

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 349
101ST GENERAL ASSEMBLY

0711H.03T

DANA RADEMAN MILLER, Chief Clerk

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) "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, that 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 in sections 135.712 to 135.719, derived from contributions for which a credit is claimed under sections 135.712 to 135.719;

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

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

(4) "Qualified student", the same meaning as used in section 166.700;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (5) "Qualifying contribution", a donation of cash, stocks, bonds, or other
17 marketable securities for purposes of claiming a tax credit under sections 135.712 to
18 135.719;

19 (6) "Scholarship account", a savings account created by the Missouri
20 empowerment scholarship accounts program;

21 (7) "Taxpayer", any of the following that files a Missouri income tax return and
22 is not a dependent of any other taxpayer:

23 (a) An individual subject to the state income tax imposed by chapter 143;

24 (b) An individual, firm, partner in a firm, corporation, or shareholder in an S
25 corporation doing business in this state and subject to the state income tax imposed by
26 chapter 143; or

27 (c) An express company that pays an annual tax on its gross receipts in this state
28 under chapter 153.

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

9 2. The amount of the tax credit claimed shall not exceed fifty percent of the
10 taxpayer's state tax liability for the tax year for which the credit is claimed. The state
11 treasurer shall certify the tax credit amount to the taxpayer. A taxpayer may carry the
12 credit forward to any of such taxpayer's four subsequent tax years. All tax credits
13 authorized under the program shall not be transferred, sold, or assigned, and are not
14 refundable.

15 3. The cumulative amount of tax credits that may be allocated to all taxpayers
16 contributing to educational assistance organizations in any one calendar year shall not
17 exceed fifty million dollars, which amount shall be annually adjusted by the state treasurer
18 for inflation based on the consumer price index for all urban consumers for the Midwest
19 region, as defined and officially recorded by the United States Department of Labor or its
20 successor, such annual increase will cease when the amount of tax credits reach seventy-
21 five million dollars. The state treasurer shall establish a procedure by which, from the
22 beginning of the calendar year until August first, the cumulative amount of tax credits
23 shall be allocated on a first-come, first-served basis among all educational assistance

24 organizations. If an educational assistance organization fails to use all, or some percentage
25 to be determined by the state treasurer, of its allocated tax credits during this period, the
26 state treasurer may reallocate these unused tax credits to those educational assistance
27 organizations that have used all, or some percentage to be determined by the state
28 treasurer, of their allocated tax credits during this period. The state treasurer may
29 establish more than one period and reallocate more than once during each calendar year.
30 The state treasurer shall establish the procedure described in this subsection in such a
31 manner as to ensure that taxpayers can claim all the tax credits possible up to the
32 cumulative amount of tax credits available for the calendar year.

33 4. A taxpayer who makes a contribution to an education assistance organization
34 shall not designate the student who will receive a scholarship grant.

35 5. The provisions of sections 135.712 to 135.719 and sections 166.700 to 166.720
36 shall be effective in any fiscal year immediately subsequent to any fiscal year in which the
37 amount appropriated for pupil transportation under section 163.161 equals or exceeds
38 forty percent of the projected amount necessary to fully fund transportation aid funding
39 for fiscal year 2021. If the amount appropriated for transportation under section 163.161
40 in any succeeding year falls below such amount, no additional scholarships for newly
41 qualified students shall be awarded.

135.714. 1. Each educational assistance organization shall:

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

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

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

8 (4) Ensure that grants are distributed to scholarship accounts of qualified students
9 in the following order:

10 (a) Qualified students that have an approved "individualized education plan" (IEP)
11 developed under the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C.
12 Section 1400 et seq., as amended or qualified students living in a household whose total
13 annual income does not exceed an amount equal to one hundred percent of the income
14 standard used to qualify for free and reduced price lunches;

15 (b) Qualified students living in a household whose total annual income does not
16 exceed an amount equal to two hundred percent of the income standard used to qualify for
17 free and reduced price lunches; and

18 (c) All other qualified students;

