



2022 South Dakota Legislature

House Bill 1009

Introduced by: The Committee on State Affairs at the request of the State Investment Council

1 **An Act to revise certain provisions of the Higher Education Savings Plan Act.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 13-63-1 be AMENDED:**

4 **13-63-1.** Terms used in this chapter mean:

- 5 (1) "Account," an account established as prescribed in this chapter;
- 6 (2) "Account owner," the person who, under this chapter or rules promulgated by the
7 council pursuant to chapter 1-26, is entitled to select or change the designated
8 beneficiary of an account, to designate any person other than the designated
9 beneficiary to whom funds may be paid from the account, or to receive distributions
10 from the account if no such other person is designated;
- 11 (3) "Cash, currency, bills, and coins in circulation. A negotiable instrument may be
12 converted to cash if properly endorsed and presented to a financial institution for
13 deposit. An automatic transfer, cashier's check, certified check, money order,
14 payroll deposit, traveler's check, personal check, and wire transfer may also be
15 converted to cash if presented to a financial institution for deposit;
- 16 (4) "Contribution," any payment directly allocated to an account for the benefit of a
17 designated beneficiary or used to pay late fees or administrative fees associated
18 with an account, and that portion of any rollover amount treated as a contribution
19 under section 529 of the Internal Revenue Code ~~and related regulations;~~
- 20 ~~(4)(5)~~ "Contributor," any person making a contribution to an account;
- 21 ~~(5)(6)~~ "Council," the South Dakota Investment Council;
- 22 ~~(6)(7)~~ "Designated beneficiary," except as provided in § 13-63-25, the individual
23 designated at the time the account is opened as the individual whose higher
24 education expenses are expected to be paid from the account or, if this designated
25 beneficiary is replaced in accordance with § 13-63-12, 13-63-13, or 13-63-14, the
26 replacement beneficiary;

- 1 ~~(7)~~(8) "Eligible education institution," ~~an institution that is eligible to participate in any~~
2 ~~financial assistance program authorized by Title IV of the Higher Education Act of~~
3 ~~1965, as amended through January 1, 2001, and that is any of the following as~~
4 ~~permitted by section 529 of the Internal Revenue Code and related regulations:~~ (a)
5 ~~— An institution described in the Higher Education Act of 1965 (P.L. 89-329, 79~~
6 ~~stat. 1219; 20 United States Code sections 1001 through 1150);~~
7 ~~(b) — An area vocational educational school as defined in section 521(3), subparagraph~~
8 ~~(C) or (D) of the Carl D. Perkins Vocational Education Act (P.L. 98-524; 98 stat.~~
9 ~~2435; 20 United States Code sections 2301 through 2471);~~
10 ~~(c) — An institution accredited for private postsecondary education as defined in section~~
11 ~~529(e)(5) of the Internal Revenue Code;~~
12 ~~(8)~~(9) "Financial institution," any bank, commercial bank, national bank, savings bank,
13 savings and loan association, credit union, an insurance company, brokerage firm,
14 or other similar entity that is authorized to do business in this state;
15 (10) "Investment direction," specifying or attempting to specify the particular financial
16 instruments or ownership interests either individually, or within a fund family or
17 other group of financial instruments or ownership interests held as an investment
18 group, into which the contributions or earnings are invested. Selecting an initial
19 type of investment program if more than one program is offered does not constitute
20 an investment direction;
21 (11) "Internal Revenue Code," the United States Internal Revenue Code as amended and
22 in effect on January 1, 2022;
23 ~~(9)~~(12) "Member of the family," ~~any of the following:~~
24 ~~(a) — A son or daughter of an individual or a descendant of the son or daughter of the~~
25 ~~individual;~~
26 ~~(b) — A stepson or stepdaughter of an individual;~~
27 ~~(c) — A brother, sister, stepbrother, or stepsister of an individual. For purposes of this~~
28 ~~subsection, the terms, brother and sister, include a brother or sister by the~~
29 ~~half blood;~~
30 ~~(d) — The father or mother of an individual or an ancestor of the father or mother of an~~
31 ~~individual;~~
32 ~~(e) — A stepfather or stepmother of an individual;~~
33 ~~(f) — A son or daughter of an individual's brother or sister. For purposes of this~~
34 ~~subsection, the terms, brother and sister, include a brother or sister by the~~
35 ~~half blood;~~

