

FIRST REGULAR SESSION

SENATE BILL NO. 85

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Pre-filed December 2, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0069S.01I

AN ACT

To amend chapter 135, RSMo, by adding thereto six new sections relating to the Missouri special needs scholarship tax credit program.

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

Section A. Chapter 135, RSMo, is amended by adding thereto six new sections, to be known as sections 135.1200, 135.1202, 135.1204, 135.1206, 135.1208, and 135.1210, to read as follows:

135.1200. Sections 135.1200 to 135.1210 shall be known and may be cited as the "Missouri Special Needs Scholarship Tax Credit Program".

135.1202. 1. As used in sections 135.1200 to 135.1210, the following terms mean:

(1) "Autism spectrum disorder", pervasive developmental disorder; Asperger's syndrome; childhood disintegrative disorder; Rett's syndrome; and autism;

(2) "Contribution", a donation of cash, stock, bonds, or other marketable securities, or real property;

(3) "Department", the department of economic development;

(4) "Director", the director of the department of economic development;

(5) "Educational scholarships", grants to students to cover all or part of the costs at either a qualified non-public school or a qualified public school, including transportation;

(6) "Eligible student", any elementary or secondary student who attended public school in Missouri the preceding semester, or who will be attending school for the first time, with an individualized education program, including but not limited to students who are mentally

18 handicapped, speech and language impaired, deaf or hard of hearing,
19 visually impaired, dual sensory impaired, physically impaired,
20 emotionally handicapped, specific learning disabled, diagnosed with an
21 autism spectrum disorder, or hospitalized or homebound due to illness
22 or disability;

23 (7) "Parent", includes a guardian, custodian or other person with
24 authority to act on behalf of the child;

25 (8) "Program", the Missouri special needs scholarship tax credit
26 program;

27 (9) "Qualified school", either a public elementary or secondary
28 school outside the district in which a student resides or a non-public
29 elementary or secondary school in Missouri that: employs teachers
30 certified to teach special education; complies with all of the
31 requirements of the program; complies with all state laws that apply to
32 non-public schools regarding criminal background checks for
33 employees; and exclude from employment any person not permitted by
34 state law to work in a non-public school;

35 (10) "Scholarship granting organization", a charitable
36 organization which is exempt from federal income tax that complies
37 with the requirements of this program and provides education
38 scholarships to students attending qualified schools of their parents'
39 choice;

40 (11) "State tax liability", in the case of a business taxpayer, any
41 liability incurred by such taxpayer pursuant to the provisions of
42 chapters 143, 147, 148, and 153, RSMo, excluding sections 143.191 to
43 143.265, RSMo, and related provisions, and in the case of an individual
44 taxpayer, any liability incurred by such taxpayer pursuant to the
45 provisions of chapter 143, RSMo, excluding sections 143.191 to 143.265,
46 RSMo, and related provisions;

47 (12) "Taxpayer", a person, firm, partner in a firm, corporation, or
48 shareholder in an S corporation doing business in the state of Missouri
49 and subject to the state income tax imposed by the provisions of
50 chapter 143, RSMo, or a corporation subject to the annual corporation
51 franchise tax imposed by the provisions of chapter 147, RSMo, or an
52 insurance company paying an annual tax on its gross premium receipts
53 in this state, or other financial institution paying taxes to the state of
54 Missouri or any political subdivision of this state pursuant to the

55 provisions of chapter 148, RSMo, or an express company which pays an
56 annual tax on its gross receipts in this state pursuant to chapter 153,
57 RSMo, or an individual subject to the state income tax imposed by the
58 provisions of chapter 143, RSMo, or any charitable organization which
59 is exempt from federal income tax and whose Missouri unrelated
60 business taxable income, if any, would be subject to the state income
61 tax imposed under chapter 143, RSMo.

62 2. For all tax years beginning on or after January 1, 2009, a
63 taxpayer shall be allowed to claim a tax credit against the taxpayer's
64 state tax liability in an amount equal to eighty percent of the amount
65 such taxpayer contributed to a scholarship granting organization. No
66 taxpayer shall be issued more than eight hundred thousand dollars in
67 tax credits authorized under this section per tax year.

68 3. The amount of the tax credit claimed shall not exceed fifty
69 percent of a taxpayer's state tax liability for the taxable year for which
70 the credit is claimed. However, any tax credit that cannot be claimed
71 in the taxable year the contribution was made may be carried over to
72 the next four succeeding taxable years until the full credit has been
73 claimed.