- 19 **(5) Ensure that:**
- 20 **(a) One hundred percent of its revenues from interest or investments is spent on**
- 21 **scholarship accounts;**
- 22 **(b) At least ninety percent of its revenues from qualifying contributions is spent on**
- 23 **scholarship accounts; and**
- 24 **(c) Marketing and administrative expenses do not exceed the following limits of its**
- 25 **remaining revenue from contributions:**
- 26 **a. Ten percent for the first two hundred fifty thousand dollars;**
- 27 **b. Eight percent for the next five hundred thousand dollars; and**
- 28 **c. Three percent thereafter;**
- 29 **(6) Distribute scholarship account payments either four times per year or in a single**
- 30 **lump sum at the beginning of the year as requested by the parent of a qualified student,**
- 31 **not to exceed a total grant amount equal to the state adequacy target as defined in section**
- 32 **163.011 and calculated by the department of elementary and secondary education, in the**
- 33 **form of a deposit into the scholarship account of the qualified student;**
- 34 **(7) Provide the state treasurer, upon request, with criminal background checks on**
- 35 **all its employees and board members and exclude from employment or governance any**
- 36 **individual who might reasonably pose a risk to the appropriate use of contributed funds;**
- 37 **(8) Demonstrate its financial accountability by:**
- 38 **(a) Submitting to the state treasurer annual audit financial statements by a certified**
- 39 **public accountant within six months of the end of the educational assistance organization's**
- 40 **fiscal year; and**
- 41 **(b) Having an auditor certify that the report is free of material misstatements; and**
- 42 **(9) Ensure that participating students take the state achievement tests or nationally**
- 43 **norm-referenced tests that measure learning gains in math and English language arts, and**
- 44 **provide for value-added assessment, in grades that require testing under the statewide**
- 45 **assessment system set forth in section 160.518;**
- 46 **(10) Allow costs of the testing requirements to be covered by the scholarships**
- 47 **distributed by the educational assistance organization;**
- 48 **(11) Provide the parents of each student who was tested with a copy of the results**
- 49 **of the tests on an annual basis, beginning with the first year of testing;**
- 50 **(12) Provide the test results to the state treasurer on an annual basis, beginning**
- 51 **with the first year of testing;**
- 52 **(13) Report student information that would allow the state treasurer to aggregate**
- 53 **data by grade level, gender, family income level, and race;**

54 (14) Provide rates of high school graduation, college attendance, and college
55 graduation for participating students to the state treasurer in a manner consistent with
56 nationally recognized standards;

57 (15) Provide to the state treasurer the results from an annual parental satisfaction
58 survey, including information about the number of years that the parent's child has
59 participated in the scholarship program. The annual satisfaction survey shall ask parents
60 of scholarship students to express:

61 (a) Their level of satisfaction with the child's academic achievement, including
62 academic achievement at the schools the child attends through the scholarship program
63 versus academic achievement at the school previously attended;

64 (b) Their level of satisfaction with school safety at the schools the child attends
65 through the scholarship program versus safety at the schools previously attended;

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

72 2. The annual audit required under this section shall include:

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

74 (2) The name and address of each qualified student for whom a parent opened a
75 scholarship account with the organization;

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

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

80 3. The state treasurer shall:

81 (1) Ensure compliance with all student privacy laws for data in the state treasurer's
82 possession;

83 (2) Collect all test results;

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

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

90 **4. An educational assistance organization may contract with private financial**
91 **management firms to manage scholarship accounts with the supervision of the state**
92 **treasurer.**

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

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

7 **3. The state treasurer or state auditor may conduct an investigation if the state**
8 **treasurer possesses evidence of fraud committed by the educational assistance**
9 **organization.**

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

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

19 **(1) Information regarding the finances of the educational assistance organizations;**
20 **and**

21 **(2) Educational outcomes of qualified students.**

22 **6. (1) There is hereby created in the state treasury the "Missouri Empowerment**
23 **Scholarship Accounts Fund", which shall consist of moneys collected under this section.**
24 **The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and**
25 **30.180, the state treasurer may approve disbursements. The fund shall be a dedicated**
26 **fund, and moneys in the fund shall be used solely by the state treasurer for the purposes**
27 **of sections 135.712 to 135.719.**

28 **(2) Notwithstanding the provisions of section 33.080 to the contrary, any moneys**
29 **remaining in the fund at the end of the biennium shall not revert to the credit of the**
30 **general revenue fund.**

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

34 7. Two percent of the total qualifying contributions received by each educational
35 assistance organization per calendar year shall be deposited in the Missouri empowerment
36 scholarship accounts fund to be used by the state treasurer for marketing and
37 administrative expenses or the costs incurred in administering the program, whichever is
38 less. The state treasurer shall establish procedures to ensure the percentage of funds for
39 administration of the program is directed to the state treasurer in a timely manner with
40 the necessary information to verify the correct amount has been transmitted.

 135.719. 1. The state treasurer and the department of revenue may promulgate
2 rules to implement 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 authority
4 delegated in this section shall become effective only if it complies with and is subject to all
5 of the provisions of chapter 536 and, if applicable, section 536.028. This section and
6 chapter 536 are nonseverable, and if any of the powers vested with the general assembly
7 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul
8 a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
9 any rule proposed or adopted after August 28, 2021, shall be invalid and void.

