AN ACT

To amend chapters 135 and 166, RSMo, by adding thereto eleven new sections relating to educational scholarships, with a penalty provision.

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

Section A. Chapters 135 and 166, RSMo, are amended by adding thereto eleven new sections, to be known as sections 135.712, 135.713, 135.714, 135.716, 135.719, 166.700, 166.705, 166.710, 166.715, 166.720, and 166.725, to read as follows:

135.712. 1. Sections 135.712 to 135.719 and sections 166.700 to 166.725 establish the "Missouri Empowerment Scholarship Accounts Program" to provide options toward ensuring the education of students in this state.

2. As used in sections 135.712 to 135.719, the following terms shall mean:

(1) "District" or "school district", the same as defined in section 160.011;

(2) "Educational assistance organization", a charitable organization registered in this state that is exempt from federal taxation under the Internal Revenue Code of 1986, as amended, is certified by the state treasurer, and that allocates all of its annual revenue for educational assistance, except as provided in paragraph (c) of subdivision (4) of subsection 1 of section 135.714 and as provided for in sections 135.712 to 135.719, derived from contributions for which a credit is claimed under this section;

(3) "Office", office of the state treasurer;

(4) "Parent", a parent, guardian, custodian, or other person with
authority to act on behalf of the qualified student;

(5) "Program", the Missouri empowerment scholarship accounts program established under sections 135.712 to 135.719 and sections 166.700 to 166.725;

(6) "Qualified student", the same as defined in section 166.700;

(7) "Qualifying contribution", a donation of cash, stock, bonds, or other marketable securities for purposes of claiming a tax credit under sections 135.712 to 135.719;

(8) "Scholarship account", a consumer-directed account created by the Missouri empowerment scholarship accounts program authorized by sections 166.700 to 166.725;

(9) "Taxpayer", an individual subject to the state income tax imposed in chapter 143; an individual, a firm, a partner in a firm, corporation, or a shareholder in an S corporation doing business in this state and subject to the state income tax imposed by chapter 143; or an express company that pays an annual tax on its gross receipts in this state under chapter 153, which files a Missouri income tax return and is not a dependent of any other taxpayer.

135.713. 1. For all tax years beginning on or after January 1, 2017, any taxpayer who makes a qualifying contribution to an educational assistance organization may claim a credit against the tax otherwise due under chapter 143, other than taxes withheld under sections 143.191 to 143.265, and chapter 153, in an amount equal to one hundred percent of the amount the taxpayer contributed during the tax year for which the credit is claimed. No taxpayer shall claim a credit under sections 135.712 to 135.719 for any contribution made by the taxpayer, or an agent of the taxpayer, on behalf of the taxpayer's dependent, or in the case of a business taxpayer, on behalf of the business's agent's dependent.

2. If the amount of the tax credit claimed exceeds the taxpayer's state tax liability for the tax year for which the credit is claimed, then the excess of the tax credit shall be considered an overpayment of the tax and be refunded to the taxpayer. The office shall certify the tax credit amount to the taxpayer and to the department of revenue. All tax credits authorized under the program may be transferred, sold, or assigned.

3. The cumulative amount of tax credits that may be allocated to
all taxpayers contributing to educational assistance organizations in any one calendar year shall not exceed twenty-five million dollars. However, in any calendar year when the annual tax credit amount for the prior calendar year is equal to or greater than ninety percent of the tax credit limitation amount applicable to that calendar year, the tax credit limitation shall increase by twenty percent. The state treasurer shall establish a procedure by which, from the beginning of the calendar year until some point in time later in the calendar year to be determined by the state treasurer, the cumulative amount of tax credits shall be allocated on a first come, first served basis among all educational assistance organizations. If an educational assistance organization fails to use all, or some percentage to be determined by the state treasurer, of its apportioned tax credits during this predetermined period of time, the state treasurer may reapportion these unused tax credits to those educational assistance organizations that have used all, or some percentage to be determined by the state treasurer, of their apportioned tax credits during this predetermined period of time. The state treasurer may establish more than one period of time and reapportion more than once during each calendar year. To the maximum extent possible, the state treasurer shall establish the procedure described in this subsection in such a manner as to ensure that taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits available for the calendar year.

