

SECOND REGULAR SESSION

SENATE BILL NO. 838

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time February 6, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

5584S.03I

AN ACT

To amend chapter 135, RSMo, by adding thereto seven new sections relating to scholarships for eligible students to attend certain nonpublic schools.

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

Section A. Chapter 135, RSMo, is amended by adding thereto seven new sections, to be known as sections 135.712, 135.713, 135.714, 135.715, 135.716, 135.717, and 135.719, to read as follows:

135.712. 1. Sections 135.712 to 135.719 shall be known and may be cited as the "Equal Opportunity Scholarship Program". This program shall grant scholarships to students from unaccredited districts for certain educational costs as provided in sections 135.712 to 135.719.

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

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

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

(3) "District", or "school district" shall have the same meaning as used in section 160.011;

(4) "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 director, and that allocates all of its annual revenue for educational assistance, with the exception of marketing and administrative expenses in paragraph (c) of subdivision (4) of subsection 1 of section 135.714 and as otherwise directed in sections 135.712 to 135.719, derived from contributions for which a credit is

21 claimed under this section;

22 (5) "Eligible student", a student who resides in any unaccredited
23 district. Any student who receives an educational scholarship under
24 this program shall remain eligible until the student graduates from
25 high school;

26 (6) "Equal opportunity scholarships", grants to eligible students
27 to cover all or part of the applicable tuition and fees at a qualified
28 school;

29 (7) "Parent", a parent, guardian, custodian, or other person with
30 authority to act on behalf of the eligible student;

31 (8) "Program", the equal opportunity scholarship program
32 established under sections 135.712 to 135.719;

33 (9) "Qualified school", a nonpublic elementary or secondary
34 school in this state that complies with all requirements of the program;

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

38 (11) "Scholarship amount", the lesser of:

39 (a) The previous year's tuition and fees for nonscholarship
40 students at the qualified school;

41 (b) Ninety percent of the previous year's average current
42 expenditure per average daily attendance for the student's district of
43 residence; or

44 (c) The tuition amount set by the voluntary interdistrict
45 coordinating council for the student's district of residence, if
46 applicable;

47 (12) "Taxpayer", an individual subject to the state income tax
48 imposed in chapter 143, an individual, a firm, a partner in a firm,
49 corporation, or a shareholder in an S corporation doing business in this
50 state and subject to the state income tax imposed by chapter 143, a
51 corporation subject to the annual corporation franchise tax imposed by
52 chapter 147, or an express company which pays an annual tax on its
53 gross receipts in this state under chapter 153, which files a Missouri
54 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,
2 2014, 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 chapters 147 and 153, in an amount
6 equal to seventy-five percent of the amount the taxpayer contributed
7 during the tax year for which the credit is claimed. No taxpayer shall
8 claim a credit under sections 135.712 to 135.719 for any contribution
9 made by the taxpayer, or an agent of the taxpayer, on behalf of the
10 taxpayer's dependent, or in the case of a business taxpayer, on behalf
11 of the business's agent's dependent.

12 2. The amount of the tax credit claimed shall not exceed the
13 amount of the taxpayer's state tax liability for the tax year for which
14 the credit is claimed. The department shall certify the tax credit
15 amount to the taxpayer and to the department of revenue. A taxpayer
16 may carry the credit forward to any of such taxpayer's four subsequent
17 taxable years. All tax credits authorized under the program may be
18 transferred, sold, or assigned.

