FIRST REGULAR SESSION

SENATE BILL NO. 531

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time February 25, 2015, and ordered printed.

AN ACT

To amend chapter 166, RSMo, by adding thereto six new sections relating to savings accounts for education, with a penalty provision.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 166, RSMo, is amended by adding thereto six new sections, to be known as sections 166.700, 166.705, 166.710, 166.715, 166.720, and 166.725, to read as follows:

166.700. As used in sections 166.700 to 166.720, the following terms shall mean:

(1) "Child with a disability":

(a) A child who is at least three years but less than twenty-two years of age, who has been evaluated and found to have at least one of the following disabilities and who, because of the disability, needs special education and related services:

a. An autism spectrum disorder;

b. Developmental delay;

c. Emotional disability;

d. Hearing impairment;

e. Other health impairments;

f. Specific learning disability;

g. Mild, moderate, or severe intellectual disability;

h. Multiple disabilities;

i. Multiple disabilities with severe sensory impairment;

j. Orthopedic impairment;

k. Preschool severe delay;

l. Speech or language impairment;

m. Traumatic brain injury;
n. Visual impairment;
(b) Shall not include a child if the determining factor for the classification is one or more of the following:
   a. A lack of appropriate instruction in reading, including essential components of reading instruction;
   b. A lack of appropriate instruction in mathematics;
   c. Difficulty in writing, speaking or understanding the English language due to an environmental background in which a language other than English is primarily or exclusively used;
   (2) "Curriculum", a complete course of study for a particular content area or grade level, including any supplemental materials;
   (3) "Department", the department of elementary and secondary education;
   (4) "Eligible postsecondary institution", any approved private institution or approved public institution as defined in section 173.1102;
   (5) "Parent", a resident of Missouri who is the parent or legal guardian of a qualified student;
   (6) "Private school", a school which is not a part of the public school system of the state of Missouri and which charges tuition for the rendering of elementary or secondary educational services;
   (7) "Program", the Missouri empowerment scholarship accounts program;
   (8) "Qualified school", a private school or a preschool for handicapped students that is located in Missouri and that does not discriminate on the basis of race, color, or national origin;
   (9) "Qualified student", a resident of this state who:
      (a) Is any of the following:
         a. Identified as having a disability under Section 504 of the Rehabilitation Act of 1973;
         b. Identified by a district as a child with a disability as defined in subdivision (1) of this section;
         c. A child with a disability who is eligible to receive services from a school district under the Individuals with Disabilities Education Act;
         d. A child who is a ward of the juvenile court and who is residing with a prospective permanent placement and for whom the case plan
is adoption or permanent guardianship;
e. A child who was a ward of the juvenile court and who achieved permanency through adoption or permanent guardianship; and

(b) Who did any of the following:
a. Attended a public school as a full-time student for at least the first one hundred days of the prior school year and who transferred from a public school under a contract to participate in the Missouri empowerment scholarship account program; or
b. Previously participated in the Missouri empowerment scholarship account program; or
c. Is a child who is eligible to begin kindergarten under sections 160.051 to 160.055.

(10) "Treasurer", the state treasurer.

166.705. 1. Sections 166.700 to 166.720 establish the "Missouri Empowerment Scholarship Accounts Program" to provide options for the education of students in this state.

2. To enroll a qualified student for a Missouri empowerment scholarship account, the parent of a qualified student shall sign an agreement to do all of the following:

(1) Provide an education for the qualified student in at least the subjects of reading, grammar, mathematics, social studies, and science;
(2) Not enroll the qualified student in a school operated by a district or a charter school and release the district of residence from all obligations to educate the qualified student; except that this subdivision shall not relieve the student's district of residence from the obligation to conduct an evaluation for disabilities;
(3) Use the money deposited in the qualified student's Missouri empowerment scholarship account only for the following expenses of the qualified student:
   (a) Tuition or fees at a qualified school;
   (b) Textbooks required by a qualified school;
   (c) Educational therapies or services for the qualified student from a licensed or accredited practitioner or provider, including licensed or accredited paraprofessionals or educational aides;
   (d) Tutoring services provided by a tutor accredited by a state, regional, or national accrediting organization;
(e) Curriculum;

(f) Tuition or fees for a nonpublic online learning program;

(g) Fees for a nationally standardized norm-referenced achievement test, advanced placement examinations, international baccalaureate examinations, or any exams related to college or university admission;

(h) Contributions to a qualified tuition program established under 26 U.S.C. Section 529 for the benefit of the qualified student;

(i) Tuition or fees at an eligible postsecondary institution;

(j) Textbooks required by an eligible postsecondary institution;

(k) Fees for management of the empowerment scholarship account by firms selected by the treasurer;

(l) Services provided by a public school, including individual classes and extracurricular programs;

(m) Insurance or surety bond payments as required by the department;

(4) Not use monies deposited in the qualified student's account for any of the following:

(a) Computer hardware or other technological devices;

(b) Transportation of the pupil;

(c) Consumable educational supplies, including paper, pens, pencils, or markers.

3. In exchange for the parent's agreement to subsection 2 of this section, the department shall transfer an amount equal to ninety percent of the state adequacy target into a Missouri empowerment scholarship account for that particular qualified student from the student's district of residence's state aid. The department may retain up to five percent for each student with a Missouri empowerment scholarship account for administration of the program. Of this five percent, one percent shall be used for the treasurer's costs. For funds in the account that are to be used at a qualified school, the department shall issue a check payable to the pupil's parent or guardian and send the check to the pupil's qualified school of enrollment. The parent or guardian shall restrictively endorse the check to the receiving qualified school of enrollment.

