

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 32
99TH GENERAL ASSEMBLY

Reported from the Committee on Government Reform, February 16, 2017, with recommendation that the Senate Committee Substitute do pass.

0399S.06C

ADRIANE D. CROUSE, Secretary.

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
2 eleven new sections, to be known as sections 135.712, 135.713, 135.714, 135.716,
3 135.719, 166.700, 166.705, 166.710, 166.715, 166.720, and 166.725, to read as
4 follows:

135.712. 1. Sections 135.712 to 135.719 and sections 166.700 to
2 166.725 establish the "Missouri Empowerment Scholarship Accounts
3 Program" to provide options toward ensuring the education of students
4 in this state.

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

7 (1) "District" or "school district", the same as defined in section
8 160.011;

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

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

18 (4) "Parent", a parent, guardian, custodian, or other person with

19 authority to act on behalf of the qualified student;

20 (5) "Program", the Missouri empowerment scholarship accounts
21 program established under sections 135.712 to 135.719 and sections
22 166.700 to 166.725;

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

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

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

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

135.713. 1. For all tax years beginning on or after January 1,
2 2017, any taxpayer who makes a qualifying contribution to an
3 educational assistance organization may claim a credit against the tax
4 otherwise due under chapter 143, other than taxes withheld under
5 sections 143.191 to 143.265, and chapter 153, in an amount equal to one
6 hundred percent of the amount the taxpayer contributed during the tax
7 year for which the credit is claimed. No taxpayer shall claim a credit
8 under sections 135.712 to 135.719 for any contribution made by the
9 taxpayer, or an agent of the taxpayer, on behalf of the taxpayer's
10 dependent, or in the case of a business taxpayer, on behalf of the
11 business's agent's dependent.

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

19 3. The cumulative amount of tax credits that may be allocated to

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

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

135.714. 1. Each educational assistance organization shall:

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

4 (2) Demonstrate to the office that it is exempt from federal
5 income tax under Section 501(c)(3) of the Internal Revenue Code of
6 1986, as amended;

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

9 (4) Ensure that:

10 (a) One hundred percent of its revenues from interest or
11 investments is spent on scholarship accounts;

12 **(b) At least ninety percent of its revenues from qualifying**
13 **contributions is spent on scholarship accounts; and**

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

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

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

28 **(7) Demonstrate its financial accountability by:**

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

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

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

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

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

48 **(2) The name and address of each qualified student who opened**

49 a scholarship account with the organization;

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

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

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

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

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

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

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

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

135.719. 1. The office and the department of revenue may
2 promulgate rules to implement the provisions of sections 135.712 to

3 135.719. Any rule or portion of a rule, as that term is defined in section
4 536.010 that is created under the authority delegated in this section
5 shall become effective only if it complies with and is subject to all of
6 the provisions of chapter 536, and, if applicable, section 536.028. This
7 section and chapter 536 are nonseverable and if any of the powers
8 vested with the general assembly pursuant to chapter 536, to review, to
9 delay the effective date, or to disapprove and annul a rule are
10 subsequently held unconstitutional, then the grant of rulemaking
11 authority and any rule proposed or adopted after August 28, 2017, shall
12 be invalid and void.

13 2. The provisions of section 23.253 of the Missouri sunset act
14 shall not apply to sections 135.712 to 135.719 and sections 166.700 to
15 166.725.

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

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

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

7 (3) "Eligible postsecondary institution", any approved private
8 institution or approved public institution as defined in section
9 173.1102;

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

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

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

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

17 (8) "Qualified school", a home school as defined in section
18 167.031, a private school as defined in this subsection, a public school
19 as defined in section 160.011, or any public or private virtual school
20 that is located in Missouri and complies with the nondiscrimination
21 policies set forth in 42 U.S.C. 1981;

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

24 (a) Was enrolled in a public school at least one semester from the

25 previous twelve months and who transferred from a public school
26 under a contract to participate in the Missouri empowerment
27 scholarship account program; or

28 (b) Previously participated in the Missouri empowerment
29 scholarship account program;

30 (c) Is a child who is eligible to begin kindergarten or first grade
31 under sections 160.051 to 160.055; or

32 (d) Is attending school for the first time.

166.705. 1. A parent of a qualified student may establish a
2 Missouri empowerment scholarship account for the student by entering
3 into a written agreement with an educational assistance
4 organization. The agreement shall provide that:

5 (1) The qualified student shall enroll in a qualified school and
6 receive an education in at least the subjects of reading, grammar,
7 mathematics, social studies, and science;

8 (2) The qualified student shall release the district of residence
9 from all obligations to educate the qualified student while the qualified
10 student is enrolled in the program if the qualified student enrolls in a
11 qualified school located outside of the qualified student's district of
12 residence, and acceptance of a scholarship account shall have the same
13 effect as a parental placement under 20 U.S.C. Section 1412 (10)(a) of
14 the Individuals with Disabilities Education Act; except that, this
15 subdivision shall not relieve the student's district of residence from the
16 obligation to conduct an evaluation for disabilities;

17 (3) The qualified student shall receive a grant, in the form of
18 money deposited under section 135.714, in the qualified student's
19 Missouri empowerment scholarship account;

20 (4) The money deposited in the qualified student's Missouri
21 empowerment scholarship account shall be used only for the following
22 expenses of the qualified student:

23 (a) Tuition or fees at a qualified school;

24 (b) Textbooks required by a qualified school;