4. The state treasurer may contract with a private financial management firm to manage scholarship account funds with supervision of the state.

135.714. 1. Each educational assistance organization shall:

(1) Notify the office of its intent to provide scholarship accounts to qualified students;

(2) Demonstrate to the office that it is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(3) Provide an office-approved receipt to taxpayers for contributions made to the organization;

(4) Ensure that:

(a) One hundred percent of its revenues from interest or investments is spent on scholarship accounts;
(b) At least ninety percent of its revenues from qualifying contributions is spent on scholarship accounts; and

(c) Marketing and administrative expenses shall not exceed the following limits of its remaining revenue from contributions: ten percent for the first two hundred fifty thousand dollars, eight percent for the next five hundred thousand dollars, and three percent thereafter;

(5) Distribute scholarship accounts payments four times per year, not to exceed a total grant amount equal to the state adequacy target as defined in section 163.011 and calculated by the department of elementary and secondary education, in the form of a deposit into the scholarship account of the qualified student;

(6) Provide the office, upon request, with criminal background checks on all its employees and board members, and exclude from employment or governance any individual that might reasonably pose a risk to the appropriate use of contributed funds;

(7) Demonstrate its financial accountability by:

(a) Submitting to the office a financial information report for the organization that complies with uniform financial accounting standards established by the office and is conducted by a certified public accountant; and

(b) Having an auditor certify that the report is free of material misstatements; and

(8) Demonstrate its financial viability, if it is to receive donations of fifty thousand dollars or more during the school year, by filing with the office before the start of the school year a surety bond payable to the state in an amount equal to the aggregate amount of contributions expected to be received during the school year or other financial information that demonstrates the financial viability of the educational assistance organization.

2. An educational assistance organization shall publicly report to the office by June first of each year the following information prepared by a certified public accountant regarding its grants in the previous calendar year:

(1) The name and address of the educational assistance organization;

(2) The name and address of each qualified student who opened
a scholarship account with the organization;

(3) The total number and total dollar amount of contributions received during the previous calendar year; and

(4) The total number and total dollar amount of scholarship accounts opened during the previous calendar year.

3. An educational assistance organization may contract with private financial management firms to manage scholarship accounts with the supervision of the state.

135.716. 1. The office shall provide a standardized format for a receipt to be issued by an educational assistance organization to a taxpayer to indicate the value of a contribution received. The office shall require a taxpayer to provide a copy of this receipt if claiming the tax credit authorized by the program.

2. The office shall provide a standardized format for educational assistance organizations to report the information required in subsection 1 of this section.

3. The office may conduct either a financial review or an audit of an educational assistance organization if the office possesses evidence of fraud committed by the organization.

4. The office may bar an educational assistance organization from participating in the program if the office establishes that the educational assistance organization has intentionally and substantially failed to comply with the requirements in section 135.714. If the office bars an educational assistance organization from the program under this subsection, it shall notify affected qualified students and their parents of the decision as soon as possible after the determination is made.

5. The office shall receive no more than two percent of the qualifying contributions for marketing and administrative expenses or the costs incurred in administering the program, whichever is less. The state treasurer shall establish procedures to ensure the percentage of funds for administration of the program is directed to the office in a timely manner with the necessary information to verify the correct amount has been transmitted. The remaining funds shall be distributed to the educational assistance organizations.

135.719. 1. The office and the department of revenue may promulgate rules to implement the provisions of sections 135.712 to
135.719. 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, 2017, shall be invalid and void.

2. The provisions of section 23.253 of the Missouri sunset act shall not apply to sections 135.712 to 135.719 and sections 166.700 to 166.725.

