

FIRST REGULAR SESSION

SENATE BILL NO. 160

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

Pre-filed December 6, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0870S.011

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
2 ten 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, and 166.720, to read as follows:

135.712. 1. Sections 135.712 to 135.719 and sections 166.700 to
2 **166.720 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) "Department", the department of revenue;**

8 **(2) "Director", the director of the department of revenue;**

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

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

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

21 (6) "Program", the Missouri empowerment scholarship accounts
22 program established under sections 135.712 to 135.719 and sections
23 166.700 to 166.720;

24 (7) "Qualified student", the same meaning as used in section
25 166.700;

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

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

32 (10) "Taxpayer", an individual subject to the state income tax
33 imposed in chapter 143; an individual, a firm, a partner in a firm,
34 corporation, or a shareholder in an S corporation doing business in this
35 state and subject to the state income tax imposed by chapter 143; or an
36 express company that pays an annual tax on its gross receipts in this
37 state under chapter 153, which files a Missouri income tax return and
38 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 department 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 fifty million dollars, which
22 amount shall annually be adjusted by the department for inflation
23 based on the consumer price index for all urban consumers for the
24 Midwest region, as defined and officially recorded by the United States
25 Department of Labor or its successor. The director shall establish a
26 procedure by which, from the beginning of the calendar year until
27 August first, the cumulative amount of tax credits shall be allocated on
28 a first come, first served basis among all educational assistance
29 organizations. If an educational assistance organization fails to use all,
30 or some percentage to be determined by the director, of its allocated
31 tax credits during this predetermined period of time, the director may
32 reallocate these unused tax credits to those educational assistance
33 organizations that have used all, or some percentage to be determined
34 by the director, of their allocated tax credits during this predetermined
35 period of time. The director may establish more than one period of
36 time and reallocate more than once during each calendar year. The
37 director shall establish the procedure described in this subsection in
38 such a manner as to ensure that taxpayers can claim all the tax credits
39 possible up to the cumulative amount of tax credits available for the
40 calendar year.

135.714. 1. Each educational assistance organization shall:

- 2 (1) Notify the department of its intent to provide scholarship
3 accounts to qualified students;
- 4 (2) Demonstrate to the department that it is exempt from federal
5 income tax under Section 501(c)(3) of the Internal Revenue Code of
6 1986, as amended;
- 7 (3) Provide a department-approved receipt to taxpayers for
8 contributions made to the organization;
- 9 (4) Ensure that:
 - 10 (a) One hundred percent of its revenues from interest or
11 investments is spent on 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 department, 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 department 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 department before the start of the school year a surety
39 bond payable to the state in an amount equal to the aggregate amount
40 of contributions expected to be received during the school year or
41 other financial information that demonstrates the financial viability of
42 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 department shall provide a standardized format
2 for a receipt to be issued by an educational assistance organization to
3 a taxpayer to indicate the value of a contribution received. The
4 department of revenue shall require a taxpayer to provide a copy of
5 this receipt if claiming the tax credit authorized by the program.

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

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

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

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

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

25 (2) Educational outcomes of qualified students.

26 6. (1) There is hereby created in the department the "Missouri
27 Empowerment Scholarship Accounts Fund", which shall consist of
28 money collected under this section. The director shall be custodian of
29 the fund. In accordance with sections 30.170 and 30.180, the director
30 may approve disbursements. The fund shall be a dedicated fund and
31 money in the fund shall be used solely by the department for the
32 purpose of sections 135.712 to 135.719.

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

36 (3) The department shall invest moneys in the fund in the same

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

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

135.719. 1. The department may promulgate rules to implement
2 the provisions of sections 135.712 to 135.719. Any rule or portion of a
3 rule, as that term is defined in section 536.010 that is created under the
4 authority delegated in this section shall become effective only if it
5 complies with and is subject to all of the provisions of chapter 536, and,
6 if applicable, section 536.028. This section and chapter 536 are
7 nonseverable and if any of the powers vested with the general assembly
8 pursuant to chapter 536, to review, to delay the effective date, or to
9 disapprove and annul a rule are subsequently held unconstitutional,
10 then the grant of rulemaking authority and any rule proposed or
11 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 Missouri**
17 **and that does not discriminate on the basis of race, color, or national**
18 **origin;**

19 **(7) "Qualified student", any elementary or secondary school**
20 **student who is a resident of this state and resides in any county with**
21 **a charter form of government or any municipality with a population**
22 **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
- 39 department;
- 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 department.
- 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
2 department 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 department shall
5 also conduct or contract for random, quarterly, and annual audits of
6 empowerment scholarship accounts as needed to ensure compliance
7 with the 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 director, or his or her designee, finds
10 the party has committed an intentional program violation consisting of
11 any misrepresentation or other act that materially violates any law or

12 rule governing the program. The department may remove any parent
13 or qualified student from eligibility for a Missouri empowerment
14 scholarship program account. A parent may appeal the department's
15 decision to the administrative hearing commission. A parent may
16 appeal the administrative hearing commission's decision to the circuit
17 court of the county in which the student resides.

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

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

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

31 5. Any rule or portion of a rule, as that term is defined in section
32 536.010 that is created under the authority delegated in this section
33 shall become effective only if it complies with and is subject to all of
34 the provisions of chapter 536, and, if applicable, section 536.028. This
35 section and chapter 536 are nonseverable and if any of the powers
36 vested with the general assembly pursuant to chapter 536, to review, to
37 delay the effective date, or to disapprove and annul a rule are
38 subsequently held unconstitutional, then the grant of rulemaking
39 authority and any rule proposed or adopted after August 28, 2019, shall
40 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 department
6 unless the information provided is false and the financial institution
7 providing the false information does so knowingly and with 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.

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Bill

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