25 (c) Educational therapies or services for the qualified student
26 from a licensed or accredited practitioner or provider, including
27 licensed or accredited paraprofessionals or educational aides;

28 (d) Tutoring services provided by a tutor or others subject to
29 review by the office;

- 30 **(e) Curriculum;**
- 31 **(f) Computer hardware or other technological devices that are**
32 **used to help meet a qualified student's educational needs and that are**
33 **approved by an educational assistance organization;**
- 34 **(g) Tuition or fees for a nonpublic online learning program;**
- 35 **(h) Tuition or fees for any public or private virtual school;**
- 36 **(i) Fees for summer education programs and specialized after-**
37 **school education programs;**
- 38 **(j) Fees for a nationally standardized norm-referenced**
39 **achievement test, advanced placement examinations, international**
40 **baccalaureate examinations, or any exams related to college or**
41 **university admission;**
- 42 **(k) Contracted services provided by a public school district**
43 **including, without limitation, extracurricular programs and individual**
44 **classes;**
- 45 **(l) Fees for management of the empowerment scholarship**
46 **account by firms selected by the educational assistance organization;**
- 47 **(m) Insurance or surety bond payments as required by the office;**
- 48 **(n) Fees for obtaining a state-recognized industry certification;**
- 49 **(o) Tuition for courses at an eligible postsecondary institution**
50 **while the qualified student is enrolled at a qualified school; and**
- 51 **(p) Transportation costs incurred for the distance necessarily**
52 **traveled in going to and returning from a qualified school or other**
53 **allowable therapy or service as stated in subsection 1 of this**
54 **section. Mileage shall be reimbursed at the rate prescribed by the**
55 **Missouri office of administration for allowable expenses for motor**
56 **vehicle use expressed as an amount per mile.**
- 57 **(5) Moneys deposited in the qualified student's account shall not**
58 **be used for consumable educational supplies including, but not limited**
59 **to, paper, pens, pencils, or markers.**

60 **2. Missouri empowerment scholarship accounts are renewable on**
61 **an annual basis upon request of the parent of a qualified student. A**
62 **student who has previously qualified for a Missouri empowerment**
63 **scholarship account shall remain eligible to apply for renewal until the**
64 **student completes high school and submits scores from a nationally**
65 **standardized norm-referenced achievement test, advanced placement**
66 **examination, international baccalaureate examination, or any exam**

67 related to college or university admission, purchased with Missouri
68 empowerment scholarship account funds, to the office.

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

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

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

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

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

166.710. 1. The parent of a qualified student in grades
2 kindergarten through twelfth who has a scholarship account shall
3 annually have the qualified student take a nationally standardized
4 norm-referenced achievement test, an advanced placement
5 examination, or any examination related to college or university
6 admissions that assesses reading and mathematics. The office shall
7 make available to qualified students with a scholarship account a list
8 of achievement tests that satisfy the requirement of this
9 subsection. Private schools may administer to qualified students
10 standardized tests in addition to the tests specified in this subsection.

11 **2. Beginning in the 2017-2018 school year and continuing each**
12 **year thereafter, the office shall contract with an independent research**
13 **organization to which parents of qualified students with scholarship**
14 **accounts must report the scores of participating qualified students on**
15 **the nationally norm-referenced tests or other assessments administered**
16 **at a qualified school. The independent research organization selected**
17 **by the office shall demonstrate documented experience in education**
18 **research and evaluation and may be a public or private entity or a**
19 **university. The office and the independent research organization may**
20 **accept grants of monies from any public or private source in order to**
21 **carry out the requirements of this subsection.**

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

41 **4. The independent research organization selected under**
42 **subsection 2 of this section shall apply appropriate analytical and**
43 **behavioral science methodologies to ensure public confidence in the**
44 **information submitted in the annual report prescribed in subsection 3**
45 **of this section. The school districts from which the participating**
46 **qualified students transferred shall participate in and cooperate with**
47 **the independent research organization.**

48 **5. The sharing and reporting of student learning data pursuant**
49 **to this subsection shall be in accordance with requirements of the**
50 **Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232, and**
51 **shall be for the sole purpose of creating the annual report prescribed**
52 **in subsection 3 of this section.**

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

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

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

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

- 21 **(1) Rules for conducting examinations of use of account funds;**
22 **(2) Rules for conducting random, quarterly, and annual reviews**
23 **of accounts;**
24 **(3) Creating an online anonymous fraud reporting service;**
25 **(4) Creating an anonymous telephone hotline for fraud reporting;**

26 and

27 (5) A surety bond requirement for account holders.

28 4. Any rule or portion of a rule, as that term is defined in section
29 536.010 that is created under the authority delegated in this section
30 shall become effective only if it complies with and is subject to all of
31 the provisions of chapter 536, and, if applicable, section 536.028. This
32 section and chapter 536 are nonseverable and if any of the powers
33 vested with the general assembly pursuant to chapter 536, to review, to
34 delay the effective date, or to disapprove and annul a rule are
35 subsequently held unconstitutional, then the grant of rulemaking
36 authority and any rule proposed or adopted after August 28, 2017, shall
37 be invalid and void.

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

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

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

4 2. A qualified school that accepts a payment from a parent under
5 sections 166.700 to 166.725 shall not be an agent of the state or federal
6 government.

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

11 4. In any legal proceeding challenging the application of sections
12 166.700 to 166.725 to a qualified school, the state shall bear the burden
13 of establishing that the law is necessary and does not impose any undue
14 burden on qualified schools.

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