74 4. The director shall determine, at least annually, which
75 organizations in this state may be classified as scholarship granting
76 organizations. The director may require of an organization seeking to
77 be classified as a scholarship granting organization information
78 reasonably necessary to make such a determination. The director shall
79 classify an organization as a scholarship granting organization, if such
80 organization meets the definition set forth in subsection 1 of this
81 section.

82 5. The director shall establish a procedure by which a taxpayer
83 can determine if an organization has been classified as a scholarship
84 granting organization. Scholarship granting organizations shall be
85 permitted to decline a contribution from a taxpayer.

86 6. Each scholarship granting organization shall provide
87 information to the director concerning the identity of each taxpayer
88 making a contribution to the scholarship granting organization who is
89 claiming a tax credit pursuant to this section and the amount of the
90 contribution. The director shall provide the information to the director
91 of the department of revenue. The director shall be subject to the

92 confidentiality and penalty provisions of section 32.057, RSMo, relating
93 to the disclosure of tax information.

94 7. Notwithstanding any other law to the contrary, any tax credits
95 granted under this section may be assigned, transferred, sold, or
96 otherwise conveyed without consent or approval. Such taxpayer,
97 hereinafter the assignor for purposes of this section, may sell, assign,
98 exchange, or otherwise transfer earned tax credits:

99 (1) For no less than seventy-five percent of the par value of such
100 credits; and

101 (2) In an amount not to exceed one hundred percent of annual
102 earned credits.

103 8. Notwithstanding any provision of law to the contrary, any
104 eligible student who receives an educational scholarship under the
105 provisions of this section and, as a result, attends a non-public school,
106 shall be enumerated in the weighted average daily attendance
107 calculation of the public school district which the student attended
108 immediately prior to receiving the educational scholarship for each
109 academic year in which the student receives the educational
110 scholarship.

135.1204. 1. Each scholarship granting organization
2 participating in the program under sections 135.1200 to 135.1210 shall:

3 (1) Notify the department of its intent to provide educational
4 scholarships to students attending qualified schools;

5 (2) Provide a department-approved receipt to taxpayers for
6 contributions made to the organization;

7 (3) Ensure that at least ninety percent of its revenue from
8 donations is spent on educational scholarships, and that all revenue
9 from interest or investments is spent on educational scholarships;

10 (4) Distribute periodic scholarship payments as checks made out
11 to a student's parent and mailed to the qualified school where the
12 student is enrolled. The parent or guardian shall endorse the check
13 before it can be deposited;

14 (5) Cooperate with the department to conduct criminal
15 background checks on all of its employees and board members and
16 exclude from employment or governance any individual who might
17 reasonably pose a risk to the appropriate use of contributed funds;

18 (6) Ensure that scholarships are portable during the school year

19 and can be used at any qualified school that accepts the eligible
20 student according to a parent's wishes. If a student moves to a new
21 qualified school during a school year, the scholarship amount may be
22 prorated;

23 (7) Demonstrate its financial accountability by:

24 (a) Submitting a financial information report, for the
25 organization, that complies with uniform financial accounting
26 standards established by the department and is conducted by a
27 certified public accountant; and

28 (b) Having the state auditor certify that the report is free of
29 material misstatements;

30 (8) Demonstrate its financial viability, if the organization is to
31 receive donations of fifty thousand dollars or more during the school
32 year, by filing with the department prior to the start of the school year:

33 (a) A surety bond payable to the state in an amount equal to the
34 aggregate amount of contributions expected to be received during the
35 school year; or

36 (b) Financial information that demonstrates the financial
37 viability of the scholarship granting organization.

38 2. Each scholarship granting organization shall ensure
39 participating schools that accept its scholarship students shall:

40 (1) Comply with all health and safety laws or codes that apply to
41 non-public schools;

42 (2) Hold a valid occupancy permit, if required by their
43 municipality;

44 (3) Certify that it will comply with 42 U.S.C. 1981; and

45 (4) Provide academic accountability to parents of the students
46 in the program by regularly reporting to the parent on the student's
47 progress.

48 3. Scholarship granting organizations shall not provide
49 educational scholarships for students to attend any school with paid
50 staff or board members who are relatives within the first degree of
51 consanguinity or affinity.

