

FIRST REGULAR SESSION

# SENATE BILL NO. 618

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Read 1st time February 28, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2480S.011

## AN ACT

To amend chapter 135, RSMo, by adding thereto eight new sections relating to educational tax credits, with an emergency clause.

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

Section A. Chapter 135, RSMo, is amended by adding thereto eight new sections, to be known as sections 135.611, 135.612, 135.614, 135.616, 135.618, 135.620, 135.622, and 135.624, to read as follows:

**135.611. Sections 135.611 to 135.624 shall be known and may be cited as the "Milton Friedman 'Put Parents in Charge' Education Program".**

**135.612. As used in sections 135.611 to 135.624, the following terms mean:**

**(1) "Administrator", the administrator of the oversight organization;**

**(2) "Director", the director of the department of economic development or a designated oversight organization;**

**(3) "Educational assistance organization", a charitable organization registered in this state that is exempt from federal taxation under the Internal Revenue Code, as amended, is certified by the director, and that allocates all of its annual revenue with the exception of marketing and administrative expenses in subdivision (5) of section 135.616 derived from contributions for which a credit is claimed under this section for educational assistance and which does not provide scholarships to students of only one particular school;**

**(4) "Income eligible student":**

**(a) Any elementary or secondary school-aged student whose parents' or guardians' income is no more than one hundred eighty-five**

18 percent of the level that would make the student eligible for a reduced  
19 price school lunch under the National School Lunch Act, 42 U.S.C. 1751  
20 et seq., and resides in any district which is designated as unaccredited  
21 or provisionally or interim accredited under the Missouri school  
22 improvement program or successor program, or a student of school age  
23 who resides in such a district but who is not currently attending any  
24 school and who does not hold a high school diploma; and

25 (b) In any district, children age three or older with disabilities  
26 regardless of the parent's income if the disabled child's parents or  
27 guardians reside in Missouri and have unreimbursed medical expenses  
28 in excess of seven and one-half percent of federal adjusted gross  
29 income; or

30 (c) In any district, when identified by the principal and approved  
31 by the superintendent, any public school student who has been  
32 suspended at least two times for a total of at least twelve days or who  
33 has been expelled, any public school student scoring at the two lowest  
34 levels of proficiency on the statewide assessments administered under  
35 section 160.518, RSMo, or any public school student who has a GPA of  
36 one point nine or lower on a four-point scale;

37 (5) "Oversight organization", a charitable organization registered  
38 in this state that is exempt from federal taxation under the Internal  
39 Revenue Code, as amended, designated by the director to certify  
40 educational assistance organizations, approve applications for the tax  
41 credit allowed by this section, and coordinate with the director in  
42 administering the tax credit allowed by sections 135.611 to 135.624;

43 (6) "Qualified school", any elementary or secondary school which  
44 a child may attend to satisfy the requirements of section 167.031, RSMo,  
45 which does not discriminate on the basis of race, color, or national  
46 origin, and which complies with the requirements of sections 135.611  
47 to 135.624;

48 (7) "Qualified student", an income eligible student who during the  
49 previous school year was enrolled in a state-funded public school in  
50 Missouri or who had received a scholarship as a qualified student and  
51 is not enrolled in the student's resident state-funded public school in  
52 the year in which the educational assistance organization is providing  
53 a scholarship to that student. The term qualified student shall include  
54 all income eligible kindergarten and first-grade students, and all

55 income eligible school-aged students moving from outside the state;

56 (8) "Qualifying contribution", a donation of cash, stock, bonds, or  
57 other marketable securities for purposes of claiming a tax credit under  
58 this section;

59 (9) "State tax liability", any liability incurred by a taxpayer  
60 under chapters 143, 147, and 153, RSMo, excluding withholding taxes  
61 under sections 143.191 to 143.265, RSMo, and related provisions;

62 (10) "Taxpayer", an individual subject to the state income tax  
63 imposed in chapter 143, RSMo, an individual, a firm, a partner in a  
64 firm, corporation, or a shareholder in an S corporation doing business  
65 in this state and subject to the state income tax imposed by chapter  
66 143, RSMo, or a corporation subject to the annual corporation franchise  
67 tax imposed by chapter 147, RSMo, or an express company which pays  
68 an annual tax on its gross receipts in this state under chapter 153,  
69 RSMo.

