the amount of assistance provided under this program.

(3) The funds in an SOS account must only be used to pay for the following qualifying education expenses, unless limited by the SGO under subsection (9), incurred for the purpose of educating an SOS student:

(a) Tuition or fees to attend a kindergarten to grade 12 public school or nonpublic school.

(b) Tuition or fees for online learning programs.

(c) Tutoring services provided by an individual or a tutoring facility.

(d) Services contracted for and provided by a public school, including, but not limited to, individual classes and extracurricular activities and programs.

(e) Textbooks, curricula, or other instructional materials, including, but not limited to, any supplemental materials or associated online instruction required by either a curriculum or an education service provider.

(f) Computer hardware or other technological devices that are primarily used to help meet an SOS student's educational needs or educational software and applications.

(g) School uniforms.

(h) Fees for nationally standardized assessments, advanced placement examinations, examinations related to college or university admission, and tuition or fees for preparatory courses for these.

(i) Tuition or fees for summer education programs and specialized after-school education programs, excluding after-school child care.

(j) Tuition, fees, instructional materials, and examination fees for career and technical education.

(k) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies provided by a licensed professional.

(l) Tuition and fees for any of the following:

(i) Enrollment in an eligible course under the postsecondary enrollment options act, 1996 PA 160, MCL 388.511 to 388.524. As used in this subparagraph, "eligible course" means that term as defined in section 3 of the postsecondary enrollment options act, 1996 PA 160, MCL 388.513.

(ii) Enrollment in an eligible course under the career and technical preparation act, 2000 PA 258, MCL 388.1901 to 388.1913. As used in this subparagraph, "eligible course" means that term as defined in section 3 of the career and technical education preparation act, 2000 PA 258, MCL 388.1903.

(iii) Participation in a CTE early/middle college or CTE dual enrollment program authorized under section 61b of the state school aid act of 1979, 1979 PA 94, MCL 388.1661b.

(m) Fees for transportation paid to a fee-for-service transportation provider, or costs for mileage, for the student to travel to and from an education service provider.

(n) Fees for school-based athletic activities.

(4) A public school or nonpublic school shall not do any of the following:

(a) Charge an SOS student tuition or charge an SOS student for any services in an amount that only applies to SOS students.

(b) Charge an SOS student tuition or charge an SOS student for any services in an amount that is different than the amount the public school or nonpublic school would have otherwise charged the SOS student under state law if he or she was not an SOS student.

(c) Charge an SOS student tuition or charge an SOS student for any services solely because he or she is an SOS student.

(5) SOS funds must not be refunded, rebated, or shared with a parent or SOS student in any manner. Any refund or rebate for materials or services purchased with SOS funds must be credited directly to the student's SOS account. Parents may make payments for the costs of educational materials and services not covered by the funds in their student's SOS account, but personal deposits into an SOS account are not permitted. As provided in section 30 of the income tax act of 1967, 1967 PA 281, MCL 206.30, funds allocated to an SOS account and used for qualifying education expenses are not taxable income to the parent or the SOS student.

(6) An SOS account remains in force, unless the SOS account is closed because of a substantial misuse of funds, and any unused funds roll over from quarter to quarter and from year to year until 1 of the following occurs:

(a) The parent withdraws the SOS student from the SOS program.

(b) The SGO determines that the SOS student's family income has increased above 250% of the amount of household income necessary to meet the income eligibility criteria for the federal free or reduced-price lunch program, as determined under the Richard B. Russell national school lunch act, 42 USC 1751 to 1769j.

(c) The SOS student receives a high school diploma or high school equivalency certificate or, for an SOS student who is a child with a disability as defined under the individuals with disabilities education act, Public Law 108-446, the SOS student receives a high school diploma, high school equivalency certificate, or certificate of completion for high school.

(d) The end of the school fiscal year in which the SOS student reaches 19 years of age or, for an SOS student who is a child with a disability as defined under the individuals with disabilities education act, Public Law 108-446, 26 years of age.

(7) When an SOS account is closed, any unused funds revert to the SGO that granted the SOS and the SGO that granted the SOS shall allocate the unused funds to fund other SOS accounts. If the SGO that granted the SOS is no longer operating, the funds must be transferred to another SGO operating in good standing with this state.

