

SECOND REGULAR SESSION

SENATE BILL NO. 565

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4758S.011

AN ACT

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

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

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

135.712. 1. Sections 135.712 to 135.719 and sections 166.700 to
2 166.725 establish the "Missouri Empowerment Scholarship Accounts
3 Program" to provide options toward ensuring the education of students
4 in this state.

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

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

9 (2) "Educational assistance organization", a charitable
10 organization registered in this state that is exempt from federal
11 taxation under the Internal Revenue Code of 1986, as amended, is
12 certified by the state treasurer, and that allocates all of its annual
13 revenue for educational assistance, except as provided in paragraph (c)
14 of subdivision (4) of subsection 1 of section 135.714 and as provided for
15 in sections 135.712 to 135.719, derived from contributions for which a
16 credit is claimed under section 135.713;

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

19 (4) "Program", the Missouri empowerment scholarship accounts

20 program established under sections 135.712 to 135.719 and sections
21 166.700 to 166.725;

22 (5) "Qualified student", the same meaning as used in section
23 166.700;

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

27 (7) "Scholarship account", a savings account created by the
28 Missouri empowerment scholarship accounts program authorized by
29 sections 166.700 to 166.725;

30 (8) "Taxpayer", an individual subject to the state income tax
31 imposed in chapter 143; an individual, a firm, a partner in a firm,
32 corporation, or a shareholder in an S corporation doing business in this
33 state and subject to the state income tax imposed by chapter 143; or an
34 express company that pays an annual tax on its gross receipts in this
35 state under chapter 153, which files a Missouri income tax return and
36 is not a dependent of any other taxpayer.

135.713. 1. For all fiscal years beginning on or after July 1, 2019,
2 any taxpayer who makes a qualifying contribution to an educational
3 assistance organization may claim a credit against the tax otherwise
4 due under chapter 143, other than taxes withheld under sections
5 143.191 to 143.265, and chapter 153, in an amount equal to one hundred
6 percent of the amount the taxpayer contributed during the tax year for
7 which the credit is claimed. No taxpayer shall claim a credit under
8 sections 135.712 to 135.719 for any contribution made by the taxpayer,
9 or an agent of the taxpayer, on behalf of the taxpayer's dependent, or
10 in the case of a business taxpayer, on behalf of the business's agent's
11 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 tax years. All tax credits authorized under the program shall not be
18 transferred, sold, or assigned, and are not refundable.

19 3. The cumulative amount of tax credits that may be allocated to
20 all taxpayers contributing to educational assistance organizations in

21 any one calendar year shall not exceed twenty-five million dollars,
22 which amount shall annually be adjusted by the state treasurer for
23 inflation based on the consumer price index for all urban consumers for
24 the Midwest region, as defined and officially recorded by the United
25 States Department of Labor or its successor. The state treasurer shall
26 establish a procedure by which, from the beginning of the calendar
27 year until August first, the cumulative amount of tax credits shall be
28 allocated on a first come, first served basis among all educational
29 assistance organizations. If an educational assistance organization
30 fails to use all, or some percentage to be determined by the state
31 treasurer, of its allocated tax credits during this predetermined period
32 of time, the state treasurer may reallocate these unused tax credits to
33 those educational assistance organizations that have used all, or some
34 percentage to be determined by the state treasurer, of their allocated
35 tax credits during this predetermined period of time. The state
36 treasurer may establish more than one period of time and reallocate
37 more than once during each calendar year. The state treasurer shall
38 establish the procedure described in this subsection in such a manner
39 as to ensure that taxpayers can claim all the tax credits possible up to
40 the cumulative amount of tax credits available for the calendar year.

135.714. 1. Each educational assistance organization shall:

- 2 (1) Notify the state treasurer of its intent to provide scholarship
3 accounts to qualified students;
- 4 (2) Demonstrate to the state treasurer that it is exempt from
5 federal income tax under Section 501(c)(3) of the Internal Revenue
6 Code of 1986, as amended;
- 7 (3) Provide a state treasurer-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 scholarship accounts;
 - 12 (b) At least ninety percent of its revenues from qualifying
13 contributions is spent on scholarship accounts; 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 two hundred fifty thousand dollars, eight percent
17 for the next five hundred thousand dollars, and three percent

18 thereafter;

19 (5) Distribute scholarship accounts payments either four times
20 per year or in a single lump sum at the beginning of the year as
21 requested by the parent or guardian of a qualified student, not to
22 exceed a total grant amount equal to the state adequacy target as
23 defined in section 163.011 and calculated by the department of
24 elementary and secondary education, in the form of a deposit into the
25 scholarship account of the qualified student;

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

30 (7) Demonstrate its financial accountability by:

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

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

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

43 2. The audit shall include:

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

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

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

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

52 3. An educational assistance organization may contract with
53 private financial management firms to manage scholarship accounts
54 with the supervision of the state.