135.614. 1. For all tax years beginning on or after January 1,  
2 2007, any taxpayer who makes contributions to an educational  
3 assistance organization may claim a credit against the tax otherwise  
4 due under chapter 143, RSMo, other than taxes withheld under sections  
5 143.191 to 143.265, RSMo, and chapters 147 and 153, RSMo, in an  
6 amount equal to sixty-five percent of the amount the taxpayer  
7 contributed during the tax year for which the credit is claimed; except  
8 that, no taxpayer shall claim a credit under sections 135.611 to 135.624  
9 for any contribution made by the taxpayer, or an agent of the taxpayer,  
10 on behalf of the taxpayer's dependent, or in the case of a business  
11 taxpayer, on behalf of the business's agent's dependent. Any amount of  
12 contribution subtracted from federal adjusted gross income or federal  
13 taxable income shall be added back in the determination of Missouri  
14 adjusted gross income or Missouri taxable income before the credit can  
15 be claimed.

16 2. The amount of the tax credit claimed shall not exceed the  
17 amount of the taxpayer's state tax liability for the tax year that the  
18 credit is claimed. The department of economic development shall  
19 certify the tax credit amount to the taxpayer and to the department of  
20 revenue. Any amount of credit that the taxpayer is prohibited by  
21 sections 135.611 to 135.624 from claiming in a tax year may be carried  
22 forward to any of the taxpayer's four subsequent taxable years. The tax

23 credit authorized in sections 135.611 to 135.624 shall be limited to those  
24 claims related to actual tax liabilities that are excluded from the  
25 definition of total state revenues in article X, section 17, Constitution  
26 of Missouri, which require no appropriation by the general assembly  
27 from the state treasury, and which serve the public purpose of  
28 providing educational opportunities for students under section 135.616.

29           3. The cumulative amount of tax credits which may be allocated  
30 to all taxpayers contributing to an educational assistance organization  
31 in any one fiscal year shall not exceed forty million dollars, which  
32 amount shall annually be adjusted for inflation based on the consumer  
33 price index for all Midwest urban consumers, or its successor index,  
34 hereinafter referred to as the "consumer price index". The director  
35 shall establish a procedure by which, from the beginning of the fiscal  
36 year until some point in time later in the fiscal year to be determined  
37 by the director, the cumulative amount of tax credits is apportioned  
38 among all nonprofit educational assistance organizations. To the  
39 maximum extent possible, the director shall establish the procedure  
40 described in this subsection in such a manner as to ensure that  
41 taxpayers can claim all the tax credits possible up to the cumulative  
42 amount of tax credits available for the fiscal year. The director shall  
43 certify to the educational assistance organizations the amount of  
44 eligible tax credits that can be taken by the organizations.

          135.616. 1. The director shall classify an organization as an  
2 educational assistance organization if the organization qualifies as  
3 defined in this section and if the organization meets the following  
4 conditions:

5           (1) At least eighty percent of all qualifying contributions it  
6 receives during any given state fiscal year are allocated for the purpose  
7 of providing scholarships to any qualified student who attends a  
8 qualified school, and the organization gives priority in awarding  
9 scholarships to those students who demonstrate the greatest need for  
10 such scholarships. These needs may include but are not limited to:

- 11           (a) Children of inmates;
- 12           (b) Children from single-parent homes;
- 13           (c) Any student scoring at the two lowest levels of proficiency on  
14 the statewide assessments administered under section 160.518, RSMo;
- 15           (d) Any child of school age in foster care, or who is currently

16 residing in a shelter or has been displaced from the child's lawful place  
17 of residence;

18 (e) Any child with a disability or any child assigned to a priority  
19 school in a low performing district as described in subdivision (4) of  
20 section 135.612. If a child transfers out of a qualified school into  
21 another qualified school, the remaining scholarship moneys shall be  
22 transferred with the student to be distributed to the new school, on a  
23 prorated basis. The remaining scholarship moneys shall revert back to  
24 the scholarship organization if a student transfers out of a qualified  
25 school into the student's resident public school. Scholarship moneys  
26 may be used to cover applicable tuition, transportation, textbooks,  
27 supplies, and other related educational or extracurricular  
28 expenses. Any qualifying contributions not required to be allocated in  
29 accordance with this subdivision may be used to provide scholarships  
30 for income eligible students who attend qualified schools or may be  
31 used for the purposes set forth in subdivision (3) of this subsection;

