

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 612

AN ACT

To amend chapters 135, 166, and 167, RSMo, by adding thereto twelve new sections relating to alternative education options for elementary and secondary education students, with penalty provisions and a contingent effective date.

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

1 Section A. Chapters 135, 166, and 167, RSMo, are amended by
2 adding thereto twelve new sections, to be known as sections
3 135.712, 135.713, 135.714, 135.716, 135.719, 166.700, 166.705,
4 166.710, 166.715, 166.720, 166.725, and 167.125, to read as
5 follows:

6 135.712. 1. Sections 135.712 to 135.719 and sections
7 166.700 to 166.725 establish the "Missouri Empowerment
8 Scholarship Accounts Program" to provide options toward ensuring
9 the education of students in this state.

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

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

1 paragraph (c) of subdivision (4) of subsection 1 of section
2 135.714 and as provided for in sections 135.712 to 135.719,
3 derived from contributions for which a credit is claimed under
4 section 135.713;

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

7 (3) "Poverty level", the federal poverty level, as
8 established and amended by the federal Department of Health and
9 Human Services or its successor agency;

10 (4) "Program", the Missouri empowerment scholarship
11 accounts program established under sections 135.712 to 135.719
12 and sections 166.700 to 166.725;

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

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

18 (7) "Scholarship account", a savings account created by the
19 Missouri empowerment scholarship accounts program authorized by
20 sections 166.700 to 166.725;

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

1 135.713. 1. (1) For all tax years beginning on or after
2 January 1, 2019, any taxpayer who makes a qualifying contribution
3 to an educational assistance organization may claim a credit
4 against the tax otherwise due under chapter 143, other than taxes
5 withheld under sections 143.191 to 143.265, and chapter 153, in
6 an amount equal to one hundred percent of the amount the taxpayer
7 contributed during the tax year for which the credit is claimed.
8 No taxpayer shall claim a credit under sections 135.712 to
9 135.719 for any contribution made by the taxpayer, or an agent of
10 the taxpayer, on behalf of the taxpayer's dependent, or in the
11 case of a business taxpayer, on behalf of the business's agent's
12 dependent.

13 (2) The following taxpayers shall not be eligible to claim
14 a tax credit under sections 135.712 to 135.719 for the tax year
15 in which the following conditions apply:

16 (a) Any taxpayer who is subject to the federal alternative
17 minimum tax imposed under 26 U.S.C. Section 55 and who claims a
18 deduction under 26 U.S.C. Section 170;

19 (b) Any taxpayer or owner of a pass-through entity who
20 claims a deduction under 26 U.S.C. Section 170 for a qualifying
21 contribution under sections 135.712 to 135.719.

22 (3) For the purposes of this subsection, the term "pass-
23 through entity" shall mean any entity organized under 26 U.S.C.
24 Subchapter S, or any other entity for which taxable income is
25 passed through to the owners of such entity.

26 2. The amount of the tax credit claimed shall not exceed
27 fifty percent of the taxpayer's state tax liability for the tax
28 year for which the credit is claimed. The state treasurer shall

1 certify the tax credit amount to the taxpayer and to the
2 department of revenue. A taxpayer may carry the credit forward
3 to any of such taxpayer's four subsequent tax years. All tax
4 credits authorized under the program shall not be transferred,
5 sold, or assigned, and are not refundable.

6 3. The cumulative amount of tax credits that may be
7 allocated to all taxpayers contributing to educational assistance
8 organizations in any one calendar year shall not exceed twenty-
9 five million dollars, which amount shall annually be adjusted by
10 the state treasurer for inflation based on the consumer price
11 index for all urban consumers for the Midwest region, as defined
12 and officially recorded by the United States Department of Labor
13 or its successor. The state treasurer may adopt rules, policies,
14 and procedures not inconsistent with the provisions of sections
15 135.712 to 135.719, to ensure that taxpayers may claim all the
16 tax credits possible up to the cumulative amount of tax credits
17 available in any one calendar year.

