

Introduced by

Senators Dwyer, Kannianen, J. Roers

Representatives Fisher, B. Koppelman, Steiner

1 A BILL for an Act to create and enact a new section to chapter 57-38 and a new subdivision to
2 subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an education
3 scholarship tax credit; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Education scholarship tax credit.**

- 8 1. A taxpayer is entitled to a credit against the income tax liability under section 57-38-30
9 or 57-38-30.3 for contributions made to an organization that provides educational
10 scholarships to eligible students. The credit is equal to seventy-five percent of the
11 amount contributed by the taxpayer to a scholarship-granting organization for
12 educational scholarships during the taxable year.
- 13 2. The credit must be claimed in the taxable year in which the charitable contribution is
14 made to a scholarship-granting organization. The credit under this section may not
15 exceed the taxpayer's liability as determined under this chapter for any taxable year. If
16 the amount of the credit determined under this section exceeds the taxpayer's liability
17 for tax under this chapter, the excess may be carried forward to each of the five
18 succeeding taxable years.
- 19 3. The aggregate amount of credits allowed each calendar year under this section may
20 not exceed three million dollars. However, if the maximum amount of allowable credits
21 are claimed in any calendar year, the aggregate amount of credits allowed in the
22 succeeding calendar year must be increased by ten percent. By August first of each
23 year after 2021, the tax commissioner shall determine whether the requirement for

- 1 increasing the allowable credit limit under this subsection for the succeeding taxable
2 year has been met.
- 3 4. If the aggregate amount of credits claimed under this section exceeds the amount
4 available in a calendar year, the tax commissioner shall prorate the credits among the
5 claimants.
- 6 5. For purposes of this section:
- 7 a. "Educational scholarship" means a grant to an eligible student to cover all or part
8 of the cost of the student's tuition and fees at a qualifying school.
- 9 b. "Eligible student" means a student who is a resident of this state, is or will be five
10 years of age or older by September tenth of the year in which the educational
11 scholarship will be disbursed, and is under nineteen years of age.
- 12 c. "Parent" means a resident of this state who is a parent, conservator, legal
13 guardian, custodian, or other individual with legal authority to act on behalf of a
14 program participant.
- 15 d. "Program" means the program established under this section.
- 16 e. "Program participant" means a child participating in the program.
- 17 f. "Qualifying school" means a nonprofit, nonpublic elementary or secondary school
18 located in this state; or a tribally controlled school on a federally recognized
19 Indian reservation which operates within the boundaries of this state; which is
20 accredited by the department of public instruction and has notified a scholarship
21 granting organization of the school's intention to participate in the program and
22 comply with the requirements of the program.
- 23 g. "Scholarship-granting organization" means a charitable organization that is
24 exempt from federal income taxation under section 501(c)(3) of the United States
25 Internal Revenue Code [26 U.S.C. 501(c)(3)], complies with the requirements of
26 the program, and provides educational scholarships with an average value of not
27 more than eighty percent of the state's share of the per student payment made to
28 a public school for the applicable year.
- 29 6. Each scholarship granting organization shall:
- 30 a. Notify annually the tax commissioner of the organization's intent to provide
31 educational scholarships;

- 1 b. Ensure at least ninety percent of contributions the organization received which
2 qualify for a tax credit under this section are used to fund educational
3 scholarships;
- 4 c. Disburse periodic scholarship payments from an educational scholarship fund
5 account as checks payable to an eligible student's parent and mailed to the
6 qualifying school at which the eligible student is enrolled. The parent shall
7 endorse the check before the check is deposited;
- 8 d. Ensure scholarships are portable during the school year and, upon a parent's
9 request, may be used at any qualifying school to which the scholarship-granting
10 organization grants scholarships and in which the eligible student enrolls;
- 11 e. Carry forward no more than twenty-five percent of the organization's revenue
12 from contributions deposited in the educational scholarship fund account from the
13 fiscal year in which the contributions were received into the next fiscal year;
- 14 f. Maintain separate accounts for scholarship funds and operating funds;
- 15 g. Provide a receipt approved by the tax commissioner to each taxpayer for
16 contributions made by the taxpayer to the organization for educational
17 scholarships;
- 18 h. Provide the tax commissioner the names and addresses of all members of the
19 organization's board of directors or other governing body and documentation
20 confirming criminal background checks have been conducted on all employees
21 and members of the governing body;
- 22 i. Exclude from employment and governance positions any individual who
23 reasonably may pose a risk to the appropriate use of contributions; and
- 24 j. Report to the tax commissioner by June first of each year a financial report
25 prepared by a certified public accountant providing the total number and total
26 dollar amount of contributions received in the preceding year and the total
27 number and total dollar amount of educational scholarships awarded in the
28 preceding year.
- 29 7. The tax commissioner:
- 30 a. Shall adopt rules as necessary to implement this section;

- 1 b. Shall develop and make available a standardized format for a receipt to be
2 issued by a scholarship-granting organization to a taxpayer on which the amount
3 of the taxpayer's contribution for educational scholarships may be recorded;
4 c. May conduct financial reviews or audits of a scholarship-granting organization if
5 the commissioner has evidence the organization engaged in fraud; and
6 d. May exclude a scholarship-granting organization from participating in the
7 program if the commissioner determines the organization intentionally or
8 substantially failed to comply with this section. If the commissioner excludes a
9 scholarship-granting organization from participating in the program, the
10 commissioner shall notify students receiving scholarships from the organization
11 and the students' parents as soon as practicable.

12 **SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota
13 Century Code is created and enacted as follows:

14 Education scholarship tax credit under section 1 of this Act.

15 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
16 December 31, 2020.