

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 313

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Chapters 135 and 166, RSMo, are amended by
2 adding thereto ten new sections, to be known as sections 135.712,
3 135.713, 135.714, 135.716, 135.719, 166.700, 166.705, 166.710,
4 166.715, and 166.720, to read as follows:

5 135.712. 1. Sections 135.712 to 135.719 and sections
6 166.700 to 166.720 establish the "Missouri Empowerment
7 Scholarship Accounts Program" to provide options toward ensuring
8 the education of students in this state.

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

11 (1) "District" or "school district", the same meaning as
12 used in section 160.011;

13 (2) "Educational assistance organization", a charitable
14 organization registered in this state that is exempt from federal
15 taxation under the Internal Revenue Code of 1986, as amended, is
16 certified by the state treasurer, and that allocates all of its

1 annual revenue for educational assistance, except as provided in
2 paragraph (c) of subdivision (4) of subsection 1 of section
3 135.714 and as provided for in sections 135.712 to 135.719,
4 derived from contributions for which a credit is claimed under
5 this section;

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

8 (4) "Program", the Missouri empowerment scholarship
9 accounts program established under sections 135.712 to 135.719
10 and sections 166.700 to 166.720;

11 (5) "Qualified student", the same meaning as used in
12 section 166.700;

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

16 (7) "Scholarship account", a savings account created by the
17 Missouri empowerment scholarship accounts program authorized by
18 sections 166.700 to 166.720;

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

27 135.713. 1. For all fiscal years beginning on or after
28 July 1, 2018, any taxpayer who makes a qualifying contribution to

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

11 2. If the amount of the tax credit claimed exceeds the
12 taxpayer's state tax liability for the tax year for which the
13 credit is claimed, then the excess of the tax credit shall be
14 considered an overpayment of the tax and refunded to the
15 taxpayer. The state treasurer shall certify the tax credit
16 amount to the taxpayer and to the department of revenue. All tax
17 credits authorized under the program shall not be transferred,
18 sold, or assigned.

19 3. The cumulative amount of tax credits that may be
20 allocated to all taxpayers contributing to educational assistance
21 organizations in any one calendar year shall not exceed fifty
22 million dollars, which amount shall annually be adjusted by the
23 state treasurer for inflation based on the consumer price index
24 for all urban consumers for the Midwest region, as defined and
25 officially recorded by the United States Department of Labor or
26 its successor. The state treasurer shall establish a procedure
27 by which, from the beginning of the calendar year until August
28 first, the cumulative amount of tax credits are equally

1 apportioned among all educational assistance organizations. If
2 an educational assistance organization fails to use all, or some
3 percentage to be determined by the state treasurer, of its
4 apportioned tax credits during this predetermined period of time,
5 the state treasurer may reapportion these unused tax credits to
6 those educational assistance organizations that have used all, or
7 some percentage to be determined by the state treasurer, of their
8 apportioned tax credits during this predetermined period of time.
9 The state treasurer may establish more than one period of time
10 and reapportion more than once during each calendar year. The
11 state treasurer shall establish the procedure described in this
12 subsection in such a manner as to ensure that taxpayers can claim
13 all the tax credits possible up to the cumulative amount of tax
14 credits available for the calendar year.

15 135.714. 1. Each educational assistance organization
16 shall:

17 (1) Notify the state treasurer of its intent to provide
18 scholarship accounts to qualified students;

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

22 (3) Provide a state treasurer-approved receipt to taxpayers
23 for contributions made to the organization;

24 (4) Ensure that:

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

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

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

6 (5) Distribute scholarship accounts payments either four
7 times per year or in a single lump sum at the beginning of the
8 year as requested by the parent or guardian of a qualified
9 student, not to exceed a total grant amount equal to the state
10 adequacy target as defined in section 163.011 and calculated by
11 the department of elementary and secondary education, in the form
12 of a deposit into the scholarship account of the qualified
13 student;

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

19 (7) Demonstrate its financial accountability by:

20 (a) Submitting to the state treasurer annual audit
21 financial statements by a certified public accountant within six
22 months of the end of the educational assistance organization's
23 fiscal year; and

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

26 (8) Demonstrate its financial viability, if it is to
27 receive donations of fifty thousand dollars or more during the
28 school year, by filing with the state treasurer before the start

1 of the school year a surety bond payable to the state in an
2 amount equal to the aggregate amount of contributions expected to
3 be received during the school year or other financial information
4 that demonstrates the financial viability of the educational
5 assistance organization.