18 135.714. 1. Each educational assistance organization
19 shall:

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

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

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

27 (4) Ensure that:

28 (a) One hundred percent of its revenues from interest or

investments is spent on scholarship accounts;

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

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

(5) Distribute scholarship amount payments four times per year, not to exceed a total grant amount equal to one and one-half times the state adequacy target, as defined in section 163.011 and calculated by the department of elementary and secondary education, in the form of a deposit into the scholarship account of the qualified student. A qualified student as defined in subparagraph d. or e. of paragraph (a) of subdivision (9) of section 166.700 shall be eligible for a total grant amount equal to the state adequacy target. The amount of the grant for all other qualified students shall be determined by the following table:

If the student's household income is:	The grant amount shall be:
0% - 100% of poverty level	equal to the state adequacy target times 1.5
101% - 250% of poverty level	equal to the state adequacy target
251% - 350% of poverty level	equal to the state adequacy target times .90

351% - 375% of poverty level	equal to the state adequacy target times .70
376% - 400% of poverty level	equal to the state adequacy target times .50
401% of poverty level or higher	\$0

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

(7) Demonstrate its financial accountability by:

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

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

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

2. The audit shall include:

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

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

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

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

9 3. An educational assistance organization may contract with
10 private financial management firms to manage scholarship accounts
11 with the supervision of the state.

12 135.716. 1. The state treasurer shall provide a
13 standardized format for a receipt to be issued by an educational
14 assistance organization to a taxpayer to indicate the value of a
15 contribution received. The department of revenue shall require a
16 taxpayer to provide a copy of this receipt if claiming the tax
17 credit authorized by the program.

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

21 3. The state treasurer or state auditor may conduct an
22 investigation if the state treasurer possesses evidence of fraud
23 committed by an educational assistance organization.

24 4. The state treasurer may bar an educational assistance
25 organization from participating in the program if the state
26 treasurer establishes that the educational assistance
27 organization has intentionally and substantially failed to comply
28 with the requirements in section 135.714. If the state treasurer

bars an educational assistance organization from the program under this subsection, it shall notify affected qualified students and their parents of the decision as soon as possible after the decision is made.

5. The state treasurer shall issue a report on the state of the Missouri empowerment scholarship accounts program five years after it goes into effect. The report shall include, but is not limited to:

(1) Information regarding the finances of the educational assistance organizations;

(2) Educational outcomes of qualified students; and

(3) The financial impact of the program to local school districts and the state.

135.719. 1. The state treasurer and the department of revenue may promulgate rules to implement the provisions of sections 135.712 to 135.719. Any rule or portion of a rule, as that term is defined in section 536.010 that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2018, shall be invalid and void.

2. The provisions of section 23.253 of the Missouri sunset act shall not apply to sections 135.712 to 135.719 and sections

1 166.700 to 166.725.

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

4 (1) "Child with a disability":

5 (a) A child who is at least five years of age but less than
6 twenty-two years of age who has been evaluated and found to have
7 at least one of the following disabilities and who, because of
8 the disability, needs special education and related services:

9 a. An autism spectrum disorder;

10 b. Developmental delay;

11 c. Emotional disability;

12 d. Hearing impairment;

13 e. Other health impairments;

14 f. Specific learning disability;

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

16 h. Multiple disabilities;

17 i. Multiple disabilities with severe sensory impairment;

18 j. Orthopedic impairment;

19 k. Preschool severe delay;

20 l. Speech or language impairment;

21 m. Traumatic brain injury; or

22 n. Visual impairment; and

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

25 a. A lack of appropriate instruction in reading, including
26 essential components of reading instruction;

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

28 c. Difficulty in writing, speaking, or understanding the

English language due to an environmental background in which a language other than English is primarily or exclusively used;

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

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

(4) "Educational assistance organization", the same meaning as used in section 135.712;

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

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

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

(8) "Qualified school", a charter school as defined in section 160.400, a home school as defined in section 167.031, a private school as defined in this section, a public school as defined in section 160.011, or a public or private virtual school that is incorporated in Missouri, and that does not discriminate on the basis of race, color, or national origin. Charter schools, public schools, and public virtual schools are "qualified schools" only to the extent that moneys deposited in a qualified student's scholarship account shall be used for specific services or individual classes consistent with the provisions of subdivision (4) of subsection 1 of section 166.705;

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

2 (a) Is any of the following:

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

4 b. A child with a disability who is eligible to receive
5 services from a school district under the Individuals with
6 Disabilities Education Act;

7 c. A child of a parent in active military service;

8 d. A child who is a ward of the juvenile court and who is
9 residing with a prospective permanent placement and for whom the
10 case plan is adoption or permanent guardianship; or

11 e. A child who was a ward of the juvenile court and who
12 achieved permanency through adoption permanent guardianship; and

13 (b) Did any of the following:

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

18 b. Previously participated in the Missouri empowerment
19 scholarship accounts program;

20 c. Is a child who is eligible to begin kindergarten under
21 sections 160.051 to 160.055; or

22 d. Is attending school for the first time.

