

# State of South Dakota

NINETY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2016

779X0100

## SENATE EDUCATION ENGROSSED NO. **SB 159** - 02/09/2016

Introduced by: Senators Heineman (Phyllis), Bradford, Brown, Curd, Greenfield (Brock), Hagggar (Jenna), Haverly, Holien, Jensen (Phil), Monroe, Novstrup (David), Olson, Omdahl, Otten (Ernie), Rampelberg, Rusch, and Van Gerpen and Representatives Gosch, Beal, Brunner, Campbell, Craig, Cronin, Deutsch, DiSanto, Feickert, Greenfield (Lana), Hagggar (Don), Harrison, Haugaard, Heinemann (Leslie), Hunt, Kirschman, Klumb, Langer, Latterell, Marty, May, Novstrup (Al), Rasmussen, Rounds, Schoenbeck, Stalzer, Steinhauer, Verchio, Westra, Wiik, Wollmann, and Zikmund

1 FOR AN ACT ENTITLED, An Act to provide a tax credit to insurance companies that  
2 contribute to an organization providing educational scholarships to certain students.

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

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms, as used in this Act, mean:

6 (1) "Division," the Division of Insurance in the Department of Labor and Regulation;

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

11 One half of the scholarship amount shall be paid by the scholarship granting



1 organization at the beginning of the first semester, and one half shall be paid at the  
2 beginning of the second semester;

3 (3) "Eligible student," any student who:

4 (a) Is a member of a household whose total annual income, the year before the  
5 student enters the program, did not exceed one hundred fifty percent of the  
6 income standard used to qualify for a free or reduced-price lunch under the  
7 national free or reduced-price lunch program established under 42 U.S.C.  
8 section 1751, et seq. as of January 1, 2016. If sufficient funding is available,  
9 once a student meets the initial income eligibility requirement, the student  
10 remains income eligible for three years or if the student is entering high  
11 school, until the student graduates high school regardless of household  
12 income. After the initial period of income eligibility, a student remains eligible  
13 if the student is a member of a household whose total annual income in the  
14 prior year did not exceed two hundred percent of the income standard used to  
15 qualify for a free or reduced-price lunch;

16 (b) Received an educational scholarship under this program the preceding  
17 semester, attended a public school the preceding semester, is starting at a K-12  
18 school in South Dakota for the first time, or is entering kindergarten, first  
19 grade, or ninth grade; and

20 (c) Resides in South Dakota while receiving the educational scholarship;

21 (4) "Low-income eligible student," any student who is a member of a household whose  
22 total annual income, the year before the student enters the program, did not exceed  
23 one hundred percent of the income standard used to qualify for a free or reduced-  
24 price lunch under the national free or reduced-price lunch program established under

1 42 U.S.C. section 1751, et seq. as of January 1, 2016.

2 (5) "Parent," any guardian, custodian, or other person with authority to act in place of a  
3 parent for the child;

4 (6) "Program," the partners in education tax credit program established pursuant to this  
5 Act;

6 (7) "Qualifying school," any nonpublic school that operates within the boundaries of  
7 South Dakota, is accredited by the Department of Education, provides education to  
8 elementary or secondary students, and has notified a scholarship granting  
9 organization of its intention to participate in the program and comply with the  
10 program requirements. This definition excludes any school that receives a majority  
11 of its revenues from public funds;

12 (8) "Scholarship granting organization," a nonprofit organization that complies with the  
13 requirements of the program and provides educational scholarships to students.

14 Section 2. That the code be amended by adding a NEW SECTION to read:

15 The partners in education tax credit program is hereby established. Through the program,  
16 any company that is liable to pay the insurance company premium and annuity tax, pursuant to  
17 § 10-44-2, may claim credit for contributions made to the scholarship granting organization. The  
18 tax credit may be claimed by the company on the annual premium tax return in an amount equal  
19 to, up to eighty percent, of the total contributions made to the scholarship granting organization  
20 in the previous taxable year. However, no tax credit may be claimed pursuant to this Act for the  
21 portion of the tax that is collected and set aside for workers' compensation coverage as provided  
22 in subdivision 10-44-2(4) or for the tax that is levied on fire insurance premiums pursuant to  
23 § 10-44-9.

24 Section 3. That the code be amended by adding a NEW SECTION to read:

1 Notwithstanding the provisions of section 2 of this Act, the total amount of tax credits  
2 claimed on annual premium tax returns pursuant to this Act may not exceed two million dollars  
3 in fiscal year 2017 and each year thereafter.

4 Section 4. That the code be amended by adding a NEW SECTION to read:

5 Each scholarship granting organization shall:

- 6 (1) Annually notify the division of its intent to provide educational scholarships to  
7 eligible students attending qualifying schools;
- 8 (2) Demonstrate to the division that it has been granted exemption from the federal  
9 income tax pursuant to section 501(c)(3) of the Internal Revenue Code;
- 10 (3) Distribute periodic scholarship payments from the educational scholarship fund  
11 account as checks made out to an eligible student's parent and mailed to the  
12 qualifying school where the eligible student is enrolled. The parent shall endorse the  
13 check before it may be deposited;
- 14 (4) Annually collect written documentation, from each qualifying school that accepts  
15 educational scholarship payments, verifying the school is accredited by the  
16 Department of Education;
- 17 (5) Provide a division approved receipt to companies for contributions made to the  
18 scholarship granting organization;
- 19 (6) Ensure that at least ninety percent of its revenue from contributions is spent on  
20 educational scholarships, and that all revenue from interest or investments is spent  
21 on scholarships;
- 22 (7) Carry forward no more than twenty-five percent of its revenue from contributions in  
23 the educational scholarship fund account from the fiscal year in which they were  
24 received to the next fiscal year. Contributions that are not carried forward shall be

