

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 160

100TH GENERAL ASSEMBLY

---

Reported from the Committee on Ways and Means, February 7, 2019, with recommendation that the Senate Committee Substitute do pass.

0870S.05C

ADRIANE D. CROUSE, Secretary.

---

## AN ACT

To amend chapters 135 and 166, RSMo, by adding thereto ten 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 ten new sections, to be known as sections 135.712, 135.713, 135.714, 135.716, 135.719, 166.700, 166.705, 166.710, 166.715, and 166.720, to read as follows:

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

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

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

**(2) "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 state treasurer, and that allocates all of its annual revenue for educational assistance, except as provided in paragraph (c) of subdivision (4) of subsection 1 of section 135.714 and as provided for in sections 135.712 to 135.719, derived from contributions for which a credit is claimed under section 135.713 and that does not discriminate on the basis of race, color, or national origin;**

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

20 (4) "Program", the Missouri empowerment scholarship accounts  
21 program established under sections 135.712 to 135.719 and sections  
22 166.700 to 166.720;

23 (5) "Qualified student", the same meaning as used in section  
24 166.700;

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

28 (7) "Scholarship account", a savings account created by the  
29 Missouri empowerment scholarship accounts program authorized by  
30 sections 166.700 to 166.720;

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

135.713. 1. For all fiscal years beginning on or after July 1, 2020,  
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 fifty  
13 percent of the taxpayer's state tax liability for the tax year for which  
14 the credit is claimed. The state treasurer shall certify the tax credit  
15 amount to the taxpayer. A taxpayer may carry the credit forward to  
16 any of such taxpayer's four subsequent tax years. All tax credits  
17 authorized under the program shall not be transferred, sold, or  
18 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 the tax credits shall be allocated on a  
27 first come, first served basis. The state treasurer shall establish the  
28 procedure described in this subsection in such a manner as to ensure  
29 that taxpayers can claim all the tax credits possible up to the  
30 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) Carry forward no more than twenty-five percent of revenue

27 from contributions from the state fiscal year in which they were  
28 received to the following state fiscal year;

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

33 (8) Annually administer either the state achievement tests or  
34 nationally norm-referenced tests that measure learning gains in math  
35 and English language arts, and provide for value-added assessment, to  
36 all participating students in grades that require testing under the  
37 statewide assessment system set forth in section 160.518;

38 (9) Allow costs of the testing requirements to be covered by the  
39 scholarships distributed by the educational assistance organization;

40 (10) Provide the parents of each student who was tested with a  
41 copy of the results of the tests on an annual basis, beginning with the  
42 first year of testing;

43 (11) Provide the test results to the state treasurer on an annual  
44 basis, beginning with the first year of testing;

45 (12) Report student information that would allow the state  
46 treasurer to aggregate data by grade level, gender, family income level,  
47 and race;

48 (13) Provide rates of high school graduation, college attendance  
49 and college graduation for participating students to the state treasurer  
50 in a manner consistent with nationally recognized standards; and

51 (14) Provide to the state treasurer the results from an annual  
52 parental satisfaction survey, including information about the number  
53 of years that the parent's child has participated in the scholarship  
54 program. The annual satisfaction survey shall ask parents of  
55 scholarship students to express:

56 (a) Their satisfaction with their child's academic achievement,  
57 including academic achievement at the school their child attended  
58 through the scholarship program versus academic achievement at the  
59 school previously attended;

60 (b) Their satisfaction with school safety at the schools their child  
61 attends through the scholarship program versus safety at the schools  
62 previously attended;

63 (c) Whether their child would have been able to attend their

64 school of choice without the scholarship; and

65 (d) Their opinions on other topics, items, or issues that the state  
66 treasurer finds would elicit information about the effectiveness of the  
67 scholarship program.