23 166.705. 1. A parent of a qualified student may establish
24 a Missouri empowerment scholarship account for the student by
25 entering into a written agreement with an educational assistance
26 organization. The agreement shall provide that:

27 (1) The qualified student shall enroll in a qualified
28 school and receive an education in at least the subjects of

1 English language arts, mathematics, social studies, and science;

2 (2) The qualified student shall not be enrolled in a school
3 operated by the qualified student's district of residence or a
4 charter school, except for a qualified student who is in the
5 custody of the state, and shall release the district of residence
6 from all obligations to educate the qualified student while the
7 qualified student is enrolled in the program; except that, this
8 subdivision shall not relieve the student's district of residence
9 from the obligation to conduct an evaluation for disabilities;

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

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

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

17 (b) Textbooks required by a qualified school;

18 (c) Educational therapies or services for the qualified
19 student from a licensed or accredited practitioner or provider,
20 including licensed or accredited paraprofessionals or educational
21 aides;

22 (d) Tutoring services;

23 (e) Curriculum;

24 (f) Tuition or fees for a private virtual school;

25 (g) Fees for nationally standardized norm-referenced
26 achievement tests, advanced placement examinations, international
27 baccalaureate examinations, or any exams related to college or
28 university admission;

1 (h) Fees for management of the empowerment scholarship
2 account by firms selected by the educational assistance
3 organization;

4 (i) Services provided by a qualified school, including
5 individual classes and extracurricular programs;

6 (j) Insurance or surety bond payments as required by the
7 state treasurer;

8 (k) Computer hardware or other technological devices that
9 are used to help meet a qualified student's educational needs and
10 that are approved by an educational assistance organization; and

11 (l) Fees for summer education programs and specialized
12 after-school education programs;

13 (5) Moneys deposited in the qualified student's account
14 shall not be used for the following:

15 (a) Consumable educational supplies including, but not
16 limited to, paper, pens, pencils, or markers; and

17 (b) Tuition at a private school located outside of the
18 state of Missouri.

19 2. Missouri empowerment scholarship accounts are renewable
20 on an annual basis upon request of the parent of a qualified
21 student. Notwithstanding any changes to the qualified student's
22 multidisciplinary evaluation team plan, a student who has
23 previously qualified for a Missouri empowerment scholarship
24 account shall remain eligible to apply for renewal until the
25 student completes high school and submits scores from a
26 nationally standardized norm-referenced achievement test,
27 advanced placement examination, international baccalaureate
28 examination, or any exam related to college or university

1 admission purchased with Missouri empowerment scholarship account
2 funds to the state treasurer.

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

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

9 5. If a qualified student withdraws from the program by
10 enrolling in a school other than a qualified school, or is
11 disqualified from the program under the provisions of section
12 166.710, the qualified student's Missouri empowerment scholarship
13 account shall be closed and any remaining funds shall be returned
14 to the educational assistance organization for redistribution to
15 other qualified students. Under such circumstances, the
16 obligation to provide an education for such student shall
17 transfer back to the student's district of residence.

18 6. Any funds remaining in a qualified student's scholarship
19 account at the end of a school year shall remain in the account
20 and shall not be returned to the educational assistance
21 organization. Any funds remaining in a qualified student's
22 scholarship account upon graduation from a qualified school that
23 is a high school shall be returned to the educational assistance
24 organization for redistribution to other qualified students.

25 7. Moneys received under section 135.714 shall not
26 constitute Missouri taxable income to the parent of the qualified
27 student.

28 166.710. 1. Beginning in the 2020-2021 school year, the

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

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

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

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

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

28 (2) Rules for conducting random, quarterly, and annual

1 reviews of accounts;

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

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

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

6 5. Any rule or portion of a rule, as that term is defined
7 in section 536.010 that is created under the authority delegated
8 in this section shall become effective only if it complies with
9 and is subject to all of the provisions of chapter 536, and, if
10 applicable, section 536.028. This section and chapter 536 are
11 nonseverable and if any of the powers vested with the general
12 assembly pursuant to chapter 536, to review, to delay the
13 effective date, or to disapprove and annul a rule are
14 subsequently held unconstitutional, then the grant of rulemaking
15 authority and any rule proposed or adopted after August 28, 2018,
16 shall be invalid and void.