(8) An SGO shall first prioritize funding SOS accounts for students who received an SOS in the previous school fiscal year, the siblings of those students, and foster children living in the same household as those students and then, for other first-time applicants, shall prioritize as follows:

(a) A majority of funds available for other first-time applicants must be reserved for students whose household income does not exceed that necessary to meet the income eligibility criteria for the federal free or reduced-price lunch program, as determined under the Richard B. Russell national school lunch act, 42 USC 1751 to 1769j, or for children who meet the definition of a child with a disability as defined under the individuals with disabilities education act, Public Law 108-446.

(b) The unfunded first-time applicants not described in subdivision (a) must be selected for funding based on a random lottery until all remaining funds are allocated to SOS accounts.

(9) An SGO may define and limit the educational services that the SOS funds may cover as long as any limitation on qualified educational services is in compliance with federal and state laws affecting students with a disability and any other federal and state laws regarding nondiscrimination. An SGO shall not accept a contribution from any person if that person designates that the contribution must be used to award an SOS to a particular student.

(10) An SGO shall not fund an SOS for the dependents of its boards of directors, its staff, or its donors.

Sec. 7. (1) To establish an SOS account for an eligible student, the parent must submit an application to a scholarship-granting organization. The SGO shall approve an application for an SOS if all of the following apply:

(a) An SGO verifies that the student on whose behalf the parent is applying is an eligible student.

(b) Funds are available for the SOS.

(c) The parent signs a written agreement with the SGO that provides for the following:

(i) To use the funds in the SOS account only for the covered qualifying education expenses described in section 5.

(ii) Not to establish any other SOS account for the eligible student with any other SGO.

(iii) To comply with the rules and requirements of the SOS program.

(2) The SGO shall annually renew a student's SOS if funds are available unless the student's family income has increased above 250% of the amount of household income necessary to meet the income eligibility criteria for the federal free or reduced-price lunch program, as determined under the Richard B. Russell national school lunch act, 42 USC 1751 to 1769j. In the event that an eligible student becomes ineligible for reasons other than fraud or misuse of funds, the SGO may cease funding for the student's SOS provided that the SGO complies with each of the following:

(a) The SGO immediately suspends payment of additional funds into the student's SOS account. For SOS accounts that have been open for at least 1 full school fiscal year, the SOS account must remain open and active for the parent to make qualifying education expenses to educate the student from funds remaining in the SOS account. When no funds remain in the student's SOS account, the SGO may close the SOS account.

(b) If the parent of an eligible student reapplies to the SGO and signs a new written agreement, payments into the student's existing SOS account may resume if the SOS account is still open and active. A new SOS account may be established if the student's SOS account was closed.

(c) An SGO shall adopt policies to provide the least disruptive process possible for SOS students desiring to leave the SOS program.

Sec. 9. (1) An organization that seeks to become a scholarship-granting organization shall apply for initial certification or renewal of certification from the department. An application for initial certification as an SGO must include all of the following:

(a) A copy of the SGO's incorporation documents.

(b) A copy of the SGO's 501(c)(3) determination letter issued by the Internal Revenue Service.

(c) A description of the methodology the SGO will use to evaluate whether a student is an eligible student to establish an SOS account.

(d) A description of the application process the SGO will use for parents and eligible students.

(e) A description of the methodology the SGO will use to establish, fund, and manage SOS accounts.

(f) A description of the process the SGO will use to approve education service providers.

(g) A description of how the SGO will inform parents of approved education service providers.

(h) A description of the SGO's procedures for crediting refunds from an education service provider back to a student's SOS account.

(i) An assurance that the SGO will conduct a background check of all employees of the SGO and maintain records of those background checks for audit purposes.

(2) Subject to subsection (4), an application for renewal of certification as an SGO must include the following:

(a) The SGO's completed Internal Revenue Service Form 990, submitted no later than November 30 of the year before the school fiscal year that the SGO intends to fund SOS accounts.

(b) A copy of the SGO's most recent financial audit. The audit required under this subdivision must satisfy each of the following:

(i) Is conducted in accordance with generally accepted auditing standards.

(ii) Evaluates the SGO's compliance with subsection (4).

(iii) Is conducted by a certified public accountant within 6 months of the end of the SGO's fiscal year.

