

2024 South Dakota Legislature

Senate Bill 94**AMENDMENT 94A
FOR THE INTRODUCED BILL**

1 **An Act to amend provisions pertaining to the partners in education tax credit**
2 **program, ~~and declare an emergency.~~**

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

4 **Section 1. That § 13-65-1 be AMENDED:**

5 **13-65-1.** Terms, as used in this chapter, mean:

6 (1) "Certified enrollment," the K-12 enrollment data required to be submitted to the
7 Department of Education by an accredited school by October fifteenth of each year
8 and published by the department on the department's website;

9 (2) "Division," the Division of Insurance in the Department of Labor and Regulation;

10 ~~(2)~~(3) "Educational scholarship," a grant to an eligible student to cover all or part of the
11 tuition and fees at a qualifying school. The average value of all scholarships
12 awarded by a scholarship granting organization may not exceed eighty-two and
13 five-tenths percent of the state's share of the per student equivalent, as defined in
14 § 13-13-10.1;

15 ~~(3)~~(4) "Eligible student," any student entering kindergarten through twelfth grade who
16 resides in South Dakota while receiving the educational scholarship and:

17 (a) Is a member of a household whose total annual income, the year before the
18 student enters the program, did not exceed one hundred fifty percent of the
19 income standard used to qualify for a free or reduced-price lunch under the
20 national free or reduced-price lunch program. If sufficient funding is
21 available, once a student meets the initial income eligibility requirement,
22 the student remains income eligible for three years or if the student is
23 entering high school, until the student graduates high school regardless of
24 household income. After the initial period of income eligibility, a student
25 remains eligible if the student is a member of a household whose total

- 1 annual income in the prior year did not exceed two hundred percent of the
 2 income standard used to qualify for a free or reduced-price lunch; or
 3 (b) Is in foster care;
- 4 ~~(4)~~(5) "Low-income eligible student," any student who is a member of a household whose
 5 total annual income, the year before the student enters the program, did not
 6 exceed one hundred percent of the income standard used to qualify for a free or
 7 reduced-price lunch under the national free or reduced-price lunch program;
- 8 ~~(5)~~(6) "Parent," any guardian, custodian, or other person with authority to act in place of
 9 a parent for the child;
- 10 ~~(6)~~(7) "Program," the partners in education tax credit program established pursuant to
 11 this chapter;
- 12 ~~(7)~~(8) "Qualifying school," any nonpublic school that operates within the boundaries of
 13 South Dakota or any tribally controlled school on a federally recognized Indian
 14 reservation that operates within the boundaries of South Dakota, is accredited by
 15 the Department of Education, provides education to elementary or secondary
 16 students, and has notified a scholarship granting organization of its intention to
 17 participate in the program and comply with the program requirements. This term
 18 excludes any school that receives a majority of its revenues from public funds;
- 19 ~~(8)~~(9) "Scholarship granting organization," a nonprofit organization that complies with
 20 the requirements of the program and provides educational scholarships to
 21 students.

22 **Section 2. That § 13-65-4 be AMENDED:**

- 23 **13-65-4.** Each scholarship granting organization shall:
- 24 (1) Annually notify the division of its intent to provide educational scholarships to
 25 eligible students attending qualifying schools;
- 26 (2) Demonstrate to the division that it has been granted exemption from the federal
 27 income tax pursuant to section 501(c)(3) of the Internal Revenue Code;
- 28 (3) Distribute periodic scholarship payments from the educational scholarship fund
 29 account as checks made out to an eligible student's parent and mailed to the
 30 qualifying school where the eligible student is enrolled. The parent shall endorse
 31 the check before it may be deposited;
- 32 (4) Annually collect written documentation, from each qualifying school that accepts
 33 educational scholarship payments, verifying the school is accredited by the
 34 Department of Education;