- 1 ~~(g)~~ A brother or sister of an individual's father or mother. For purposes of this
2 subsection, the terms, brother and sister, include a brother or sister by the
3 half blood;
- 4 ~~(h)~~ A son in law, daughter in law, father in law, mother in law, brother in law, or
5 sister in law of an individual;
- 6 ~~(i)~~ The spouse of an individual or the spouse of an individual described in this
7 subdivision;
- 8 ~~(j)~~ Any individual who meets the criteria to be a member of the family as described in
9 this subdivision as a result of legal adoption;
- 10 ~~(k)~~ Any other individual who is considered a member of the family under section 529
11 of the Internal Revenue Code and related regulations as defined in section
12 529(e)(2) of the Internal Revenue Code;
- 13 ~~(11)~~(13) "Person," as defined in the regulations to section 529 of the Internal Revenue
14 Code an individual, a corporation, a partnership, a trust or estate, a joint-stock
15 company, an association, or a syndicate, group, pool, joint venture, or other
16 unincorporated organization or group;
- 17 ~~(12)~~(14) "Program," the higher education savings program established under this
18 chapter;
- 19 ~~(13)~~(15) "Program manager," any financial institution selected by the council to act as
20 the depository and manager for an account;
- 21 ~~(16)~~ "Qualified higher education expenses," ~~tuition, fees, books, supplies, and equipment~~
22 ~~required for enrollment or attendance and room and board of a designated~~
23 ~~beneficiary at an eligible education institution, and any other expenses qualifying~~
24 ~~as qualified higher education expenses under section 529 of the Internal Revenue~~
25 ~~Code and related regulations; provided that room and board expenses qualify only~~
26 ~~if the beneficiary enrolls at least half time and only if the expenses do not exceed~~
27 ~~the minimum room and board allowance determined in calculating costs of~~
28 ~~attendance for federal financial aid programs as defined in section 529(e)(3) of the~~
29 ~~Internal Revenue Code;~~
- 30 ~~(17)~~ "Qualified tuition program," as defined in section 529(b) of the Internal Revenue
31 Code;
- 32 ~~(17)~~(18) "Rollover," a disbursement or transfer from an account of a designated
33 beneficiary that is transferred to or deposited within sixty days into an account of
34 the same designated beneficiary or another individual who is a member of the
35 family of the designated beneficiary, if the transferee account was created under

1 this chapter or under a qualified-state tuition program maintained by another state
2 in accordance with section 529 of the Internal Revenue Code ~~and related~~
3 ~~regulations, or any other rollover allowed by section 529 of the Internal Revenue~~
4 Code.

5 **Section 2. That § 13-63-3 be AMENDED:**

6 **13-63-3.** The council may implement the program through the use of one or more
7 financial institutions to act as the depositories and managers. Under the program, persons
8 may establish accounts through the program at a depository. The council may solicit
9 proposals from financial institutions to act as the depositories and managers of the
10 program. Financial institutions that submit proposals must describe the financial
11 instruments that will be held in accounts. Any program depositories and managers
12 selected by the council shall be selected from among bidding financial institutions that
13 demonstrate the most advantageous combination, both to potential program participants
14 and this state, of the following factors:

- 15 (1) Financial stability and integrity;
- 16 (2) The safety of the investment instruments being offered, taking into account any
17 insurance provided with respect to these instruments;
- 18 (3) The ability of the financial institution to track estimated costs of higher education
19 as calculated by the council;
- 20 (4) The ability of the financial institutions, directly or through a subcontract, to satisfy
21 record- keeping and reporting requirements;
- 22 (5) The financial institution's plan for promoting the program and the investment it is
23 willing to make to promote the program;
- 24 (6) The fees, if any, proposed to be charged to persons for maintaining accounts;
- 25 (7) The minimum initial deposit and minimum contributions that the financial institution
26 will require and the willingness of the financial institution to accept contributions
27 through payroll deduction plans and other deposit plans; and
- 28 (8) Any other benefits to this state or its residents included in the proposal, including,
29 if applicable, an account opening fee payable to the council by the account owner
30 and an additional fee from the financial institution for statewide program marketing
31 by the council.

32 **Section 3. That § 13-63-4 be AMENDED:**

1 **13-63-4.** The council ~~shall~~ may enter into a contract with any financial institution
2 engaged selected to serve as a program manager and depository.

3 ~~The council may select more than one financial institution if both of the following~~
4 ~~conditions exist:~~

5 ~~(1) The United States Internal Revenue Service has provided guidance that giving~~
6 ~~a contributor such a choice will not cause the program to fail to qualify for favorable tax~~
7 ~~treatment under section 529 of the Internal Revenue Code and related regulations; and~~

8 ~~(2) The council concludes that the choice of financial institutions is in the best~~
9 ~~interest of program beneficiaries and will not interfere with the promotion of the~~
10 ~~program.~~ The contract may include terms and conditions, not contrary to federal or state
11 law, as agreed to by the parties.