(iv) Is free of material misstatements.

(c) An annual report that includes the following:

(i) The number of applications the SGO received during the previous school fiscal year, disaggregated by county and by grade level of the applicants.

(ii) The number of all students, disaggregated by county and by grade level of the students, that received SOS funds from the SGO during the previous school fiscal year.

(iii) The total number of SOS accounts the SGO maintains.

(iv) The following amount of funds:

(A) Funds received by the SGO to fund SOS accounts during the last school fiscal year.

(B) Funds distributed by the SGO into SOS accounts during the last school fiscal year.

(C) Funds remaining after the distribution into SOS accounts and any obligations to fund SOS accounts in the future.

(D) Funds spent on administrative expenses and an accounting of those expenses during the last school fiscal year.

(E) Funds spent on fees to private financial management firms or other organizations to maintain records and process transactions of the SOS accounts.

(v) A list of the SGO's approved education service providers.

(vi) A description of how the SGO has complied with the operational requirements and responsibilities of this act.

(3) The annual report required under subsection (2) must also satisfy all of the following:

(a) Comply with uniform financial accounting standards.

(b) Be attested to by an independent certified public accountant.

(c) Be free of material misstatements or exceptions.

(4) The department shall certify an SGO or renew an SGO's certification under this act if the organization meets the requirements of this section. The department shall issue initial certifications within 60 days of receiving the application and renew certifications within 30 days of receiving the application. For a renewal application, an SGO shall provide proof of the following:

(a) At least 90% of the total annual contributions received by the SGO are allocated to SOS accounts no later than the last day of the SGO's immediately succeeding calendar year or fiscal year, whichever is applicable, unless the current year's total annual contributions received by the SGO exceed an amount equal to the average of the total annual contributions received in the immediately preceding 3 years by more than 15%, in which case the excess amount may be carried forward and expended for SOS accounts in 3 equal installments over the immediately succeeding 3 years.

(b) The SGO maintained separate accounts for SOS funds and operating funds. Any interest that accrues from contributions that are eligible for the tax credit under section 279 or 679 of the income tax act of 1967, 1967 PA 281, MCL 206.279 and 206.679, were allocated by the SGO to fund SOS accounts. An SGO utilized a standard application process for parents to establish their student's eligibility for an SOS and the application was readily available to interested families and may be submitted through various sources, including the internet.

(c) The SGO included 2 or more education service providers in its SOS program.

Sec. 11. (1) An SGO shall provide parents with a written explanation of the qualifying education expenses for which SOS funds may be used under this act, the responsibilities of parents under this act, and the duties of the SGO and the role of any private financial management firms or other organizations that the SGO may contract with to process SOS transactions or maintain records for other aspects of the SOS program under this act.

(2) An SGO may transfer funds to another SGO if additional funds are required to meet SOS demands at the receiving SGO or if the transferring SGO determines it cannot continue to operate due to any reason. If funds are transferred for the purpose of meeting SOS demands, no more than a combined aggregate of 10% of the SGOs total annual contributions received may be retained by the SGOs for administrative expenses. All transferred funds must be allocated by the receiving SGO to its account for SOS accounts. All transferred amounts received by an SGO must be separately disclosed in the receiving SGO's annual report for certification renewal under section 9.

(3) An SGO that receives a transfer of funds from an SGO that has determined it will not continue to operate shall agree to fund the SOS accounts established by the transferring SGO to the extent funds are available. The receiving SGO shall also prioritize the funding of transferred SOS accounts before funding new SOS applicants.

(4) An SGO that receives a contribution for which a preapproval letter was issued shall, within 10 business days after receipt of that contribution, notify the department and issue a certificate of contribution to the taxpayer that includes the name of the taxpayer, the amount of the contribution made, and the date on which the contribution was made. An SGO may accept donations that were not made pursuant to a preapproval letter and that are not eligible for the tax credit under section 279 or 679 of the income tax act of 1967, 1967 PA 281, MCL 206.279 and 206.679, and grants to cover administrative costs, to inform the public about the SOS program, to fund additional SOS accounts, or to offer assistance outside of the SOS program. Donations that are not eligible for the tax credit under section 279 or 679 of the income tax act of 1967, 1967 PA 281, MCL 206.279 and 206.679, are not subject to the requirements of this act.