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

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

10 3. The state treasurer or state auditor may conduct an
11 investigation if the state treasurer possesses evidence of fraud
12 committed by the organization.

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

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

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

26 (2) Educational outcomes of qualified students.

27 6. (1) There is hereby created in the state treasury the "Missouri
28 Empowerment Scholarship Accounts Fund", which shall consist of
29 money collected under this section. The state treasurer shall be
30 custodian of the fund. In accordance with sections 30.170 and 30.180,
31 the state treasurer may approve disbursements. The fund shall be a
32 dedicated fund and money in the fund shall be used solely by the state
33 treasurer for the purpose of sections 135.712 to 135.719.

34 (2) Notwithstanding the provisions of section 33.080 to the
35 contrary, any moneys remaining in the fund at the end of the biennium
36 shall not revert to the credit of the general revenue fund.

37 (3) The state treasurer shall invest moneys in the fund in the

38 same manner as other funds are invested. Any interest and moneys
39 earned on such investments shall be credited to the fund.

40 7. No more than two percent of the qualifying contributions may
41 be deposited in the Missouri empowerment scholarship accounts fund
42 to be used for marketing and administrative expenses or the costs
43 incurred in administering the program, whichever is less. The state
44 treasurer shall establish procedures to ensure the percentage of funds
45 for administration of the program is directed to the state treasurer in
46 a timely manner with the necessary information to verify the correct
47 amount has been transmitted. The remaining funds shall be distributed
48 to the educational assistance organizations.

135.719. 1. The state treasurer and the department of revenue
2 may promulgate rules to implement the provisions of sections 135.712
3 to 135.719. Any rule or portion of a rule, as that term is defined in
4 section 536.010 that is created under the authority delegated in this
5 section shall become effective only if it complies with and is subject to
6 all of the provisions of chapter 536, and, if applicable, section
7 536.028. This section and chapter 536 are nonseverable and if any of
8 the powers vested with the general assembly pursuant to chapter 536,
9 to review, to delay the effective date, or to disapprove and annul a rule
10 are subsequently held unconstitutional, then the grant of rulemaking
11 authority and any rule proposed or adopted after August 28, 2018, shall
12 be invalid and void.

13 2. The provisions of section 23.253 of the Missouri sunset act
14 shall not apply to sections 135.712 to 135.719 and sections 166.700 to
15 166.725.

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

- 3 (1) "Child with a disability":
4 (a) A child who is at least five years of age but less than
5 twenty-two years of age who has been evaluated and found to have at
6 least one of the following disabilities and who, because of the disability,
7 needs special education and related services:
8 a. An autism spectrum disorder;
9 b. Developmental delay;
10 c. Emotional disability;
11 d. Hearing impairment;

- 12 e. Other health impairments;
13 f. Specific learning disability;
14 g. Mild, moderate, or severe intellectual disability;
15 h. Multiple disabilities;
16 i. Multiple disabilities with severe sensory impairment;
17 j. Orthopedic impairment;
18 k. Preschool severe delay;
19 l. Speech or language impairment;
20 m. Traumatic brain injury; or
21 n. Visual impairment; and
22 (b) Shall not include a child if the determining factor for the
23 classification is one or more of the following:
24 a. A lack of appropriate instruction in reading, including
25 essential components of reading instruction;
26 b. A lack of appropriate instruction in mathematics; or
27 c. Difficulty in writing, speaking, or understanding the English
28 language due to an environmental background in which a language
29 other than English is primarily or exclusively used;
30 (2) "Curriculum", a complete course of study for a particular
31 content area or grade level, including any supplemental materials;
32 (3) "Educational assistance organization", the same meaning as
33 used in section 135.712;
34 (4) "Parent", the same meaning as used in section 135.712;
35 (5) "Private school", a school that is not a part of the public
36 school system of the state of Missouri and that charges tuition for the
37 rendering of elementary or secondary educational services;
38 (6) "Program", the Missouri empowerment scholarship accounts
39 program;
40 (7) "Qualified school", a home school as defined in section
41 167.031, a private school as defined in this subsection, a public school
42 as defined in section 160.011, or a public or private virtual school that
43 is located in Missouri and that does not discriminate on the basis of
44 race, color, or national origin;
45 (8) "Qualified student", a resident of this state who:
46 (a) Is any of the following:
47 a. Identified by a district as a child with a disability;
48 b. A child with a disability who is eligible to receive services

49 from a school district under the Individuals with Disabilities Education
50 Act;

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

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

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

57 (b) Did any of the following:

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

62 b. Previously participated in the Missouri empowerment
63 scholarship account program; or

64 c. Is a child who is eligible to begin kindergarten under sections
65 160.051 to 160.055.