12 **Section 4. That § 13-63-9 be AMENDED:**

13 **13-63-9.** The program ~~shall~~ must be operated through the use of accounts. An
14 account may be opened by any person who desires to save to pay the qualified higher
15 education expenses of an individual by satisfying each of the following requirements:

16 (1) Completing an application in the form prescribed by the council. ~~The application~~
17 ~~shall include the following information that includes:~~

18 (a) The name, address, and social security number or employer identification
19 number of the contributor;

20 (b) The name, address, and social security number or employer identification
21 number of the account owner if the account owner is not the contributor;

22 (c) The name, address, and social security number of the designated beneficiary;

23 ~~The certification relating to~~ A certification acknowledging that no excess
24 contributions required by § 13-63-21 will be permitted pursuant to
25 applicable law; and

26 (e) Any other information that the council may require;

27 (2) Paying ~~the~~ any one-time application fee established by the council;

28 (3) Making the minimum contribution required by the council; and

29 (4) Designating the type of account to be opened if more than one type of account is
30 offered.

31 **Section 5. That § 13-63-12 be AMENDED:**

32 **13-63-12.** An account owner may change the designated beneficiary of an account
33 to an individual who is a member of the family of the former designated beneficiary or to

1 any other individual in accordance with this section or with procedures established by the
2 council by rules promulgated pursuant to chapter 1-26.

3 To change the designated beneficiary, the owner shall certify to the financial
4 institution the name, address, social security number, and relationship of the new
5 designated beneficiary to the previously named designated beneficiary. The change is
6 effective upon the financial institution's receipt of the certification.

7 **Section 6. That § 13-63-13 be AMENDED:**

8 **13-63-13.** On the direction of an account owner, all or a portion of an account
9 may be transferred to another account of which the designated beneficiary is a member
10 of the family of the designated beneficiary of the transferee account, if the transferee
11 account was created by this chapter or under a qualified state tuition program maintained
12 by another state in accordance with section 529 of the Internal Revenue Code ~~and related~~
13 ~~regulations~~, or to an Achieving a Better Life Experience account in accordance with section
14 529A of the Internal Revenue Code.

15 **Section 7. That § 13-63-18 be AMENDED:**

16 **13-63-18.** ~~No~~A contributor to, account owner of, or designated beneficiary of, any
17 account may not, directly or indirectly, direct the investment of any contributions to an
18 account or the earnings from the account, except to the extent permitted under section
19 529 of the Internal Revenue Code ~~and related regulations~~. A financial institution may not
20 permit a contributor, account owner, or designated beneficiary to act with respect to an
21 account in a manner that constitutes investment direction, except to the extent permitted
22 under section 529(b)(4) of the Internal Revenue Code.

23 The council, as trustee, may offer participants a choice of several investment
24 options, some of which may require investment counseling prior to participation. Any
25 investment vehicle offered by the council ~~shall~~ must be in accordance with policies of the
26 council adopted pursuant to this chapter and ~~shall~~ must be consistent with the investments
27 of a prudent person with similar objectives and ~~shall~~ must further be separate from, and
28 not commingled with, other investment programs of the council.

29 **Section 8. That chapter 13-63 be amended with a NEW SECTION:**

30 For each designated beneficiary, the balance in the qualified tuition program may
31 not exceed the limits as defined in section 529 of the Internal Revenue Code. If the

1 financial institution determines that a contribution would cause the account balance limit
2 to be exceeded, the financial institution may only deposit that portion of the contribution,
3 if any, that does not result in an excess balance. The financial institution shall return the
4 excess to the contributor or permit the account owner to transfer the excess to another
5 account in accordance with § 13-63-13. The program manager shall continuously monitor
6 the current, cumulative balance in the accounts for each designated beneficiary.

7 **Section 9. That § 13-63-23 be AMENDED:**

8 **13-63-23.** The financial institution shall provide statements to each account
9 owner ~~at least once each year~~ annually within thirty-one days after the twelve-month
10 period to which they relate. The statement ~~shall identify the~~ must include a minimum of
11 the beginning balance; all contributions made during a the preceding twelve-month
12 period; ~~the sum total of contributions made through the end of the period;~~ any interest
13 accrued, penalties charged, and distributions made during the period; the value of the
14 account as of the end of ~~this the~~ the period, ~~distribution made during this period;~~ and any
15 other matters that the council requires be reported to the account owner.

16 **Section 10. That § 13-63-30 be AMENDED:**

17 **13-63-30.** Every contract, application, deposit slip, or any other ~~similar~~ document
18 that may be used in connection with a contribution to an account shall clearly indicate, in
19 a typeface and a location that are readily visible, that the account is not insured by this
20 state and neither the principal deposited nor the investment return is guaranteed by this
21 state.