6 2. The audit shall include:

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

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

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

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

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

18 135.716. 1. The state treasurer shall provide a
19 standardized format for a receipt to be issued by an educational
20 assistance organization to a taxpayer to indicate the value of a
21 contribution received. The state treasurer shall require a
22 taxpayer to provide a copy of this receipt if claiming the tax
23 credit authorized by the program.

24 2. The state treasurer shall provide a standardized format
25 for educational assistance organizations to report the
26 information required in subsection 1 of this section.

27 3. The state treasurer or state auditor may conduct an
28 investigation if the state treasurer possesses evidence of fraud

1 committed by the organization.

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

11 5. (1) There is hereby created in the state treasury the
12 "Missouri Empowerment Scholarship Accounts Fund", which shall
13 consist of money collected under this section. The state
14 treasurer shall be custodian of the fund. In accordance with
15 sections 30.170 and 30.180, the state treasurer may approve
16 disbursements. The fund shall be a dedicated fund and money in
17 the fund shall be used solely by the state treasurer for the
18 purpose of sections 135.712 to 135.719.

19 (2) Notwithstanding the provisions of section 33.080 to the
20 contrary, any moneys remaining in the fund at the end of the
21 biennium shall not revert to the credit of the general revenue
22 fund.

23 (3) The state treasurer shall invest moneys in the fund in
24 the same manner as other funds are invested. Any interest and
25 moneys earned on such investments shall be credited to the fund.

26 6. No more than two percent of the qualifying contributions
27 may be deposited in the Missouri empowerment scholarship accounts
28 fund to be used for marketing and administrative expenses or the

1 costs incurred in administering the program, whichever is less.
2 The state treasurer shall establish procedures to ensure the
3 percentage of funds for administration of the program is directed
4 to the state treasurer in a timely manner with the necessary
5 information to verify the correct amount has been transmitted.
6 The remaining funds shall be distributed to the educational
7 assistance organizations.

8 135.719. 1. The state treasurer and the department of
9 revenue may promulgate rules to implement the provisions of
10 sections 135.712 to 135.719. Any rule or portion of a rule, as
11 that term is defined in section 536.010 that is created under the
12 authority delegated in this section shall become effective only
13 if it complies with and is subject to all of the provisions of
14 chapter 536, and, if applicable, section 536.028. This section
15 and chapter 536 are nonseverable and if any of the powers vested
16 with the general assembly pursuant to chapter 536, to review, to
17 delay the effective date, or to disapprove and annul a rule are
18 subsequently held unconstitutional, then the grant of rulemaking
19 authority and any rule proposed or adopted after August 28, 2017,
20 shall be invalid and void.

21 2. The provisions of section 23.253 of the Missouri sunset
22 act shall not apply to sections 135.712 to 135.719 and sections
23 166.700 to 166.720.

24 166.700. As used in sections 166.700 to 166.720, the
25 following terms mean:

26 (1) "Child with a disability":

27 (a) A child who is at least five years of age but less than
28 twenty-two years of age who has been evaluated and found to have

1 at least one of the following disabilities and who, because of
2 the disability, needs special education and related services:

3 a. An autism spectrum disorder;

4 b. Developmental delay;

5 c. Emotional disability;

6 d. Hearing impairment;

7 e. Other health impairments;

8 f. Specific learning disability;

9 g. Mild, moderate, or severe intellectual disability;

10 h. Multiple disabilities;