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

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

- 2 (1) "Curriculum", a complete course of study for a particular content area or grade
3 level, including any supplemental materials;
- 4 (2) "District", the same meaning as used in section 160.011;
- 5 (3) "Educational assistance organization", the same meaning as used in section
6 135.712;
- 7 (4) "Parent", the same meaning as used in section 135.712;
- 8 (5) "Private school", a school that is not a part of the public school system of the
9 state of Missouri and that charges tuition for the rendering of elementary or secondary
10 educational services;
- 11 (6) "Program", the same meaning as used in section 135.712;
- 12 (7) "Qualified school", a home school as defined in section 167.031 or any of the
13 following entities that is incorporated in Missouri and that does not discriminate on the
14 basis of race, color, or national origin:
 - 15 (a) A charter school as defined in section 160.400;
 - 16 (b) A private school;
 - 17 (c) A public school as defined in section 160.011; or
 - 18 (d) A public or private virtual school;

19 (8) "Qualified student", any elementary or secondary school student who is a
20 resident of this state and resides in any county with a charter form of government or any
21 city with at least thirty thousand inhabitants who:

22 (a) Has an approved "individualized education plan" (IEP) developed under the
23 federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq.,
24 as amended; or

25 (b) Is a member of a household whose total annual income does not exceed an
26 amount equal to two hundred percent of the income standard used to qualify for free and
27 reduced price lunches, and meets at least one of the following qualifications:

28 a. Attended a public school as a full-time student for at least one semester during
29 the previous twelve months; or

30 b. Is a child who is eligible to begin kindergarten or first grade under sections
31 160.051 to 160.055.

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

4 (1) The qualified student shall enroll in a qualified school and receive an education
5 in at least the subjects of English language arts, mathematics, social studies, and science;

6 (2) Except for a qualified student who is in the custody of the state, the qualified
7 student shall not be enrolled in a public school operated by, or a charter school located
8 within, the qualified student's district of residence and shall release the district of residence
9 from all obligations to educate the qualified student while the qualified student is enrolled
10 in the program. This subdivision shall not be construed to relieve the student's district of
11 residence from the obligation to conduct an evaluation for disabilities;

12 (3) The qualified student shall receive a grant, in the form of moneys deposited in
13 accordance with section 135.714, in the qualified student's Missouri empowerment
14 scholarship account;

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

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

18 (b) Textbooks required by a qualified school;

19 (c) Educational therapies or services from a licensed or accredited practitioner or
20 provider including, but not limited to, licensed or accredited paraprofessionals or
21 educational aides;

22 (d) Tutoring services;

23 (e) Curriculum;

- 24 **(f) Tuition or fees for a private virtual school;**
25 **(g) Fees for a nationally standardized norm-referenced achievement test, advanced**
26 **placement examinations, international baccalaureate examinations, or any examinations**
27 **related to college or university admission;**
28 **(h) Fees for management of the Missouri empowerment scholarship account by**
29 **firms selected by the educational assistance organization;**
30 **(i) Services provided by a public school including, but not limited to, individual**
31 **classes and extracurricular programs;**
32 **(j) Computer hardware or other technological devices that are used to help meet**
33 **the qualified student's educational needs and that are approved by an educational**
34 **assistance organization;**
35 **(k) Fees for summer education programs and specialized after-school education**
36 **programs;**
37 **(l) Transportation costs for mileage to and from a qualified school; and**
38 **(5) Moneys deposited in the qualified student's Missouri empowerment scholarship**
39 **account shall not be used for the following:**
40 **(a) Consumable educational supplies including, but not limited to, paper, pens,**
41 **pencils, or markers;**
42 **(b) Tuition at a private school located outside of the state of Missouri; and**
43 **(c) Payments or reimbursements to any person related within the third degree of**
44 **consanguinity or affinity to a qualified student.**
45 **2. Missouri empowerment scholarship accounts are renewable on an annual basis**
46 **upon request of the parent of a qualified student. Notwithstanding any changes to the**
47 **qualified student's multidisciplinary evaluation team plan, a student who has previously**
48 **qualified for a Missouri empowerment scholarship account shall remain eligible to apply**
49 **for renewal until the student completes high school and submits scores to the state**
50 **treasurer from a nationally standardized norm-referenced achievement test, advanced**
51 **placement examination, international baccalaureate examination, or any examination**
52 **related to college or university admission purchased with Missouri empowerment**
53 **scholarship account funds.**
54 **3. A signed agreement under this section shall satisfy the compulsory school**
55 **attendance requirements of section 167.031.**
56 **4. A qualified school or a provider of services purchased under this section shall**
57 **not share, refund, or rebate any Missouri empowerment scholarship account moneys with**
58 **the parent or qualified student in any manner.**