32 (2) The organization does not provide scholarships to qualified  
33 students that exceed an average of five thousand dollars each school  
34 year, which amount shall annually be adjusted for inflation based on  
35 the Consumer Price Index rounded up to the nearest fifty dollar  
36 increment, except that the educational assistance organization may  
37 award scholarships to children with disabilities who are age three or  
38 older and defined as an income-eligible student in any amount that is  
39 substantially comparable to the amount that would have been paid for  
40 comparable services for the education of such child, and except that  
41 scholarships may be awarded in amounts in excess of the limitation for  
42 nondisabled students, which amount shall annually be adjusted for  
43 inflation based on the Consumer Price Index, if the increased amount  
44 of any such scholarships is offset by a reduction in the funding  
45 described in subdivision (3) of this subsection;

46 (3) An educational assistance organization may allocate up to  
47 twenty percent of any qualifying contributions it receives during any  
48 given state fiscal year that are not required to be allocated under  
49 subdivisions (1) and (2) of this subsection to directly assist any income  
50 eligible student who attends such student's resident public school in  
51 defraying the costs of private instructional assistance, including any  
52 related private educational supplies; for offsetting fees for out-of-school

53 educational programs; for apprenticeship programs; for scholarship  
54 assistance for dropouts to pursue a GED or its equivalent; for grants for  
55 public school academic or extracurricular programs, for income eligible  
56 or qualified students to attend a qualified school, even in excess of the  
57 limitations in subdivision (2) of this subsection, for transportation of  
58 an income eligible student to a public school when such transportation  
59 is not already state-reimbursed, and for students participating in a  
60 voluntary desegregation transfer plan to supplement the tuition  
61 payment supplied by the desegregation transfer plan;

62 (4) All interest accruing from contributions shall be used for  
63 educational assistance;

64 (5) All marketing and administrative expenses for the  
65 educational assistance organization shall be no more than ten percent  
66 for the first one hundred thousand dollars; eight percent for the next  
67 four hundred thousand dollars; six percent for the next five hundred  
68 thousand dollars; and three percent thereafter of the qualifying  
69 contributions it raises; and

70 (6) No credits may be awarded until students have been  
71 identified as either income-eligible or qualified students and potential  
72 vacancies identified, or until students have been placed.

73 2. An educational assistance organization shall report annually  
74 to the director the names of the participating qualified schools and  
75 scholarship recipients. Classification as an educational assistance  
76 organization shall continue from year to year upon submission of  
77 required information under sections 135.611 to 135.624, in the absence  
78 of credible evidence of fraud or abuse. The director shall establish  
79 procedures to prevent the issuance of duplicate scholarships.

135.618. 1. The director shall establish a procedure by which a  
2 taxpayer can determine if an organization has been classified as an  
3 educational assistance organization, and by which taxpayers can claim  
4 the tax credit under sections 135.611 to 135.624.

5 2. The director shall provide a consistent format for profiles of  
6 qualified schools, to be posted on the department's web site, containing  
7 the following information:

8 (1) Link to the qualified school's web site, if applicable;

9 (2) Mission statement, years of operation, academic and  
10 extracurricular program, and types of students served;

11           **(3) Education, credentials, qualifications, and experience of**  
12 **teaching and administrative staff;**

13           **(4) The most recent year's scores from an assessment**  
14 **administered under subsection 3 of this section and the results of the**  
15 **most recent year's parental satisfaction survey administered under this**  
16 **section; and**

17           **(5) Names of educational assistance organizations supplying**  
18 **scholarships to the school.**

19           **3. The director shall ensure that the qualified schools, excluding**  
20 **home schools that are required to meet the requirements of section**  
21 **167.031, RSMo, and excluding public schools outside the qualified**  
22 **students' district of residence, meet the following accountability**  
23 **requirements before receiving scholarship funds:**

24           **(1) Filing of a statement of intent to participate that includes the**  
25 **information listed in subdivisions (1), (2), and (3) of subsection 2 of this**  
26 **section;**

27           **(2) For initial applicants, a listing of the information required**  
28 **under subsection 2 of this section, and for requalifying schools, annual**  
29 **reporting of the information required under subsection 2 of this**  
30 **section. No public reporting of information required under sections**  
31 **135.611 to 135.624 shall be personally identifiable to an individual**  
32 **student;**

33           **(3) Fiscal soundness as evidenced by three years in existence, a**  
34 **surety bond, or letter of credit covering the amount of funds received**  
35 **on behalf of scholarship recipients under sections 135.611 to 135.624 or**  
36 **accreditation;**