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

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

8 (2) The qualified student shall not be enrolled in a school
9 operated by the qualified student's district of residence or a charter
10 school and shall release the district of residence from all obligations to
11 educate the qualified student while the qualified student is enrolled in
12 the program; except that, this subdivision shall not relieve the student's
13 district of residence from the obligation to conduct an evaluation for
14 disabilities;

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

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

- 21 **(a) Tuition or fees at a qualified school;**
22 **(b) Textbooks required by a qualified school;**
23 **(c) Educational therapies or services for the qualified student**
24 **from a licensed or accredited practitioner or provider, including**
25 **licensed or accredited paraprofessionals or educational aides;**
26 **(d) Tutoring services provided by a tutor accredited by a state,**
27 **regional, or national accrediting organization;**
28 **(e) Curriculum;**
29 **(f) Tuition or fees for a nonpublic online learning program;**
30 **(g) Fees for a nationally standardized norm-referenced**
31 **achievement test, advanced placement examinations, international**
32 **baccalaureate examinations, or any exams related to college or**
33 **university admission;**
34 **(h) Fees for management of the empowerment scholarship**
35 **account by firms selected by the educational assistance organization;**
36 **(i) Services provided by a public school, including individual**
37 **classes and extracurricular programs;**
38 **(j) Insurance or surety bond payments as required by the state**
39 **treasurer;**
40 **(k) Computer hardware or other technological devices that are**
41 **used to help meet a qualified student's educational needs and that are**
42 **approved by an educational assistance organization; and**
43 **(l) Fees for summer education programs and specialized after-**
44 **school education programs;**
45 **(5) Moneys deposited in the qualified student's account shall not**
46 **be used for the following:**
47 **(a) Consumable educational supplies including, but not limited**
48 **to, paper, pens, pencils, or markers; and**
49 **(b) Tuition at a private school located outside of the state of**
50 **Missouri.**

51 **2. Missouri empowerment scholarship accounts are renewable on**
52 **an annual basis upon request of the parent of a qualified**
53 **student. Notwithstanding any changes to the qualified student's**
54 **multidisciplinary evaluation team plan, a student who has previously**
55 **qualified for a Missouri empowerment scholarship account shall remain**
56 **eligible to apply for renewal until the student completes high school**
57 **and submits scores from a nationally standardized norm-referenced**

58 achievement test, advanced placement examination, international
59 baccalaureate examination, or any exam related to college or university
60 admission purchased with Missouri empowerment scholarship account
61 funds to the state treasurer.

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

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

68 5. If a qualified student withdraws from the program by
69 enrolling in a school other than a qualified school, or is disqualified
70 from the program under the provisions of section 166.715, the qualified
71 student's Missouri empowerment scholarship account shall be closed
72 and any remaining funds shall be returned to the educational
73 assistance organization for redistribution to other qualified
74 students. Under such circumstances, the obligation to provide an
75 education for such student shall transfer back to the student's district
76 of residence.

77 6. Any funds remaining in a qualified student's scholarship
78 account at the end of a school year shall remain in the account and
79 shall not be returned to the educational assistance organization. Any
80 funds remaining in a qualified student's scholarship account upon
81 graduation from a qualified school shall be returned to the educational
82 assistance organization for redistribution to other qualified students.

83 7. Moneys received under sections 166.700 to 166.725 shall not
84 constitute Missouri taxable income to the parent of the qualified
85 student.

86 8. Any qualified student under subparagraph d of paragraph (a)
87 of subdivision (8) of section 166.700 who receives a scholarship under
88 the provisions of this section shall continue to be eligible to receive his
89 or her scholarship upon a legal adoption.

166.710. 1. The parent of a qualified student in grades
2 kindergarten through twelve who has a scholarship account shall
3 annually have the qualified student take a nationally standardized
4 norm-referenced achievement test, an advanced placement
5 examination, or any examination related to college or university

6 admissions that assesses reading and mathematics. The state treasurer
7 shall make available to qualified students with a scholarship account
8 a list of achievement tests that satisfy the requirement of this
9 subsection. Private schools may administer to qualified students
10 standardized tests in addition to the tests specified in this subsection.