19 3. The cumulative amount of tax credits which may be allocated
20 to all taxpayers contributing to educational assistance organizations in
21 any one fiscal year shall not exceed fifty million dollars, which amount
22 shall annually be adjusted by the department for inflation based on the
23 consumer price index for all urban consumers for the Midwest region,
24 as defined and officially recorded by the United States Department of
25 Labor, or its successor. The director shall establish a procedure by
26 which, from the beginning of the fiscal year until some point in time
27 later in the fiscal year to be determined by the director, the cumulative
28 amount of tax credits are equally apportioned among all educational
29 assistance organizations. If an educational assistance organization
30 fails to use all, or some percentage to be determined by the director, of
31 its apportioned tax credits during this predetermined period of time,
32 the director may reapportion these unused tax credits to those
33 educational assistance organizations that have used all, or some
34 percentage to be determined by the director, of their apportioned tax
35 credits during this predetermined period of time. The director may
36 establish more than one period of time and reapportion more than once
37 during each fiscal year. To the maximum extent possible, the director
38 shall establish the procedure described in this subsection in such a
39 manner as to ensure that taxpayers can claim all the tax credits
40 possible up to the cumulative amount of tax credits available for the

41 **fiscal year.**

135.714. 1. Each educational assistance organization shall:

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

4 (2) Demonstrate to the department 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 a department-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 educational scholarships;

12 (b) At least ninety percent of its revenues from qualifying
13 contributions is spent on educational scholarships; 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 one hundred thousand dollars; eight percent for
17 the next four hundred thousand dollars; six percent for the next five
18 hundred thousand dollars; and three percent thereafter;

19 (5) Distribute educational scholarship payments four times per
20 year in the form of checks made out to an eligible student's parent and
21 mailed to the qualified school where the student is enrolled. The
22 parent shall endorse the check before it can be deposited;

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

27 (7) Ensure that equal opportunity scholarships are portable
28 during the school year and can be used at any qualified school that
29 accepts the eligible student according to a parent's wishes. If an
30 eligible student moves to a new qualified school during a school year,
31 the equal opportunity scholarship amount may be prorated;

32 (8) Demonstrate its financial accountability by:

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

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

39 **(9) Demonstrate its financial viability, if it is to receive**
40 **donations of fifty thousand dollars or more during the school year, by**
41 **filing with the department before the start of the school year a surety**
42 **bond payable to the state in an amount equal to the aggregate amount**
43 **of contributions expected to be received during the school year.**

44 **2. Each educational assistance organization shall ensure that any**
45 **qualified school to which it grants a scholarship meets the**
46 **requirements of section 135.715.**

47 **3. Educational assistance organizations shall not provide equal**
48 **opportunity scholarships for eligible students to attend any school with**
49 **paid staff or board members, or relatives within the first or second**
50 **degree of consanguinity thereof, in common with the educational**
51 **assistance organization. Educational assistance organizations shall not**
52 **limit scholarships to only one qualified school or to students from only**
53 **one district or school or other educational venue.**

54 **4. An educational assistance organization shall publicly report**
55 **to the department by June first of each year the following information**
56 **prepared by a certified public accountant regarding its grants in the**
57 **previous calendar year:**

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

60 **(2) The name and address of each eligible student who received**
61 **an equal opportunity scholarship from the organization;**

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

64 **(4) The total number and total dollar amount of equal**
65 **opportunity scholarships awarded during the previous calendar year;**

66 **(5) The total number and total dollar amount of equal**
67 **opportunity scholarships awarded during the previous year to eligible**
68 **students qualifying for the federal free and reduced price school lunch**
69 **program.**

70 **5. Before educational assistance organizations may raise**
71 **contributions under the program, they shall have received or**
72 **demonstrated ability to receive applications from eligible students, and**
73 **shall have identified potential vacancies in qualified schools as**

74 determined by the director.

135.715. 1. A qualified school shall comply with all state laws
2 that apply to public schools regarding criminal background checks for
3 employees and shall exclude from employment any person prohibited
4 by state law from working in a public school.