11 i. Multiple disabilities with severe sensory impairment;

12 j. Orthopedic impairment;

13 k. Preschool severe delay;

14 l. Speech or language impairment;

15 m. Traumatic brain injury; or

16 n. Visual impairment; and

17 (b) Shall not include a child if the determining factor for
18 the classification is one or more of the following:

19 a. A lack of appropriate instruction in reading, including
20 essential components of reading instruction;

21 b. A lack of appropriate instruction in mathematics; or

22 c. Difficulty in writing, speaking, or understanding the
23 English language due to an environmental background in which a
24 language other than English is primarily or exclusively used;

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

28 (3) "Educational assistance organization", the same meaning

1 as used in section 135.712;

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

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

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

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

12 (8) "Qualified school", a home school as defined in section
13 167.031, a private school as defined in this subsection, a public
14 school as defined in section 160.011, or a public or private
15 virtual school that is located in Missouri and that does not
16 discriminate on the basis of race, color, or national origin;

17 (9) "Qualified student", a resident of this state who:

18 (a) Is any of the following:

19 a. Identified by a district as a child with a disability;

20 b. A child with a disability who is eligible to receive
21 services from a school district under the Individuals with
22 Disabilities Education Act;

23 c. A child who is a ward of the juvenile court and who is
24 residing with a prospective permanent placement and for whom the
25 case plan is adoption or permanent guardianship; or

26 d. A child who was a ward of the juvenile court and who
27 achieved permanency through adoption permanent guardianship; and

28 (b) Did any of the following:

1 a. Attended a public school as a full-time student for at
2 least one semester from the previous twelve months and who
3 transferred from a public school under a contract to participate
4 in the Missouri empowerment scholarship accounts program;

5 b. Previously participated in the Missouri empowerment
6 scholarship account program; or

7 c. Is a child who is eligible to begin kindergarten under
8 sections 160.051 to 160.055.

9 166.705. 1. A parent of a qualified student may establish
10 a Missouri empowerment scholarship account for the student by
11 entering into a written agreement with an educational assistance
12 organization. The agreement shall provide that:

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

16 (2) The qualified student shall not be enrolled in a school
17 operated by the qualified student's district of residence or a
18 charter school and shall release the district of residence from
19 all obligations to educate the qualified student while the
20 qualified student is enrolled in the program; except that, this
21 subdivision shall not relieve the student's district of residence
22 from the obligation to conduct an evaluation for disabilities;

23 (3) The qualified student shall receive a grant, in the
24 form of money deposited pursuant to section 135.714, in the
25 qualified student's Missouri empowerment scholarship account;

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

- 1 (a) Tuition or fees at a qualified school;
- 2 (b) Textbooks required by a qualified school;
- 3 (c) Educational therapies or services for the qualified
4 student from a licensed or accredited practitioner or provider,
5 including licensed or accredited paraprofessionals or educational
6 aides;
- 7 (d) Tutoring services provided by a tutor accredited by a
8 state, regional, or national accrediting organization;
- 9 (e) Curriculum;
- 10 (f) Tuition or fees for a nonpublic online learning
11 program;
- 12 (g) Fees for a nationally standardized norm-referenced
13 achievement test, advanced placement examinations, international
14 baccalaureate examinations, or any exams related to college or
15 university admission;
- 16 (h) Contributions to a qualified tuition program
17 established under 26 U.S.C. Section 529 for the benefit of the
18 qualified student;
- 19 (i) Tuition or fees at an eligible postsecondary
20 institution;
- 21 (j) Textbooks required by an eligible postsecondary
22 institution;
- 23 (k) Fees for management of the empowerment scholarship
24 account by firms selected by the educational assistance
25 organization;
- 26 (l) Services provided by a public school, including
27 individual classes and extracurricular programs;
- 28 (m) Insurance or surety bond payments as required by the

1 state treasurer;

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

5 (o) Fees for summer education programs and specialized
6 after-school education programs;

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

10 2. Missouri empowerment scholarship accounts are renewable
11 on an annual basis upon request of the parent of a qualified
12 student. Notwithstanding any changes to the qualified student's
13 multidisciplinary evaluation team plan, a student who has
14 previously qualified for a Missouri empowerment scholarship
15 account shall remain eligible to apply for renewal until the
16 student completes high school and submits scores from a
17 nationally standardized norm-referenced achievement test,
18 advanced placement examination, international baccalaureate
19 examination, or any exam related to college or university
20 admission purchased with Missouri empowerment scholarship account
21 funds to the state treasurer.