166.700. As used in sections 166.700 to 166.725, the following terms shall mean:

(1) "Curriculum", a complete course of study for a particular content area or grade level, including any supplemental materials;

(2) "Educational assistance organization", the same as defined in section 135.712;

(3) "Eligible postsecondary institution", any approved private institution or approved public institution as defined in section 173.1102;

(4) "Office", the same as defined in section 135.712;

(5) "Parent", the same as defined in section 135.712;

(6) "Private school", a school that is not a part of the public school system of the state of Missouri and that charges tuition or fees for the rendering of elementary or secondary educational services;

(7) "Program", the Missouri empowerment scholarship accounts program;

(8) "Qualified school", a home school as defined in section 167.031, a private school as defined in this subsection, a public school as defined in section 160.011, or any public or private virtual school that is located in Missouri and complies with the nondiscrimination policies set forth in 42 U.S.C. 1981;

(9) "Qualified student", any elementary or secondary school student who is a resident of this state who:

(a) Was enrolled in a public school at least one semester from the
previous twelve months 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;
(c) Is a child who is eligible to begin kindergarten or first grade
under sections 160.051 to 160.055; or
(d) Is attending school for the first time.

166.705. 1. A parent of a qualified student may establish a
Missouri empowerment scholarship account for the student by entering
into a written agreement with an educational assistance
organization. The agreement shall provide that:
(1) The qualified student shall enroll in a qualified school and
receive an education in at least the subjects of reading, grammar,
mathematics, social studies, and science;
(2) The qualified student shall release the district of residence
from all obligations to educate the qualified student while the qualified
student is enrolled in the program if the qualified student enrolls in a
qualified school located outside of the qualified student's district of
residence, and acceptance of a scholarship account shall have the same
effect as a parental placement under 20 U.S.C. Section 1412 (10)(a) of
the Individuals with Disabilities Education Act; except that, this
subdivision shall not relieve the student's district of residence from the
obligation to conduct an evaluation for disabilities;
(3) The qualified student shall receive a grant, in the form of
money deposited under section 135.714, in the qualified student's
Missouri empowerment scholarship account;
(4) The money deposited in the qualified student's Missouri
empowerment scholarship account shall be used 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 or others subject to
review by the office;
(e) Curriculum;

(f) Computer hardware or other technological devices that are used to help meet a qualified student's educational needs and that are approved by an educational assistance organization;

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

(h) Tuition or fees for any public or private virtual school;

(i) Fees for summer education programs and specialized after-school education programs;

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

(k) Contracted services provided by a public school district including, without limitation, extracurricular programs and individual classes;

(l) Fees for management of the empowerment scholarship account by firms selected by the educational assistance organization;

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

(n) Fees for obtaining a state-recognized industry certification;

(o) Tuition for courses at an eligible postsecondary institution while the qualified student is enrolled at a qualified school; and

(p) Transportation costs incurred for the distance necessarily traveled in going to and returning from a qualified school or other allowable therapy or service as stated in subsection 1 of this section. Mileage shall be reimbursed at the rate prescribed by the Missouri office of administration for allowable expenses for motor vehicle use expressed as an amount per mile.

5. Moneys deposited in the qualified student's account shall not be used for consumable educational supplies including, but not limited to, paper, pens, pencils, or markers.

2. Missouri empowerment scholarship accounts are renewable on an annual basis upon request of the parent of a qualified student. 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 office.

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

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

5. If a qualified student withdraws from the program by
enrolling in a school other than a qualified school, or is disqualified
from the program under the provisions of section 166.710, the qualified
student's Missouri empowerment scholarship account shall be closed
and any remaining funds shall be returned to the educational
assistance organization for redistribution to other qualified
students. Under such circumstances, the obligation to provide an
education for such student shall transfer back to the student's district
of residence.

6. Any funds remaining in a qualified student's scholarship
account at the end of a school year shall remain in the account and
shall not be returned to the educational assistance organization. Any
funds remaining in a qualified student's scholarship account upon
graduation from a qualified high school shall be returned to the
educational assistance organization for redistribution to other
qualified students.

7. Moneys received under sections 166.700 to 166.725 shall not
constitute Missouri taxable income to the parent of the qualified
student.