17 166.715. The parent of a qualified student in grades third
18 through twelfth who has a scholarship account shall annually have
19 the qualified student take a nationally standardized norm-
20 referenced achievement test, an advanced placement examination,
21 or any examination related to college or university admissions
22 that assesses reading and mathematics. The state treasurer shall
23 make available to qualified students with a scholarship account a
24 list of achievement tests that satisfy the requirement of this
25 section. Qualified schools shall ensure that such tests and
26 examinations are administered during the same timeframe and at
27 the same rate that public schools of the state administer the
28 same tests and examinations.

1 166.720. 1. A person commits a class A misdemeanor if they
2 are found to have knowingly used moneys granted under section
3 135.714 for purposes other than those provided for in sections
4 166.700 to 166.725.

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

10 166.725. 1. Sections 166.700 to 166.725 do not permit any
11 governmental agency to exercise control or supervision over any
12 qualified school in which a qualified student enrolls other than
13 a qualified school that is a public school.

14 2. A qualified school, other than a qualified school that
15 is a public school, that accepts a payment from a parent under
16 sections 166.700 to 166.725 shall not be considered an agent of
17 the state or federal government due to the school's acceptance of
18 the payment.

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

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

28 167.125. 1. For any pupil residing in any school district

1 in the state, the commissioner of education or his or her
2 designee shall, upon proper application by the parent or guardian
3 of the pupil, assign the pupil and any sibling of the pupil to
4 another school district if the pupil is eligible as described
5 under subsection 2 of this section and the following conditions
6 are met:

7 (1) The actual driving distance from the pupil's residence
8 to the attendance center in the district of residence is fifteen
9 miles or more by the shortest route available as determined by
10 the commissioner or his or her designee;

11 (2) The attendance center to which the pupil would be
12 assigned in the receiving district is at least five miles closer
13 in actual driving distance by the shortest route available to the
14 pupil's residence than the current attendance center in the
15 district of residence as determined by the commissioner or his or
16 her designee; and

17 (3) The attendance of the pupil will not cause the
18 classroom in the receiving district to exceed the number of
19 pupils per class as determined by the receiving district.

20 2. (1) For pupils applying to the commissioner of
21 education under this section, the commissioner or his or her
22 designee shall assign pupils in the order in which applications
23 are received, so long as the applications are properly completed
24 and the conditions of subsection 1 of this section are met.

25 (2) Once granted, the hardship assignment shall continue
26 until the pupil, and any sibling of the pupil who attends the
27 same attendance center, completes his or her course of study in
28 the receiving district or the parent or guardian withdraws the

1 pupil. If a parent or guardian withdraws a pupil from a hardship
2 assignment, the granting of a subsequent application is
3 discretionary.

4 (3) A pupil shall be eligible to apply to the commissioner
5 of education to be assigned to another district under this
6 section if the pupil has been enrolled in and attending a public
7 school in his or her district of residence during the school year
8 prior to the application. Any pupil shall be eligible to apply
9 to the commissioner of education to be assigned to another
10 district under this section if the pupil has been enrolled in and
11 attending a public school in a district other than his or her
12 district of residence and paid nonresident tuition for such
13 enrollment during the school year prior to the application.
14 Pupils who reside in the district who become eligible for
15 kindergarten or first grade shall also be eligible to apply to
16 the commissioner of education to be assigned to another district.

17 (4) A pupil who is not currently enrolled in a public
18 school district shall become eligible to apply to the
19 commissioner of education to be assigned to another district
20 after the pupil has enrolled in and completed a full school year
21 in a public school in his or her district of residence.

22 3. A school district that is assigned a pupil under the
23 provisions of this section may charge a nonresident tuition rate.
24 The board of education of the pupil's district of residence shall
25 pay the tuition of the pupil assigned, however, the amount paid
26 by the district of residence shall not exceed the pro rata cost
27 of instruction of the attendance center the pupil would have
28 attended in the pupil's district of residence. If the amount of

1 tuition paid by the district of residence is less than the
2 nonresident tuition rate set by the receiving school district,
3 the balance shall be paid by the parents or guardians of the
4 pupil. No pupil shall be assigned under the provisions of this
5 section unless tuition is paid in full.

6 Section B. This act shall become effective on July first
7 following the school year in which the amount appropriated for
8 subsections 1 and 2 of section 163.031 is equal to or exceeds the
9 amount necessary to fund the entire entitlement calculation
10 determined by subsections 1 and 2 of section 163.031. The
11 department of elementary and secondary education shall inform the
12 revisor of statutes when the amount appropriated for subsections
13 1 and 2 of section 163.031 is equal to or exceeds the amount
14 necessary to fund the entire entitlement calculation determined
15 by subsections 1 and 2 of section 163.031.