- 1           remitted to the division;
- 2       (8)   Submit to the division the names and addresses of all board members and  
3           documentation validating that criminal background checks have been conducted on  
4           all of its employees and board members, and exclude any employee or board member  
5           from employment or governance who might reasonably pose a risk to the appropriate  
6           use of contributed funds;
- 7       (9)   Ensure that scholarships are portable during the school year and can be used at any  
8           qualifying school to which the scholarship granting organization grants scholarships  
9           and that accepts the eligible student according to a parent's wishes. If a student moves  
10          to a new qualifying school during a school year, the scholarship amount may be  
11          prorated; and
- 12       (10) Report to the division by March first of each year the following information, prepared  
13          by a certified public accountant regarding its contributions in the previous calendar  
14          year:
- 15           (a)   The name and address of each contributing company;
- 16           (b)   The total number and total dollar amount of contributions received from each  
17           company; and
- 18           (c)   The total number and total dollar amount of educational scholarships awarded  
19           to eligible students, the total number and total dollar amount of educational  
20           scholarships awarded to low-income eligible students, and the percentage of  
21           first-time recipients of educational scholarships who were enrolled in a public  
22           school in the prior school year;
- 23       (11) Any donation received that is not awarded a tax credit pursuant to section 2 of this  
24          Act is not subject to subdivisions (5) to (7), inclusive, of this section.

1 Section 5. That the code be amended by adding a NEW SECTION to read:

2 The scholarship granting organization shall demonstrate financial accountability by annually  
3 submitting to the auditor general a financial information report that complies with uniform  
4 financial accounting standards and is the result of an audit conducted by a certified public  
5 accountant and by having the auditor certify that the report is free of material misstatements.

6 The scholarship granting organization shall provide the audit to the auditor general within one  
7 hundred eighty days after the completion of the scholarship granting organization's fiscal year.

8 Section 6. That the code be amended by adding a NEW SECTION to read:

9 The responsibilities of an eligible student and an eligible student's parent in participating in  
10 the program include the following:

11 (1) An eligible student's parent shall select a qualifying school and apply for admission  
12 of the eligible student;

13 (2) An eligible student participating in the program shall remain in attendance  
14 throughout the school year, at the qualifying school in which the eligible student is  
15 enrolled, unless, excused by the school for illness or other good cause, or the eligible  
16 student has transferred to another school;

17 (3) An eligible student and an eligible student's parent shall comply with the published  
18 policies of the qualifying school in which the eligible student is enrolled;

19 (4) An eligible student's parent shall ensure that the eligible student participating in the  
20 program takes the norm-referenced tests or statewide assessments administered by  
21 the qualifying school; and

22 (5) The parent of an eligible student, upon receipt of a scholarship warrant from the  
23 scholarship granting organization, shall restrictively endorse the warrant to the  
24 qualifying school district for deposit.

1 Section 7. That the code be amended by adding a NEW SECTION to read:

2 The secretary of the Department of Labor and Regulation shall promulgate rules, pursuant  
3 to chapter 1-26, establishing annual timelines for the notifications, verifications, and other  
4 procedures required of the insurance companies seeking a tax credit pursuant to section 2 of this  
5 Act.

6 Section 8. That the code be amended by adding a NEW SECTION to read:

7 The division shall provide a standardized format for a receipt to be issued by the scholarship  
8 granting organization to a company to indicate the value of a contribution received. The division  
9 shall require a company to provide a copy of this receipt when claiming the tax credit  
10 established in this Act. Prior to accepting any contribution from any company, the scholarship  
11 granting organization shall first verify with the division that the limit on the total amount of tax  
12 credits allowed pursuant to section 3 of this Act has not yet been reached for the current fiscal  
13 year. The scholarship granting organization shall report to the division the name of the insurance  
14 company, date, and amount for each contribution received from an insurance company seeking  
15 a tax credit pursuant to section 2 of this Act within thirty days of the date of the contribution.

16 Section 9. That the code be amended by adding a NEW SECTION to read:

17 The division shall provide a standardized format for the scholarship granting organization  
18 to report the information in subdivision (10) of section 4 of this Act. Any information provided  
19 relating to the identity of a taxpayer that provides an eligible contribution pursuant to this Act  
20 shall remain confidential unless the company deems otherwise.

21 Section 10. That the code be amended by adding a NEW SECTION to read:

22 The auditor general may conduct either a financial review or audit of the scholarship  
23 granting organization if it possesses evidence of fraud.

24 Section 11. That the code be amended by adding a NEW SECTION to read:

1       The tax credit provided for in this Act may be first claimed on the annual premium tax  
2 return filed in 2017.

3       Section 12. That the code be amended by adding a NEW SECTION to read:

4       The program established pursuant to this Act does not expand the regulatory authority of the  
5 state or the state's officers to impose additional regulation of nonpublic schools beyond those  
6 necessary to enforce the requirements of this Act.