68 (15) Demonstrate its financial accountability by:

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

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

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

81 2. The state treasurer shall:

82 (1) Ensure compliance with all student privacy laws;

83 (2) Collect all test results;

84 (3) Provide the test results and associated learning gains to the  
85 public via a state website after the third year of test and test-related  
86 data collection. The findings shall be aggregated by the students grade  
87 level, gender, family income level, number of years of participation in  
88 the scholarship program, and race; and

89 (4) Provide graduation rates to the public via a state website  
90 after the third year of test and test-related data collection.

91 3. The audit shall include:

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

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

96 (3) The total number and total dollar amount of scholarship  
97 accounts opened during the previous calendar year.

98 4. An educational assistance organization may contract with  
99 private financial management firms to manage scholarship accounts  
100 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.

135.719. 1. The state treasurer may promulgate rules to  
2 implement the provisions of sections 135.712 to 135.719. Any rule or  
3 portion of a rule, as that term is defined in section 536.010 that is  
4 created under the authority delegated in this section shall become  
5 effective only if it complies with and is subject to all of the provisions  
6 of chapter 536, and, if applicable, section 536.028. This section and  
7 chapter 536 are nonseverable and if any of the powers vested with the  
8 general assembly pursuant to chapter 536, to review, to delay the  
9 effective date, or to disapprove and annul a rule are subsequently held  
10 unconstitutional, then the grant of rulemaking authority and any rule  
11 proposed or adopted after August 28, 2019, shall be invalid and void.

12           **2. The provisions of section 23.253 of the Missouri sunset act**  
13 **shall not apply to sections 135.712 to 135.719 and sections 166.700 to**  
14 **166.720.**

**166.700. As used in sections 166.700 to 166.720, the following**  
2 **terms mean:**

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

5           **(2) "Educational assistance organization", the same meaning as**  
6 **used in section 135.712;**

7           **(3) "Parent", the same meaning as used in section 135.712;**

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

11           **(5) "Program", the Missouri empowerment scholarship accounts**  
12 **program;**

13           **(6) "Qualified school", a charter school as defined in section**  
14 **160.400, a home school as defined in section 167.031, a private school as**  
15 **defined in this subsection, a public school as defined in section 160.011,**  
16 **or a public or private virtual school that is incorporated in**  
17 **Missouri. Charter schools, public schools, and public virtual schools**  
18 **are "qualified schools" only to the extent that moneys deposited in a**  
19 **qualified student's scholarship account shall be used for specific**  
20 **services or individual classes consistent with the provisions of**  
21 **subdivision (4) of subsection 1 of section 166.705;**

22           **(7) "Qualified student", any elementary or secondary school**  
23 **student who is a resident of this state and resides in any county with**  
24 **a charter form of government or any municipality with a population**  
25 **greater than thirty thousand.**

**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 English language arts,**  
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, except for a qualified student that is in the custody of the state,  
11 and shall release the district of residence from all obligations to  
12 educate the qualified student while the qualified student is enrolled in  
13 the program; except that, this subdivision shall not relieve the student's  
14 district of residence from the obligation to conduct an evaluation for  
15 disabilities;

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

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

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

23 (b) Textbooks required by a qualified school;

24 (c) Educational therapies or services for the qualified student  
25 from a licensed or accredited practitioner or provider, including  
26 licensed or accredited paraprofessionals or educational aides;

27 (d) Tutoring services;

28 (e) Curriculum;

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

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 166.710, 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. If a qualified student moves out of any county with a charter**

84 form of government or any municipality with a population greater than  
85 thirty thousand, the qualified student shall remain eligible for  
86 participation in the program until the student graduates from high  
87 school.

88 8. Moneys received under sections 166.700 to 166.720 shall not  
89 constitute Missouri taxable income to the parent of the qualified  
90 student.

166.710. 1. Beginning in the 2021-2022 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, 2019, shall**  
41 **be invalid and void.**

**166.715. 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 166.720.**

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.**

**166.720. 1. Sections 166.700 to 166.720 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, other than a qualified school that is a**  
6 **public school, that accepts a payment from a parent under sections**  
7 **166.700 to 166.720 shall not be considered an agent of the state or**  
8 **federal government.**

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

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

✓