11 2. Beginning in the 2019-2020 school year and continuing each
12 year thereafter, the state treasurer shall contract with an independent
13 research organization to which parents of qualified students with
14 scholarship accounts shall report the scores of participating qualified
15 students on the nationally norm-referenced tests or other assessments
16 administered at a qualified school. The independent research
17 organization selected by the state treasurer shall demonstrate
18 documented experience in education research and evaluation and may
19 be a public or private entity or a university. The state treasurer and
20 the independent research organization may accept grants of monies
21 from any public or private source in order to carry out the
22 requirements of this subsection.

23 3. Beginning in the 2019-2020 school year, the independent
24 research organization selected by the state treasurer under subsection
25 2 of this section shall publish an annual report that summarizes the
26 achievement and year-to-year learning data for qualified students with
27 scholarship accounts. The annual report shall include, to the extent
28 possible, a comparison of learning gains of qualified students with
29 scholarship accounts to the statewide learning gains of public school
30 students with comparable socioeconomic backgrounds. In order to
31 minimize costs and reduce time required for the independent research
32 organization's analysis and evaluation, the state treasurer shall
33 conduct analyses of matched students from public school assessment
34 data and calculate control group learning gains using a methodology
35 outlined in the contract with the independent research
36 organization. The annual report shall include a summary of parent and
37 student satisfaction with the scholarship accounts, the overall impact
38 of the program on public school students and the school districts and
39 schools from which the participating qualified students transferred,
40 and the impact of the program on public and private school capacity,
41 availability, and quality of service.

42 4. The independent research organization selected under

43 subsection 2 of this section shall apply appropriate analytical and
44 behavioral science methodologies to ensure public confidence in the
45 information submitted in the annual report prescribed in subsection 3
46 of this section. The school districts from which the participating
47 qualified students transferred shall participate in and cooperate with
48 the independent research organization.

49 5. The sharing and reporting of student learning data pursuant
50 to this section shall be in accordance with requirements of the Family
51 Educational Rights and Privacy Act, 20 U.S.C. Section 1232g, and shall
52 be for the sole purpose of creating the annual report prescribed in
53 subsection 3 of this section.

54 6. The state treasurer shall annually report on its website the
55 graduation rates of qualified students who are enrolled in the
56 program. Qualified students with an individualized education plan for
57 whom standardized testing is not appropriate are exempt from this
58 requirement.

166.715. 1. Beginning in the 2020-2021 school year, the state
2 treasurer shall conduct or contract for annual audits of empowerment
3 scholarship accounts to ensure compliance with the requirements of
4 subsection 1 of section 166.705. The state treasurer shall also conduct
5 or contract for random, quarterly, and annual audits of empowerment
6 scholarship accounts as needed to ensure compliance with the
7 requirements of subsection 1 of section 166.705.

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

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

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

- 25 (1) Rules for conducting examinations of use of account funds;
26 (2) Rules for conducting random, quarterly, and annual reviews
27 of accounts;
28 (3) Creating an online anonymous fraud reporting service;
29 (4) Creating an anonymous telephone hotline for fraud reporting;
30 and
31 (5) A surety bond requirement for account holders.

32 5. Any rule or portion of a rule, as that term is defined in section
33 536.010 that is created under the authority delegated in this section
34 shall become effective only if it complies with and is subject to all of
35 the provisions of chapter 536, and, if applicable, section 536.028. This
36 section and chapter 536 are nonseverable and if any of the powers
37 vested with the general assembly pursuant to chapter 536, to review, to
38 delay the effective date, or to disapprove and annul a rule are
39 subsequently held unconstitutional, then the grant of rulemaking
40 authority and any rule proposed or adopted after August 28, 2018, shall
41 be invalid and void.

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

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

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

5 2. A qualified school that accepts a payment from a parent under
6 sections 166.700 to 166.725 shall not be an agent of the state or federal
7 government.

8 3. A qualified school shall not be required to alter its creed,
9 practices, admissions policy, or curriculum in order to accept students

10 whose parents pay tuition or fees from an empowerment scholarship
11 account to participate as a qualified school.

12 4. In any legal proceeding challenging the application of sections
13 166.700 to 166.725 to a qualified school, the state shall bear the burden
14 of establishing that the law is necessary and does not impose any undue
15 burden on qualified schools.

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