5 2. A qualified school shall:

6 (1) Comply with all health and safety laws or codes that apply to
7 nonpublic schools;

8 (2) Hold a valid occupancy permit if required by its municipality;
9 and

10 (3) Accept the application of any eligible student who applies
11 and of any student who satisfies the conditions of subsection 6 of
12 section 167.020;

13 (4) Certify that it will not discriminate in admissions on the
14 basis of race, color, religion, national origin, or disability. However, a
15 qualified school that does not provide special education services shall
16 not be required to provide such services for an eligible student but a
17 qualified school may negotiate arrangements for the provision of
18 services for an eligible student who has an individualized education
19 program that requires speech, occupational, or physical therapy, or
20 other services that are delivered outside the main classroom;

21 (5) File a statement of intent to participate that includes the
22 information listed in this subsection;

23 (6) For initial applicants, file a list of the information required
24 under this subsection, and for requalifying schools, annual reporting
25 of the information required under this subsection. No public reporting
26 of information required under this subsection shall be personally
27 identifiable to an individual student;

28 (7) Be fiscally sound as evidenced by three years in existence, a
29 surety bond, or letter of credit covering the amount of funds received
30 on behalf of scholarship recipients;

31 (8) Be accredited by a regional or national accrediting agency or
32 for a school that is not currently accredited, provisional approval
33 pending the achievement of accreditation no later than the fourth
34 school year of participation;

35 (9) Annually administer a parental satisfaction survey; and

36 (10) Demonstrate evidence of the annual transmittal of the

37 information required by this section to parents and evidence of its
38 availability to applicants.

39 3. A qualified school whose tuition is higher than an eligible
40 student's scholarship amount may allow a work-study program at the
41 level of a ninth grade or higher student with the approval of the
42 student's parent.

43 4. A qualified school shall have on record a form signed by the
44 parent of the scholarship recipient agreeing to the release of the
45 student's participation as a scholarship recipient under sections
46 135.712 to 135.719 to the director.

47 5. As a condition of participation, the parents and scholarship
48 recipients under sections 135.712 to 135.719 shall agree to abide by the
49 school's code of conduct and any parental involvement requirements
50 unless the qualifying school agrees to a waiver of any requirements.

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

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

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

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

20 5. The department 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 director shall establish procedures to ensure the percentage of funds

24 for administration of the program is directed to the department of
25 economic development in a timely manner with the necessary
26 information to verify the correct amount has been transmitted. The
27 remaining funds shall be distributed to the educational assistance
28 organizations.

135.717. 1. Subject to appropriations, the joint committee on
2 education shall conduct a study of the program. The joint committee
3 may contract with one or more qualified researchers if assistance is
4 needed and if funds are available.

5 2. The study shall assess the following areas:

6 (1) The impact of the program on public and private school
7 capacity, availability, and quality of service; and

8 (2) Student performance on statewide assessment instruments
9 before and after entering the program if any students took the
10 statewide assessment instruments at their qualified school, provided
11 that no participating student shall be individually identified.

12 3. The study shall be conducted during the first five years of the
13 program for the period of those five years. If the committee deems it
14 necessary, an interim report or reports may be issued based on
15 available data.

16 4. The joint committee shall provide the general assembly with
17 a final report of the evaluation of the program.

18 5. The public and nonpublic participating schools to and from
19 which students transfer as part of the program shall cooperate with the
20 research effort by providing student assessment instrument scores and
21 any other data necessary to complete this study. Scores and data shall
22 be provided in such a manner that no participating student, or
23 participating student's scores, can be individually identified.

135.719. 1. The department 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, 2014, shall
12 be invalid and void.

13 2. Under section 23.253 of the Missouri sunset act:

14 (1) The provisions of the new program authorized under sections
15 135.712 to 135.719 shall automatically sunset six years after the
16 effective date of sections 135.712 to 135.719 unless reauthorized by an
17 act of the general assembly; and

18 (2) If such program is reauthorized, the program authorized
19 under sections 135.712 to 135.719 shall automatically sunset twelve
20 years after the effective date of the reauthorization of sections 135.712
21 to 135.719; and

22 (3) Sections 135.712 to 135.719 shall terminate on September first
23 of the calendar year immediately following the calendar year in which
24 the program authorized under sections 135.712 to 135.719 is sunset.

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Bill

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