37           **(4) Accreditation by a regional or national accrediting agency or**  
38 **for a school that is not currently accredited, provisional approval**  
39 **pending the achievement of accreditation no later than the fourth**  
40 **school year of participation;**

41           **(5) Criminal background check for the owner or operator and all**  
42 **personnel with direct student contact, unless the owner, operator, or**  
43 **other person has successfully completed a background check within the**  
44 **previous twelve months;**

45           **(6) Administration of the statewide assessments under section**  
46 **160.518, RSMo, a nationally recognized norm-referenced assessment, or**  
47 **an assessment of educational functioning level for adult basic**

48 education that meets the guidelines for the national reporting system  
49 for adult education and literacy, such as but not limited to, the test for  
50 adult basic education, for all scholarship students except those whose  
51 individualized education plan specifies such assessment would not be  
52 appropriate, provided that such assessments or tests shall not be  
53 required to be given more frequently in a grade than the statewide  
54 assessments are given;

55 (7) Annual administration of a parental satisfaction survey; and

56 (8) Evidence of the annual transmittal of the information  
57 required by subsection 2 of this section and this subsection to parents  
58 and evidence of its availability to applicants.

59 4. Notwithstanding the accountability requirements of subsection  
60 3 of this section, pupils who are home schooled under section 167.031,  
61 RSMo, may receive a scholarship under sections 135.611 to 135.624 up  
62 to the amount of money spent on educational expenses, excluding any  
63 payment to the pupil's parent or guardian for instructional services.

64 5. The results of the assessments administered in subdivision (6)  
65 of subsection 3 of this section shall be compiled annually by the  
66 director, and reported to the governor and general assembly.

67 6. Qualified students shall initially select a school in any district  
68 that is neither unaccredited nor provisionally accredited and which is  
69 located adjacent to a district described in subdivision (4) of section  
70 136.612 or within twenty miles of a qualified student's place of  
71 residence at the time of the student's application, if any such district  
72 has opted to accept qualified students. Such districts shall follow the  
73 procedure in subsection 5 of section 135.624 to declare their intent to  
74 participate. Such district shall have the right of first acceptance of the  
75 qualified student. If the district declines to accept the applicant, the  
76 applicant may then select from any qualified school. The director shall  
77 establish procedures to accomplish this right of first acceptance in a  
78 timely manner.

135.620. Qualified schools shall have on record a form signed by  
2 the parent or guardian of the scholarship recipients agreeing to the  
3 release of the following information to the director:

4 (1) The student's participation as a scholarship recipient under  
5 sections 135.611 to 135.624;

6 (2) Testing results under section 160.518, RSMo; and



7           **(3) The parental satisfaction survey.**

8 **As a condition of participation, the parents, guardians, and scholarship**  
9 **recipients under sections 135.611 to 135.624 shall agree to abide by the**  
10 **code of conduct and any parental involvement requirements unless the**  
11 **qualifying school agrees to a waiver of any requirements.**

**135.622. 1. The funding authorized in sections 135.611 to 135.624**  
2 **shall be considered private, voluntary, nongovernmental funding. The**  
3 **providing of assistance by an educational assistance organization shall**  
4 **not be construed to be a public appropriation or the providing of public**  
5 **assistance to any school.**

6           **2. The weighted average daily attendance count for state aid**  
7 **purposes of a school district whose resident students receive**  
8 **scholarships under sections 135.611 to 135.624 shall be adjusted such**  
9 **that no school district shall receive state aid for any pupil who is no**  
10 **longer enrolled in the school district as the result of using the proceeds**  
11 **of an educational scholarship to transfer to a qualified school under**  
12 **sections 135.611 to 135.624.**

**135.624. 1. The director may enter into a contract with an**  
2 **oversight organization located in the state of Missouri for the purpose**  
3 **of administering sections 135.611 to 135.624. An oversight organization**  
4 **shall be subject to an audit by the director. To qualify for designation,**  
5 **an oversight organization shall:**

6           **(1) Have the administrative capability to promote the success of**  
7 **the tax credit allowed by sections 135.611 to 135.624 by recruiting and**  
8 **coordinating activities with all interested educational assistance**  
9 **organizations in this state and certifying those educational assistance**  
10 **organizations that meet the certification criteria set forth in section**  
11 **135.616;**