Sec. 13. (1) On or before January 1 of each year, the department shall publish on its publicly accessible website a list of SGOs. However, if an SGO fails to meet the requirements of this act, the department shall not include the organization on the list of SGOs the following calendar year.

(2) The department shall produce and publish on its publicly accessible website an annual report that aggregates the data obtained from the annual reports submitted by SGOs for the renewal of their certification under section 9. The department's report must not include, for SOS students, any personally identifiable information of SOS students and, for SGOs, any confidential identifying information of SGOs.

Sec. 15. (1) The department may conduct or contract for an additional audit or appropriate financial review of an SGO upon reasonable belief that the SGO has violated the requirements of this act. In the event that the department determines that there has been a violation of this act by an SGO, the department shall send written notice to the SGO. The SGO that receives written notice of a violation will have 60 days from receipt of notice to correct the violation identified by the department. If the SGO fails or refuses to comply after 60 days, the department may revoke the SGO's certification to participate in the SOS program.

(2) An SGO whose certificate has been revoked under this section may appeal the department's revocation of its certification pursuant to section 22 of 1941 PA 122, MCL 205.22. If the applicant does not file a timely appeal, upon revocation, an SGO shall comply with the following:

(a) Continue administering SOS funds that were donated prior to the date of notice stated on the revocation.

(b) Not accept any further contributions for the purpose of funding SOS accounts on or after the date of notice stated on the revocation.

(c) Refund any contributions that were received for the purpose of funding SOS accounts on or after the date of notice stated on the revocation.

Sec. 17. (1) Each SGO shall implement a commercially viable, cost-effective, and parent-friendly system for payment of qualifying education expenses from SOS accounts to education service providers. The SGO shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket qualifying education expenses, but shall provide maximum flexibility to parents by facilitating direct payments to education service providers or requests for preapproval of and reimbursements for qualifying education expenses described in section 5.

(2) An SGO may contract with private financial management firms or other organizations to develop the payment system. An SGO may contract with private financial management firms or other organizations to maintain records and process transactions of the SOS accounts. If funding is available, an SGO shall continue making payments into an SOS account until any of the following occur:

(a) The parent withdraws the SOS student from the SOS program.

(b) The SGO determines that the SOS student's family income has increased above 250% of the amount of household income necessary to meet the income eligibility criteria for the federal free or reduced-price lunch program, as determined under the Richard B. Russell national school lunch act, 42 USC 1751 to 1769j.

(c) The SGO determines that there was substantial misuse of the funds in the SOS account.

(d) The SOS student receives a high school diploma or high school equivalency certificate or, for an SOS student who is a child with a disability as defined under the individuals with disabilities education act, Public Law 108-446, the SOS student receives a high school diploma, high school equivalency certificate, or certificate of completion for high school.

(e) The end of the school fiscal year in which the SOS student reaches 19 years of age or, for an SOS student who is a child with a disability as defined under the individuals with disabilities education act, Public Law 108-446, 26 years of age.

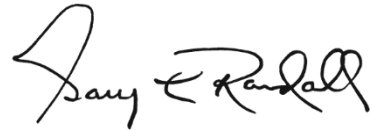
(3) Each SGO shall establish a process for approving education service providers. An SGO may approve education service providers on their own initiative, at the request of parents, or upon request from prospective education service providers.

Sec. 19. (1) Nothing in this act must be deemed to limit the independence or autonomy of an education service provider or to make the actions of an education service provider the actions of this state.

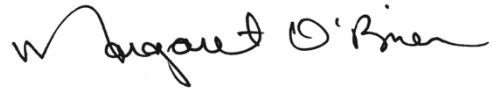
(2) Nothing in this act must be construed to expand the regulatory authority of this state, its officers, or any public school or nonpublic school to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the SOS program.

(3) An education service provider that accepts payment from an SOS account under this act is not an agent of this state. An education service provider must not be required to alter its creed, practices, admissions policy, or curriculum in order to accept payments from an SOS account.

Sec. 21. If any part of this act is challenged in state court as violating either the state or federal constitutions, parents of students who would meet the criteria for being eligible students shall be permitted to intervene as of right in such lawsuit for the purposes of defending the SOS program's constitutionality.



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

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Governor