



## 2024 South Dakota Legislature

# Senate Bill 94

Introduced by: **Senator Schoenbeck**

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

7            The division shall authorize the 2024 maximum allowable tax credit for each  
8            scholarship granting organization on June 30, 2024, for fiscal year 2025, using the certified  
9            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.