52 4. A scholarship granting organization shall publicly report to
53 the department, by June first of each year, the following information
54 prepared by a certified public accountant regarding their grants in the
55 previous calendar year:

56 (1) The name and address of the scholarship granting
57 organization;

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

60 (3) The total number and total dollar amount of educational
61 scholarships awarded during the previous calendar year, and the total
62 number and total dollar amount of educational scholarships awarded
63 during the previous year to students eligible for free and reduced
64 lunch.

 135.1206. 1. The department shall adopt rules and regulations
2 consistent with sections 135.1200 to 135.1210 as necessary to implement
3 the program.

4 2. The department shall provide a standardized format for a
5 receipt to be issued by a scholarship granting organization to a
6 taxpayer to indicate the value of a contribution received. The
7 department shall require a taxpayer to provide a copy of this receipt
8 when claiming the Missouri special needs scholarship tax credit.

9 3. Any rule or portion of a rule, as that term is defined in section
10 536.010, RSMo, that is created under the authority delegated in this
11 section shall become effective only if it complies with and is subject to
12 all of the provisions of chapter 536, RSMo, and, if applicable, section
13 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
14 and if any of the powers vested with the general assembly pursuant to
15 chapter 536, RSMo, to review, to delay the effective date, or to
16 disapprove and annul a rule are subsequently held unconstitutional,
17 then the grant of rulemaking authority and any rule proposed or
18 adopted after August 28, 2009, shall be invalid and void.

19 4. The department shall provide a standardized format for
20 scholarship granting organizations to report the information required
21 under section 135.1204.

22 5. The department may conduct either a financial review or
23 audit of a scholarship granting organization.

24 6. If the department believes that a scholarship granting
25 organization has intentionally and substantially failed to comply with
26 the requirements of section 135.1204, the department may hold a
27 hearing before the director, or his or her designee, to bar a scholarship
28 granting organization from participating in the program. The director,

29 or his or her designee, shall issue a decision within thirty days. A
30 scholarship granting organization may appeal the director's decision
31 to the administrative hearing commission for a hearing in accordance
32 with the provisions of chapter 621, RSMo.

33 7. If the scholarship granting organization is barred from
34 participating in the program, the department shall notify affected
35 scholarship students and their parents of this decision within fifteen
36 days.

135.1208. 1. The department shall conduct a study of the
2 program with funds other than state funds. The department may
3 contract with one or more qualified researchers who have previous
4 experience evaluating similar programs. The department may accept
5 grants to assist in funding this study.

6 2. The study shall assess:

7 (1) The level of participating students' satisfaction with the
8 program;

9 (2) The level of parental satisfaction with the program;

10 (3) The percentage of participating students who were bullied or
11 harassed because of their special needs status at their resident school
12 district compared to the percentage so bullied or harassed at their
13 qualified school;

14 (4) The percentage of participating students who exhibited
15 behavioral problems at their resident school district compared to the
16 percentage exhibiting behavioral problems at their qualified school;

17 (5) The class size experienced by participating students at their
18 resident school district and at their qualified school; and

19 (6) The fiscal impact to the state and resident school districts of
20 the program.

21 3. The study shall be completed using appropriate analytical and
22 behavioral sciences methodologies to ensure public confidence in the
23 study.

24 4. The department shall provide the general assembly with a
25 final copy of the evaluation of the program by December 31, 2010.

26 5. The public and non-public participating schools from which
27 students transfer to participate in the program shall cooperate with the
28 research effort by providing student assessment instrument scores and
29 any other data necessary to complete this study.

30 6. The general assembly may require periodic updates on the
31 status of the study from the department. Individuals completing the
32 study shall make their data and methodology available for public
33 review while complying with the requirements of the Family
34 Educational Rights and Privacy Act.

 135.1210. Pursuant to section 23.253, RSMo, of the Missouri
2 sunset act:

3 (1) The provisions of the new program authorized under sections
4 135.1200 to 135.1210 shall sunset automatically six years after the
5 effective date of sections 135.1200 to 135.1210 unless reauthorized by an
6 act of the general assembly; and

7 (2) If such program is reauthorized, the program authorized
8 under sections 135.1200 to 135.1210 shall sunset automatically twelve
9 years after the effective date of the reauthorization of sections 135.1200
10 to 135.1210; and

11 (3) Sections 135.1200 to 135.1210 shall terminate on September
12 first of the calendar year immediately following the calendar year in
13 which the program authorized under sections 135.1200 to 135.1210 is
14 sunset.

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