4. (1) There is hereby established in the state treasury the "Missouri Empowerment Scholarship Account Fund", which shall consist
of money collected under this section. The department of elementary
and secondary education shall administer the fund. The state treasurer
shall be custodian of the fund. In accordance with sections 30.170 and
30.180, the state treasurer may approve disbursements. The fund shall
be a dedicated fund and money in the fund shall be used solely by the
department of elementary and secondary education for the purposes of
Missouri empowerment education savings accounts. Notwithstanding
the provisions of section 33.080 to the contrary, any moneys remaining
in the fund at the end of the biennium shall not revert to the credit of
the general revenue fund. The state treasurer shall invest moneys in
the fund in the same manner as other funds are invested. Any interest
and moneys earned on such investments shall be credited to the fund.

(2) If the number of Missouri empowerment scholarship accounts
significantly increases after the first fiscal year of implementation, the
department of elementary and secondary education and the treasurer
may request an increase in the amount appropriated to the fund in any
subsequent fiscal year in their budget requests.

5. Missouri empowerment scholarship accounts are renewable on
an annual basis upon request of the parent of a qualified
student. Notwithstanding any changes to the qualified student's
multidisciplinary evaluation team plan, a student who has previously
qualified for a Missouri empowerment scholarship account shall remain
eligible to apply for renewal until the student completes high school,
and submits scores from a nationally standardized norm-referenced
achievement test, advanced placement examination, international
baccalaureate examination, or any exam related to college or university
admission purchased with Missouri empowerment scholarship account
funds to the department.

6. A signed agreement under this section shall satisfy the
compulsory school attendance requirements of section 167.031.

7. A qualified school or a provider of services purchased under
this section shall not share, refund, or rebate any Missouri
empowerment scholarship account monies with the parent or qualified
student in any manner.

8. When the qualified student graduates from a postsecondary
institution or after any period of four consecutive years after high
school graduation in which the student is not enrolled in an eligible
postsecondary institution, the qualified student's Missouri empowerment scholarship account shall be closed and any remaining funds shall be returned to the state.

9. Monies received under sections 166.700 to 166.720 shall not constitute taxable income to the parent of the qualified student.

166.710. 1. The treasurer may contract with private financial management firms to manage Missouri empowerment scholarship accounts with the supervision of the treasurer.

2. The department shall conduct or contract for annual audits of empowerment scholarship accounts to ensure compliance with the requirements of subsection 2 of section 166.705. The department shall also conduct or contract for random, quarterly, and annual audits of empowerment scholarship accounts as need to ensure compliance with the requirements of subsection 2 of section 166.705.

3. A parent or qualified student or vendor may be disqualified from program participation if, after a hearing before the commissioner of education or his or her designee, the party is found to have committed an intentional program violation consisting of any misrepresentation or other act that materially violates any law or rule governing the program. The department may remove any parent or qualified student from eligibility for a Missouri empowerment scholarship program account and shall notify the treasurer. A parent may appeal the department's decision to the state board of education. A parent may appeal the state board of education's decision to the circuit court of the county in which the student resides.

4. The department may refer cases of substantial misuse of monies to the attorney general for investigation if the department obtains evidence of fraudulent use of an account.

5. The department shall make quarterly transfers of the amount calculated under subsection 3 of section 166.705 to the treasurer for deposit into the empowerment scholarship account of each qualified student.

6. The department shall determine a period that is between July first and May first of each year during which it shall accept applications for the following school year. On or before May thirtieth of each year, the department shall submit to the senate appropriations committee and the budget committee of the house of representatives an
estimate of the amount required to fund empowerment scholarship accounts for the following fiscal year. The department shall include in its budget request for the following fiscal year the amount estimated in subsection 3 of section 166.705 for each qualified student.

7. The department shall promulgate rules to implement and administer the Missouri empowerment scholarship accounts program, including:

(1) Policies for conducting examinations of use of account funds;
(2) Policies for conducting random, quarterly, and annual reviews of accounts;
(3) Creating an online anonymous fraud reporting service;
(4) Creating an anonymous telephone hotline for fraud reporting;
and
(5) A surety bond requirement for account holders.

8. Any rule or portion of a rule, as that term is defined in section 536.010 that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2015, shall be invalid and void.

166.715. 1. A person commits the offense of savings account fraud if the person knowingly obtains by means of a false statement or representation, by impersonation, or by other fraudulent device any of the following:
(1) Assistance or service to which the person is not entitled;
(2) Assistance or service greater than that to which the person is entitled;
(3) Payment for services or materials not provided for in sections 166.700 to 166.720.

2. The offense of savings account fraud is a class A misdemeanor.

3. No financial institution shall be liable in any civil action for providing a savings account’s financial information to the department unless the information provided is false and the financial institution
providing the false information does so knowingly and with malice.

166.720. 1. Sections 166.700 to 166.720 do not permit any governmental agency to exercise control or supervision over any nonpublic school or program of home education under subsection 2 of section 167.031.

2. A qualified school that accepts a payment from a parent under sections 166.700 to 166.720 shall not be an agent of the state or federal government.

3. A qualified school shall not be required to alter its creed, practices, admissions policy, or curriculum in order to accept students whose parents pay tuition or fees from an empowerment scholarship account to participate as a qualified school.

4. In any legal proceeding challenging the application of sections 166.700 to 166.720 to a qualified school, the state shall bear the burden of establishing that the law is necessary and does not impose any undue burden on qualified schools.

166.725. Pursuant to section 23.253 of the Missouri sunset act:

(1) The provisions of the new program authorized under sections 166.700 to 166.720 shall sunset automatically six years after the effective date of sections 166.700 to 166.720 unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under sections 166.700 to 166.720 shall sunset automatically twelve years after the effective date of the reauthorization of sections 166.700 to 166.720; and

(3) Sections 166.700 to 166.720 shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under sections 166.700 to 166.720 is sunset.