59 **5. If a qualified student withdraws from the program by enrolling in a school other**
60 **than a qualified school or is disqualified from the program under the provisions of section**
61 **166.710, the qualified student's Missouri empowerment scholarship account shall be closed**
62 **and any remaining funds shall be returned to the educational assistance organization for**
63 **redistribution to other qualified students. Under such circumstances, the obligation to**
64 **provide an education for such student shall transfer back to the student's district of**
65 **residence.**

66 **6. Any funds remaining in a qualified student's Missouri empowerment scholarship**
67 **account at the end of a school year shall remain in the account and shall not be returned**
68 **to the educational assistance organization. Any funds remaining in a qualified student's**
69 **Missouri empowerment scholarship account upon graduation from a qualified school shall**
70 **be returned to the educational assistance organization for redistribution to other qualified**
71 **students.**

72 **7. Moneys received under sections 166.700 to 166.720 shall not constitute Missouri**
73 **taxable income to the parent of the qualified student.**

166.710. 1. Beginning in the 2023-24 school year and continuing thereafter, the
2 **state treasurer shall conduct or contract for annual audits, and may conduct or contract**
3 **for random and quarterly audits as needed, of Missouri empowerment scholarship**
4 **accounts to ensure compliance with the requirements of subsection 1 of section 166.705.**

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

13 **3. The state treasurer may refer cases of substantial misuse of moneys to the**
14 **attorney general for investigation if the state treasurer obtains evidence of fraudulent use**
15 **of an account.**

16 **4. The state treasurer shall promulgate rules containing the following to implement**
17 **and administer the program:**

- 18 **(1) Procedures for conducting examinations of use of account funds;**
19 **(2) Procedures for conducting random, quarterly, and annual reviews of accounts;**
20 **(3) Creation of an online anonymous fraud reporting service;**
21 **(4) Creation of an anonymous telephone hotline for fraud reporting; and**

22 **(5) A surety bond requirement for educational assistance organizations.**

23 **5. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
24 **created under the authority delegated in this section shall become effective only if it**
25 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
26 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**
27 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
28 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
29 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2021,**
30 **shall be invalid and void.**

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

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

166.720. 1. Sections 166.700 to 166.720 shall not be construed to permit any
2 **governmental agency to exercise control or supervision over any qualified school in which**
3 **a qualified student enrolls other than a qualified school that is a public school.**

4 **2. A qualified school, other than a qualified school that is a public school, that**
5 **accepts a payment from a parent under sections 166.700 to 166.720 shall not be considered**
6 **an agent of the state or federal government due to its acceptance of the payment.**

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

10 **4. (1) Any qualified student receiving a Missouri empowerment scholarship who**
11 **leaves a public school or charter school, as such terms are defined in chapter 160, in the**
12 **qualified student's resident school district to enroll in a qualified school that is not the**
13 **qualified student's resident school district shall continue to be counted in the resident**
14 **public school or charter school's weighted average daily attendance as a resident student**
15 **for the purposes of determining state and federal aid for the qualified student's resident**
16 **school district or charter school.**

17 **(2) The qualified student will continue to be counted for such purpose as provided:**

18 **(a) For five years after the qualified student no longer attends school in the**
19 **qualified student's resident school district;**

20 **(b) Until any calendar year that the qualified student no longer receives grant**
21 **money in their scholarship account;**

22 **(c) Until the qualified student is counted in the weighted average daily attendance**
23 **for a public school or charter that they are a resident student in; or**

24 **(d) Until the qualified student graduates.**

25 **(3) The educational assistance organization and the state treasurer shall provide**
26 **the necessary information to the department of elementary and secondary education to**
27 **allow the federal and state aid to continue to the public school or charter school in the**
28 **qualified student's resident school district previously attended by the qualified student.**

29 **(4) The provisions of this subsection shall terminate five years after the effective**
30 **date of this section.**

31 **5. In any legal proceeding challenging the application of sections 166.700 to 166.720**
32 **to a qualified school, the state shall bear the burden of establishing that the law is**
33 **necessary and does not impose any undue burden on qualified schools.**

34 **6. The provisions of section 23.253 of the Missouri sunset act shall not apply to**
35 **sections 166.700 to 166.720.**

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