166.710. 1. The parent of a qualified student in grades
kindergarten through twelfth who has a scholarship account shall
annually have the qualified student take a nationally standardized
norm-referenced achievement test, an advanced placement
examination, or any examination related to college or university
admissions that assesses reading and mathematics. The office shall
make available to qualified students with a scholarship account a list
of achievement tests that satisfy the requirement of this
subsection. Private schools may administer to qualified students
standardized tests in addition to the tests specified in this subsection.
2. Beginning in the 2017-2018 school year and continuing each year thereafter, the office shall contract with an independent research organization to which parents of qualified students with scholarship accounts must report the scores of participating qualified students on the nationally norm-referenced tests or other assessments administered at a qualified school. The independent research organization selected by the office shall demonstrate documented experience in education research and evaluation and may be a public or private entity or a university. The office and the independent research organization may accept grants of monies from any public or private source in order to carry out the requirements of this subsection.

3. Beginning in the 2017-2018 school year, the independent research organization selected by the office under subsection 2 of this section shall publish an annual report that summarizes the achievement and year-to-year learning data for qualified students with scholarship accounts. The annual report shall include, to the extent possible, a comparison of learning gains of qualified students with scholarship accounts to the statewide learning gains of public school students with comparable socioeconomic backgrounds. In order to minimize costs and reduce time required for the independent research organization's analysis and evaluation, the office shall conduct analyses of matched students from public school assessment data and calculate control group learning gains using a methodology outlined in the contract with the independent research organization. The annual report shall include a summary of parent and student satisfaction with the scholarship accounts, the overall impact of the program on public school students and the school districts and schools from which the participating qualified students transferred, and the impact of the program on public and private school capacity, availability, and quality of service.

4. The independent research organization selected under subsection 2 of this section shall apply appropriate analytical and behavioral science methodologies to ensure public confidence in the information submitted in the annual report prescribed in subsection 3 of this section. The school districts from which the participating qualified students transferred shall participate in and cooperate with the independent research organization.
5. The sharing and reporting of student learning data pursuant to this subsection shall be in accordance with requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232, and shall be for the sole purpose of creating the annual report prescribed in subsection 3 of this section.

6. The office shall annually report on its website the graduation rates of qualified students who are enrolled in the program. Qualified students with an individualized education plan shall not be included in the testing requirements or graduation rates prescribed by this subsection unless the disability is classified as a developmental delay-emotional disability, mild intellectual disability, specific learning disability, speech/language impairment or other health impairment.

166.715. 1. The office shall conduct or contract for annual audits of empowerment scholarship accounts to ensure compliance with the requirements of subsection 1 of section 166.705. The office shall also conduct or contract for random, quarterly, and annual audits of empowerment scholarship accounts as needed to ensure compliance with the requirements of subsection 1 of section 166.705.

2. A parent or qualified student or vendor may be disqualified from program participation if the state treasurer, or his or her designee, finds the party has committed an intentional program violation consisting of any misrepresentation or other act that materially violates any law or rule governing the program. The office may remove any parent or qualified student from eligibility for a Missouri empowerment scholarship program account. A parent may appeal the state treasurer's decision to the administrative hearing commission. A parent may appeal the administrative hearing commission's decision to the circuit court of the county in which the student resides.

3. The office shall promulgate rules to implement and administer the Missouri empowerment scholarship accounts program including, but not limited to:

(1) Rules for conducting examinations of use of account funds;

(2) Rules 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.

4. 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, 2017, shall be invalid and void.

166.720. 1. A person commits a class A misdemeanor if they are found to have knowingly used moneys granted under section 135.714 for purposes other than those provided for in sections 166.700 to 166.725.

2. No financial institution shall be liable in any civil action for providing a scholarship account's financial information to the office unless the information provided is false and the financial institution providing the false information does so knowingly and with malice.

166.725. 1. Sections 166.700 to 166.725 do not permit any governmental agency to exercise control or supervision over any qualified school in which a qualified student enrolls.

2. A qualified school that accepts a payment from a parent under sections 166.700 to 166.725 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 166.725 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.