- 1 (5) Provide a ~~division-approved~~ division-approved receipt to companies for
2 contributions made to the scholarship granting organization;
- 3 (6) Ensure that at least ninety percent of its revenue from contributions is spent on
4 educational scholarships, and that all revenue from interest or investments is spent
5 on scholarships;
- 6 (7) Carry forward no more than twenty-five percent of its revenue from contributions
7 in the educational scholarship fund account from the fiscal year in which they were
8 received to the next fiscal year. Contributions that are not carried forward ~~shall~~
9 must be remitted to the division;
- 10 (8) Submit to the division the names and addresses of all board members and
11 documentation validating that criminal background checks have been conducted
12 on all of its employees and board members, and exclude any employee or board
13 member from employment or governance who might reasonably pose a risk to the
14 appropriate use of contributed funds;
- 15 (9) Ensure that scholarships are portable during the school year and can be used at
16 any qualifying school to which the scholarship granting organization grants
17 scholarships and that accepts the eligible student according to a parent's wishes.
18 If a student moves to a new qualifying school during a school year, the scholarship
19 amount may be prorated; ~~and~~
- 20 (10) Report to the division by June first of each year the following information, prepared
21 by a certified public accountant, regarding its contributions in the previous calendar
22 year and the scholarship awards in the current fiscal year:
- 23 (a) The name and address of each contributing company;
- 24 (b) The total number and total dollar amount of contributions received from
25 each company; and
- 26 (c) The total number and total dollar amount of educational scholarships
27 awarded to eligible students, the total number and total dollar amount of
28 educational scholarships awarded to low-income eligible students, and the
29 percentage of first-time recipients of educational scholarships who were
30 enrolled in a public school in the prior school year;
- 31 (11) Report to the division by December fifteenth of each year, in a format prescribed
32 by the director, information regarding schools entering into participation
33 agreements with the scholarship granting organization, including school names and
34 school certified enrollment as provided by the Department of Education on the
35 Department of Education's website;

1 (12) Maintain a board that consists of at least five members, each of whom must be a
2 resident of this state; and

3 (13) Maintain and staff a physical location in the state to meet with and provide service
4 to qualifying schools.

5 Any donation received that is not awarded a tax credit pursuant to § 13-65-2 is
6 not subject to subdivisions (5) to (7), inclusive, of this section.

7 **Section 3. That a NEW SECTION be added to chapter 13-65:**

8 A qualifying school electing to accept scholarships from a scholarship granting
9 organization may only enter into a participation agreement with one scholarship granting
10 organization each school year. A participation agreement for the next school year must
11 be completed each year by November fifteenth.

12 To be eligible for a premium tax credit for contributions to a scholarship granting
13 program pursuant to this chapter, the scholarship granting organization must have
14 entered into a participation agreement with at least twenty percent of the qualifying
15 schools in the state.

16 **Section 4. That a NEW SECTION be added to chapter 13-65:**

17 The division shall calculate the maximum allowable contributions eligible for a
18 premium tax credit for each scholarship granting organization for each fiscal year by:

19 (1) Dividing the total certified enrollment of all qualifying schools in a participation
20 agreement with the scholarship granting organization in the previous school year
21 by the total certified enrollment of all qualifying schools in participation agreements
22 with all scholarship granting organizations in the previous school year; and

23 (2) Multiplying the result of subdivision (1) by the total available tax credits provided
24 in § 13-65-3.

25 **Section 5. That a NEW SECTION be added to chapter 13-65:**

26 The division shall authorize the maximum allowable allocation of tax credits for
27 each scholarship granting organization pursuant to section 4 of this Act for each calendar
28 year, by January first of each calendar year.

29 **Section 6. That § 13-65-11 be AMENDED:**

1 **13-65-11.** ~~The tax credit provided for in this chapter may be first claimed on the~~
2 ~~annual premium tax return filed in 2017.~~ For the 2024-2025 school year and 2025 fiscal
3 year tax credits, each scholarship granting organization shall:

4 (1) File the report required by § 13-65-4 by ~~April~~ July 1, 2024; and

5 (2) Complete all participation agreements required by section 3 of this Act by ~~April~~ July
6 1, 2024.

7 The division shall authorize the 2024 maximum allowable tax credit for each
8 scholarship granting organization on ~~June 30~~ July 1, 2024, for fiscal year 2025, using the
9 certified enrollment from the 2023-2024 school year.

10 ~~**Section 7.** Whereas, this Act is necessary for the immediate preservation of the public peace,~~
11 ~~health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force~~
12 ~~and effect from and after its passage and approval.~~