

FIRST REGULAR SESSION

# SENATE BILL NO. 23

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

0628S.01I

ADRIANE D. CROUSE, Secretary

## AN ACT

To amend chapters 135 and 166, RSMo, by adding thereto eleven new sections relating to educational scholarship accounts, 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  
2 adding thereto eleven new sections, to be known as sections  
3 135.712, 135.713, 135.714, 135.716, 135.719, 166.700, 166.705,  
4 166.710, 166.715, 166.720, and 166.725, to read as follows:

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

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

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

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

18 135.713 and that does not discriminate on the basis of race,  
19 color, or national origin;

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

23 (4) "Program", the Missouri empowerment scholarship  
24 accounts program established under sections 135.712 to  
25 135.719 and sections 166.700 to 166.725;

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

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

31 (7) "Scholarship account", a savings account created  
32 by the Missouri empowerment scholarship accounts program  
33 authorized by sections 166.700 to 166.725;

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

135.713. 1. For all fiscal years beginning on or  
2 after July 1, 2022, any taxpayer who makes a qualifying  
3 contribution to an educational assistance organization may  
4 claim a credit against the tax otherwise due under chapter  
5 143, other than taxes withheld under sections 143.191 to  
6 143.265, and chapter 153, in an amount equal to eighty-five  
7 percent of the amount the taxpayer contributed during the  
8 tax year for which the credit is claimed. No taxpayer shall

9 claim a credit under sections 135.712 to 135.719 for any  
10 contribution made by the taxpayer, or an agent of the  
11 taxpayer, on behalf of the taxpayer's dependent, or in the  
12 case of a business taxpayer, on behalf of the business's  
13 agent's dependent.

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

22 3. The cumulative amount of tax credits that may be  
23 allocated to all taxpayers contributing to educational  
24 assistance organizations in any one calendar year shall not  
25 exceed fifty million. The state treasurer shall establish a  
26 procedure by which the tax credits shall be allocated on a  
27 first come, first served basis. The state treasurer shall  
28 establish the procedure described in this subsection in such  
29 a manner as to ensure that taxpayers can claim all the tax  
30 credits possible up to the cumulative amount of tax credits  
31 available for the calendar year.

135.714. 1. Each educational assistance organization  
2 shall:

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

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

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

- 10           (4) Ensure that:
- 11           (a) One hundred percent of its revenues from interest  
12 or investments is spent on scholarship accounts;
- 13           (b) At least ninety percent of its revenues from  
14 qualifying contributions is spent on scholarship accounts;  
15 and
- 16           (c) Marketing and administrative expenses shall not  
17 exceed the following limits of its remaining revenue from  
18 contributions: ten percent for the first two hundred fifty  
19 thousand dollars, eight percent for the next five hundred  
20 thousand dollars, and three percent thereafter;
- 21           (5) Distribute scholarship accounts payments either  
22 four times per year or in a single lump sum at the beginning  
23 of the year as requested by the parent or guardian of a  
24 qualified student, not to exceed a total grant amount equal  
25 to the state adequacy target as defined in section 163.011  
26 and calculated by the department of elementary and secondary  
27 education, in the form of a deposit into the scholarship  
28 account of the qualified student;
- 29           (6) Carry forward no more than twenty-five percent of  
30 revenue from contributions from the state fiscal year in  
31 which they were received to the following state fiscal year;
- 32           (7) Provide the state treasurer, upon request, with  
33 criminal background checks on all its employees and board  
34 members, and exclude from employment or governance any  
35 individual that might reasonably pose a risk to the  
36 appropriate use of contributed funds;
- 37           (8) Annually administer either the state achievement  
38 tests or nationally norm-referenced tests that measure  
39 learning gains in math and English language arts, and  
40 provide for value-added assessment, to all participating

41 students in grades that require testing under the statewide  
42 assessment system set forth in section 160.518;

43 (9) Allow costs of the testing requirements to be  
44 covered by the scholarships distributed by the educational  
45 assistance organization;

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

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

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

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

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

64 (a) Their satisfaction with their child's academic  
65 achievement, including academic achievement at the school  
66 their child attended through the scholarship program versus  
67 academic achievement at the school previously attended;

68 (b) Their satisfaction with school safety at the  
69 schools their child attends through the scholarship program  
70 versus safety at the schools previously attended;

71 (c) Whether their child would have been able to attend  
72 their school of choice without the scholarship; and

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

76 (15) Demonstrate its financial accountability by:

77 (a) Submitting to the state treasurer annual audit  
78 financial statements by a certified public accountant within  
79 six months of the end of the educational assistance  
80 organization's fiscal year which shall include:

81 a. The name and address of the educational assistance  
82 organization;

83 b. The total number and total dollar amount of  
84 contributions received during the previous calendar year; and

85 c. The total number and total dollar amount of  
86 scholarship accounts opened during the previous calendar  
87 year; and

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

90 (16) Demonstrate its financial viability, if it is to  
91 receive donations of fifty thousand dollars or more during  
92 the school year, by filing with the state treasurer before  
93 the start of the school year a surety bond or insurance  
94 policy payable to the state in an amount equal to the  
95 aggregate amount of contributions expected to be received  
96 during the school year or other financial information that  
97 demonstrates the financial viability of the educational  
98 assistance organization.