12           **(2) Demonstrate the ability to handle large volumes of and**  
13 **amounts of financial transactions, have not filed for bankruptcy and be**  
14 **able to resolve Internal Revenue Service compliance issues;**

15           **(3) Review the staff qualifications, evaluate fund-raising**  
16 **capabilities, and confirm tax-exempt status of the educational**  
17 **assistance organizations;**

18           **(4) Create a standardized application for use by nonprofit**  
19 **educational assistance organizations; and**

20           **(5) Produce an annual report for the general assembly.**

21           2. The director shall encourage newly opened schools established  
22 to meet the needs of students receiving scholarships under sections  
23 135.611 to 135.624 to locate such schools in provisionally accredited or  
24 unaccredited districts.

25           3. The oversight organization or the department of economic  
26 development if an oversight organization is not selected shall receive  
27 no more than two percent of the qualifying contributions for marketing  
28 and administrative expenses or the costs incurred in administering the  
29 program, whichever is less. The director shall establish procedures to  
30 ensure the percentage of funds for administration of the program is  
31 directed to the oversight organization or the department of economic  
32 development in a timely manner with the necessary information to  
33 verify the correct amount has been transmitted. The remaining funds  
34 shall be distributed to the educational assistance organizations for  
35 student scholarships.

36           4. Sections 135.611 to 135.624 are subject to the provisions of  
37 section 1.140, RSMo. The department of revenue and the department  
38 of economic development may promulgate rules and regulations for the  
39 administration of sections 135.611 to 135.624. Any rule or portion of a  
40 rule, as that term is defined in section 536.010, RSMo, that is created  
41 under the authority delegated in sections 135.611 to 135.624 shall  
42 become effective only if it complies with and is subject to all of the  
43 provisions of chapter 536, RSMo, and, if applicable, section 536.028,  
44 RSMo. Sections 135.611 to 135.624 and chapter 536, RSMo, are  
45 nonseverable and if any of the powers vested with the general assembly  
46 pursuant to chapter 536, RSMo, to review, to delay the effective date,  
47 or to disapprove and annul a rule are subsequently held  
48 unconstitutional, then the grant of rulemaking authority and any rule  
49 proposed or adopted after August 28, 2007, shall be invalid and void.

50           5. Any school district that is not explicitly made eligible for the  
51 program through the definitions in section 135.612 may opt to  
52 participate in the program authorized in sections 135.611 to 135.624  
53 upon the adoption of a resolution by a majority of the school board  
54 members present and the submission of the resolution to the  
55 departments of elementary and secondary education and economic  
56 development.

57           6. A qualified student whose eligibility for a scholarship is based

58 upon residence in a provisionally accredited or an unaccredited  
59 district shall continue to be eligible despite subsequent changes in the  
60 residence district's accreditation status.

61       7. The school district shall notify the parents or guardians of any  
62 student who attends a public school in a provisionally accredited or  
63 unaccredited district, or of any student in any district who has been  
64 identified by the principal or superintendent under paragraph (c) of  
65 subdivision (4) of section 135.612, that the student may be eligible for  
66 a scholarship under sections 135.611 to 135.624.

67       8. Pursuant to section 23.253, RSMo, of the Missouri Sunset Act:

68       (1) The provisions of the new program authorized under sections  
69 135.611 to 135.624 shall automatically sunset six years after the  
70 effective date of these sections, unless reauthorized by an act of the  
71 general assembly; and

72       (2) If such program is reauthorized, the program authorized  
73 under sections 135.611 to 135.624 shall automatically sunset twelve  
74 years after the effective date of the reauthorization of these sections;  
75 and

76       (3) Sections 135.611 to 135.624 shall terminate on September first  
77 of the calendar year immediately following the calendar year in which  
78 the program authorized under these sections is sunset.

79       9. If the scholarship program sunsets as provided in subsection  
80 6 of this section, students receiving scholarships at the time the  
81 program is sunset shall continue to receive such scholarship moneys  
82 until completion of the twelfth grade.

Section B. Because of the immediate need to assist students in certain  
2 school districts, the enactment of section A of this act is deemed necessary for the  
3 immediate preservation of the public health, welfare, peace and safety, and is  
4 hereby declared to be an emergency act within the meaning of the constitution,  
5 and the enactment of section A of this act shall be in full force and effect upon its  
6 passage and approval or July 1, 2007, whichever later occurs.

✓