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

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

28 5. If a qualified student withdraws from the program by

1 enrolling in a school other than a qualified school, or is
2 disqualified from the program under the provisions of section
3 166.710, the qualified student's Missouri empowerment scholarship
4 account shall be closed and any remaining funds shall be returned
5 to the educational assistance organization for redistribution to
6 other qualified students. Under such circumstances, the
7 obligation to provide an education for such student shall
8 transfer back to the student's district of residence.

9 6. Any funds remaining in a qualified student's scholarship
10 account at the end of a school year shall remain in the account
11 and shall not be returned to the educational assistance
12 organization. Any funds remaining in a qualified student's
13 scholarship account upon graduation from a qualified school may
14 be used for the purposes of postsecondary education as specified
15 in subdivision (4) of subsection 1 of this section. Any funds
16 remaining in a qualified student's account after graduation from
17 an eligible postsecondary institution, or after a period of four
18 years following graduation from a qualified school, whichever
19 occurs first, shall be returned to the educational assistance
20 organization for redistribution to other qualified students.

21 7. Moneys received under sections 166.700 to 166.720 shall
22 not constitute Missouri taxable income to the parent of the
23 qualified student.

24 8. Any qualified student under subparagraph d of paragraph
25 (a) of subdivision (10) of section 166.700 who receives a
26 scholarship under the provisions of this section shall continue
27 to be eligible to receive his or her scholarship upon a legal
28 adoption.

1 166.710. 1. Beginning in the 2019-2020 school year, the
2 state treasurer shall conduct or contract for annual audits of
3 empowerment scholarship accounts to ensure compliance with the
4 requirements of subsection 1 of section 166.705. The state
5 treasurer shall also conduct or contract for random, quarterly,
6 and annual audits of empowerment scholarship accounts as needed
7 to ensure compliance with the requirements of subsection 1 of
8 section 166.705.

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

21 3. The state treasurer may refer cases of substantial
22 misuse of moneys to the attorney general for investigation if the
23 state treasurer obtains evidence of fraudulent use of an account.

24 4. The state treasurer shall promulgate the following rules
25 to implement and administer the Missouri empowerment scholarship
26 accounts program:

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

1 (2) Rules for conducting random, quarterly, and annual
2 reviews of accounts;

3 (3) Creating an online anonymous fraud reporting service;

4 (4) Creating an anonymous telephone hotline for fraud
5 reporting; and

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

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

18 166.715. 1. A person commits a class A misdemeanor if they
19 are found to have knowingly used moneys granted under section
20 135.714 for purposes other than those provided for in sections
21 166.700 to 166.720.

22 2. No financial institution shall be liable in any civil
23 action for providing a savings account's financial information to
24 the state treasurer unless the information provided is false and
25 the financial institution providing the false information does so
26 knowingly and with malice.

27 166.720. 1. Sections 166.700 to 166.720 do not permit any
28 governmental agency to exercise control or supervision over any

1 qualified school in which a qualified student enrolls other than
2 a qualified school that is a public school.

3 2. A qualified school that accepts a payment from a parent
4 under sections 166.700 to 166.720 shall not be an agent of the
5 state or federal government.

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

11 4. In any legal proceeding challenging the application of
12 sections 166.700 to 166.720 to a qualified school, the state
13 shall bear the burden of establishing that the law is necessary
14 and does not impose any undue burden on qualified schools.