99 2. The state treasurer shall:

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

102 (2) Collect all test results;

103 (3) Provide the test results and associated learning  
104 gains to the public via a state website after the third year

105 of test and test-related data collection. The findings  
106 shall be aggregated by the students' grade level, gender,  
107 family income level, number of years of participation in the  
108 scholarship program, and race; and

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

112 3. An educational assistance organization may contract  
113 with a private financial management firm to manage  
114 scholarship accounts with the supervision of the state.

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

7 2. The state treasurer shall provide a standardized  
8 format for educational assistance organizations to report  
9 the information required 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  
12 fraud committed by the organization.

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

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

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

29           (2) Educational outcomes of qualified students.

          135.719. 1. The state treasurer may promulgate rules  
2 to implement the provisions of sections 135.712 to 135.719.  
3 Any rule or portion of a rule, as that term is defined in  
4 section 536.010, that is created under the authority  
5 delegated in this section shall become effective only if it  
6 complies with and is subject to all of the provisions of  
7 chapter 536 and, if applicable, section 536.028. This  
8 section and chapter 536 are nonseverable and if any of the  
9 powers vested with the general assembly pursuant to chapter  
10 536 to review, to delay the effective date, or to disapprove  
11 and annul a rule are subsequently held unconstitutional,  
12 then the grant of rulemaking authority and any rule proposed  
13 or adopted after August 28, 2021, shall be invalid and void.

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

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

3           (1) "Bullying", the same meaning as used in section  
4 160.775;

5           (2) "Child with a disability":

6           (a) A child who is at least five years of age but less  
7 than twenty-two years of age who has been evaluated and  
8 found to have at least one of the following disabilities and



9 who, because of the disability, needs special education and  
10 related services:

- 11 a. An autism spectrum disorder;
- 12 b. Developmental delay;
- 13 c. Emotional disability;
- 14 d. Hearing impairment;
- 15 e. Other health impairments;
- 16 f. Specific learning disability;
- 17 g. Mild, moderate, or severe intellectual disability;
- 18 h. Multiple disabilities;
- 19 i. Multiple disabilities with severe sensory  
20 impairment;
- 21 j. Orthopedic impairment;
- 22 k. Preschool severe delay;
- 23 l. Speech or language impairment;
- 24 m. Traumatic brain injury; or
- 25 n. Visual impairment; and

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

- 29 a. A lack of appropriate instruction in reading,  
30 including essential components of reading instruction;
- 31 b. A lack of appropriate instruction in mathematics; or
- 32 c. Difficulty in writing, speaking, or understanding  
33 the English language due to an environmental background in  
34 which a language other than English is primarily or  
35 exclusively used;

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

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

41 (5) "Parent", the same meaning as used in section  
42 135.712;

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

47 (7) "Program", the Missouri empowerment scholarship  
48 accounts program;

49 (8) "Qualified school", a charter school as defined in  
50 section 160.400, a home school as defined in section  
51 167.031, a private school as defined in this subsection, a  
52 public school as defined in section 160.011, or a public or  
53 private virtual school that is incorporated in Missouri.  
54 Charter schools, public schools, and public virtual schools  
55 are "qualified schools" only to the extent that moneys  
56 deposited in a qualified student's scholarship account shall  
57 be used for specific services or individual classes  
58 consistent with the provisions of subdivision (4) of  
59 subsection 1 of section 166.705;

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

61 (a) Is any of the following:

62 a. Identified by a district as a child with a  
63 disability;

64 b. A child with a disability who is eligible to  
65 receive services from a school district under the federal  
66 Individuals with Disabilities Education Act;

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

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

71 e. A child who was a ward of the juvenile court and  
72 who achieved permanency through adoption permanent  
73 guardianship; or

74 f. A child who can certify that he or she has been  
75 subject to bullying by providing a written statement from  
76 the school, school counselor, a physician, or any health  
77 care provider licensed under chapter 337;

78 (b) Did any of the following:

79 a. Attended a public school as a full-time student for  
80 at least one semester from the previous twelve months and  
81 who transferred from a public school under a contract to  
82 participate in the Missouri empowerment scholarship accounts  
83 program;

84 b. Previously participated in the Missouri empowerment  
85 scholarship accounts program;

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

88 d. Is attending school for the first time.

