

SENATE BILL NO. 251

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

1137S.01H

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
2 adding thereto ten 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, and 166.720, to read as follows:

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

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

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

12 (4) "Educational assistance organization", a
13 charitable organization registered in this state that is
14 exempt from federal taxation under the Internal Revenue Code
15 of 1986, as amended, is certified by the director, and that
16 allocates all of its annual revenue for educational
17 assistance, except as provided in paragraph (c) of

18 subdivision (4) of subsection 1 of section 135.714 and as
19 provided for in sections 135.712 to 135.719, derived from
20 contributions for which a credit is claimed under section
21 135.713;

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

25 (6) "Program", the Missouri empowerment scholarship
26 accounts program established under sections 135.712 to
27 135.719 and sections 166.700 to 166.720;

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

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

33 (9) "Scholarship account", a savings account created
34 by the Missouri empowerment scholarship accounts program
35 authorized by sections 166.700 to 166.720;

36 (10) "Taxpayer", an individual subject to the state
37 income tax imposed in chapter 143; an individual, a firm, a
38 partner in a firm, corporation, or a shareholder in an S
39 corporation doing business in this state and subject to the
40 state income tax imposed by chapter 143; or an express
41 company that pays an annual tax on its gross receipts in
42 this state under chapter 153, which files a Missouri income
43 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 one hundred

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
17 department 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.

135.714. 1. Each educational assistance organization
2 shall:

- 3 (1) Notify the department of its intent to provide
4 scholarship accounts to qualified students;
- 5 (2) Demonstrate to the department that it is exempt
6 from federal income tax under Section 501(c)(3) of the
7 Internal Revenue Code of 1986, as amended;
- 8 (3) Provide a department-approved receipt to taxpayers
9 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) Provide the department, upon request, with
30 criminal background checks on all its employees and board
31 members, and exclude from employment or governance any
32 individual that might reasonably pose a risk to the
33 appropriate use of contributed funds;

34 (7) Demonstrate its financial accountability by:

35 (a) Submitting to the department annual audit
36 financial statements by a certified public accountant within
37 six months of the end of the educational assistance
38 organization's fiscal year; and

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

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

49 2. The audit shall include:

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

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

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

56 (4) The total number and total dollar amount of
57 scholarship accounts opened during the previous calendar
58 year.

59 3. An educational assistance organization may contract
60 with private financial management firms to manage
61 scholarship accounts with the supervision of the state.

135.716. 1. The department 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
5 department of revenue shall require a taxpayer to provide a
6 copy of this receipt if claiming the tax credit authorized
7 by the program.

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

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

14 4. The department may bar an educational assistance
15 organization from participating in the program if the
16 department establishes that the educational assistance
17 organization has intentionally and substantially failed to
18 comply with the requirements in section 135.714. If the
19 department bars an educational assistance organization from
20 the program under this subsection, it shall notify affected

21 qualified students and their parents of the decision as soon
22 as possible after the determination is made.

23 5. The department shall issue a report on the state of
24 the Missouri empowerment scholarship accounts program five
25 years after it goes into effect. The report shall include,
26 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.

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

38 (2) Notwithstanding the provisions of section 33.080
39 to the contrary, any moneys remaining in the fund at the end
40 of the biennium shall not revert to the credit of the
41 general revenue fund.

42 (3) The department shall invest moneys in the fund in
43 the same manner as other funds are invested. Any interest
44 and moneys earned on such investments shall be credited to
45 the fund.

46 7. No more than two percent of the qualifying
47 contributions may be deposited in the Missouri empowerment
48 scholarship accounts fund to be used for marketing and
49 administrative expenses or the costs incurred in
50 administering the program, whichever is less. The director
51 shall establish procedures to ensure the percentage of funds
52 for administration of the program is directed to the

53 department in a timely manner with the necessary information
54 to verify the correct amount has been transmitted. The
55 remaining funds shall be distributed to the educational
56 assistance organizations.

135.719. 1. The department may promulgate rules to
2 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
11 disapprove and annul a rule are subsequently held
12 unconstitutional, then the grant of rulemaking authority and
13 any rule proposed or adopted after August 28, 2021, shall be
14 invalid and void.

15 2. The provisions of section 23.253 of the Missouri
16 sunset act shall not apply to sections 135.712 to 135.719
17 and sections 166.700 to 166.720.

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

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

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

8 (3) "Parent", the same meaning as used in section
9 135.712;

10 (4) "Private school", a school that is not a part of
11 the public school system of the state of Missouri and that

12 charges tuition for the rendering of elementary or secondary
13 educational services;

14 (5) "Program", the Missouri empowerment scholarship
15 accounts program;

16 (6) "Qualified school", a charter school as defined in
17 section 160.400, a home school as defined in section
18 167.031, a private school as defined in this section, a
19 public school as defined in section 160.011, or a public or
20 private virtual school that is incorporated in Missouri and
21 that does not discriminate on the basis of race, color, or
22 national origin;

23 (7) "Qualified student", any elementary or secondary
24 school student who is a resident of this state.

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) Insurance or surety bond payments as required by
45 the department;

46 (k) Computer hardware or other technological devices
47 that are used to help meet a qualified student's educational
48 needs and that are approved by an educational assistance
49 organization; and

50 (1) Fees for summer education programs and specialized
51 after-school education programs;

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

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

56 (b) Tuition at a private school located outside of the
57 state of Missouri.

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

70 3. A signed agreement under this section shall satisfy
71 the compulsory school attendance requirements of section
72 167.031.

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

77 5. If a qualified student withdraws from the program
78 by enrolling in a school other than a qualified school, or
79 is disqualified from the program under the provisions of
80 section 166.710, the qualified student's Missouri
81 empowerment scholarship account shall be closed and any

82 remaining funds shall be returned to the educational
83 assistance organization for redistribution to other
84 qualified students. Under such circumstances, the
85 obligation to provide an education for such student shall
86 transfer back to the student's district of residence.

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

95 7. If a qualified student moves out of any county with
96 a charter form of government or any municipality with a
97 population greater than thirty thousand, the qualified
98 student shall remain eligible for participation in the
99 program until the student graduates from high school.

100 8. Moneys received under sections 166.700 to 166.720
101 shall not constitute Missouri taxable income to the parent
102 of the qualified student.

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

9 2. A parent or qualified student or vendor may be
10 disqualified from program participation if the director, or
11 his or her designee, finds the party has committed an

12 intentional program violation consisting of any
13 misrepresentation or other act that materially violates any
14 law or rule governing the program. The department may
15 remove any parent or qualified student from eligibility for
16 a Missouri empowerment scholarship program account. A
17 parent may appeal the department's decision to the
18 administrative hearing commission. A parent may appeal the
19 administrative hearing commission's decision to the circuit
20 court of the county in which the student resides.

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

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

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

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

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

34 (4) Creating an anonymous telephone hotline for fraud
35 reporting; and

36 (5) A surety bond requirement for account holders.

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 he or she is found to have knowingly used moneys granted
3 under section 135.714 for purposes other than those provided
4 for in sections 166.700 to 166.720.

2. No financial institution shall be liable in any
6 civil action for providing a savings account's financial
7 information to the department 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 166.720 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.

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 166.720 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 166.720 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.

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