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

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

10 (2) The qualified student shall not be enrolled in a  
11 school operated by the qualified student's district of  
12 residence or a charter school, except for a qualified  
13 student that is in the custody of the state, and shall  
14 release the district of residence from all obligations to

15 educate the qualified student while the qualified student is  
16 enrolled in the program; except that, this subdivision shall  
17 not relieve the student's district of residence from the  
18 obligation to conduct an evaluation for disabilities;

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

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

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

27 (b) Textbooks required by a qualified school;

28 (c) Educational therapies or services for the  
29 qualified student from a licensed or accredited practitioner  
30 or provider, including licensed or accredited  
31 paraprofessionals or educational aides;

32 (d) Tutoring services;

33 (e) Curriculum;

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

35 (g) Fees for a nationally standardized norm-referenced  
36 achievement test, advanced placement examinations,  
37 international baccalaureate examinations, or any exams  
38 related to college or university admission;

39 (h) Fees for management of the empowerment scholarship  
40 account by firms selected by the educational assistance  
41 organization;

42 (i) Services provided by a public school, including  
43 individual classes and extracurricular programs;

44 (j) Computer hardware or other technological devices  
45 that are used to help meet a qualified student's educational

46 needs and that are approved by an educational assistance  
47 organization; and

48 (k) Fees for summer education programs and specialized  
49 after-school education programs;

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

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

54 (b) Tuition at a private school located outside of the  
55 state of Missouri.

56 2. Missouri empowerment scholarship accounts are  
57 renewable on an annual basis upon request of the parent of a  
58 qualified student. Notwithstanding any changes to the  
59 qualified student's multidisciplinary evaluation team plan,  
60 a student who has previously qualified for a Missouri  
61 empowerment scholarship account shall remain eligible to  
62 apply for renewal until the student completes high school  
63 and submits scores from a nationally standardized norm-  
64 referenced achievement test, advanced placement examination,  
65 international baccalaureate examination, or any exam related  
66 to college or university admission purchased with Missouri  
67 empowerment scholarship account funds to the state treasurer.

68 3. A signed agreement under this section shall satisfy  
69 the compulsory school attendance requirements of section  
70 167.031.

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

75 5. If a qualified student withdraws from the program  
76 by enrolling in a school other than a qualified school, or  
77 is disqualified from the program under the provisions of

78 section 166.710, the qualified student's Missouri  
79 empowerment scholarship account shall be closed and any  
80 remaining funds shall be returned to the educational  
81 assistance organization for redistribution to other  
82 qualified students. Under such circumstances, the  
83 obligation to provide an education for such student shall  
84 transfer back to the student's district of residence.

85 6. Any funds remaining in a qualified student's  
86 scholarship account at the end of a school year shall remain  
87 in the account and shall not be returned to the educational  
88 assistance organization. Any funds remaining in a qualified  
89 student's scholarship account upon graduation from a  
90 qualified school shall be returned to the educational  
91 assistance organization for redistribution to other  
92 qualified students.

93 7. Moneys received under sections 166.700 to 166.725  
94 shall not constitute Missouri taxable income to the parent  
95 of the qualified student.

166.710. 1. Beginning in the 2023-2024 school year,  
2 the educational assistance organization shall conduct or  
3 contract for annual audits of empowerment scholarship  
4 accounts to ensure compliance with the requirements of  
5 subsection 1 of section 166.705. The educational assistance  
6 organization shall also conduct or contract for random,  
7 quarterly, and annual audits of empowerment scholarship  
8 accounts as needed to ensure compliance with the  
9 requirements of subsection 1 of section 166.705.

10 2. A parent or qualified student or vendor may be  
11 disqualified from program participation if the state  
12 treasurer, or his or her designee, finds the party has  
13 committed an intentional program violation consisting of any  
14 misrepresentation or other act that materially violates any

15 law or rule governing the program. The state treasurer may  
16 remove any parent or qualified student from eligibility for  
17 a Missouri empowerment scholarship program account. A  
18 parent may appeal the state treasurer's decision to the  
19 administrative hearing commission. A parent may appeal the  
20 administrative hearing commission's decision to the circuit  
21 court of the county in which the student resides.

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

26 4. The state treasurer shall promulgate the following  
27 rules to implement and administer the Missouri empowerment  
28 scholarship accounts program:

29 (1) Rules for conducting examinations of use of  
30 account funds;

31 (2) Rules for conducting random, quarterly, and annual  
32 reviews of accounts;

33 (3) Creating an online anonymous fraud reporting  
34 service; and

35 (4) Creating an anonymous telephone hotline for fraud  
36 reporting.

37 5. Any rule or portion of a rule, as that term is  
38 defined in section 536.010, that is created under the  
39 authority delegated in this section shall become effective  
40 only if it complies with and is subject to all of the  
41 provisions of chapter 536 and, if applicable, section  
42 536.028. This section and chapter 536 are nonseverable and  
43 if any of the powers vested with the general assembly  
44 pursuant to chapter 536 to review, to delay the effective  
45 date, or to disapprove and annul a rule are subsequently  
46 held unconstitutional, then the grant of rulemaking

47 authority and any rule proposed or adopted after August 28,  
48 2021, shall be invalid and void.

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

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

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

6 2. A qualified school, other than a qualified school  
7 that is a public school, that accepts a payment from a  
8 parent under sections 166.700 to 166.725 shall not be  
9 considered an agent of the state or federal government.

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

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

166.725. All personally identifiable information  
2 concerning eligible students and the parents of eligible



3 students within the Missouri empowerment scholarship  
4 accounts program pursuant to sections 135.712 to 135.719 and  
5 sections 166.700 to 166.725 shall be confidential, and any  
6 disclosure of such information shall be restricted to  
7 purposes directly connected with administration of the  
8 program.

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