

SECOND REGULAR SESSION

SENATE BILL NO. 707

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3330S.011

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 adding thereto eleven 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, 166.720, and 166.725, to read as follows:

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

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

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

(2) "Educational assistance organization", a charitable organization registered in this state that is exempt from federal taxation under the Internal Revenue Code of 1986, as amended, is certified by the state treasurer, and that allocates all of its annual revenue for educational assistance, except as provided in paragraph (c) of subdivision (4) of subsection 1 of section 135.714 and as provided for in sections 135.712 to 135.719, derived from contributions for which a credit is claimed under section 135.713 and that does not discriminate on the basis of race, color, or national origin;

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

20 (4) "Program", the Missouri empowerment scholarship accounts
21 program established under sections 135.712 to 135.719 and sections
22 166.700 to 166.725;

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

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

28 (7) "Scholarship account", a savings account created by the
29 Missouri empowerment scholarship accounts program authorized by
30 sections 166.700 to 166.725;

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

135.713. 1. For all fiscal years beginning on or after July 1, 2021,
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 eighty-five
6 percent of the amount the taxpayer contributed during the tax year for
7 which the credit is claimed. No taxpayer shall claim a credit under
8 sections 135.712 to 135.719 for any contribution made by the taxpayer,
9 or an agent of the taxpayer, on behalf of the taxpayer's dependent, or
10 in the case of a business taxpayer, on behalf of the business's agent's
11 dependent.

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

19 3. The cumulative amount of tax credits that may be allocated to

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

135.714. 1. Each educational assistance organization shall:

- 2 (1) Notify the state treasurer of its intent to provide scholarship
3 accounts to qualified students;
- 4 (2) Demonstrate to the state treasurer that it is exempt from
5 federal income tax under Section 501(c)(3) of the Internal Revenue
6 Code of 1986, as amended;
- 7 (3) Provide a state treasurer-approved receipt to taxpayers for
8 contributions made to the organization;
- 9 (4) Ensure that:
 - 10 (a) One hundred percent of its revenues from interest or
11 investments is spent on scholarship accounts;
 - 12 (b) At least ninety percent of its revenues from qualifying
13 contributions is spent on scholarship accounts; and
 - 14 (c) Marketing and administrative expenses shall not exceed the
15 following limits of its remaining revenue from contributions: ten
16 percent for the first two hundred fifty thousand dollars, eight percent
17 for the next five hundred thousand dollars, and three percent
18 thereafter;
- 19 (5) Distribute scholarship payments either four times
20 per year or in a single lump sum at the beginning of the year as
21 requested by the parent or guardian of a qualified student, not to
22 exceed a total grant amount equal to the state adequacy target as
23 defined in section 163.011 and calculated by the department of
24 elementary and secondary education, in the form of a deposit into the
25 scholarship account of the qualified student;
- 26 (6) Carry forward no more than twenty-five percent of revenue
27 from contributions from the state fiscal year in which they were
28 received to the following state fiscal year;
- 29 (7) Provide the state treasurer, upon request, with criminal
30 background checks on all its employees and board members, and

31 exclude from employment or governance any individual that might
32 reasonably pose a risk to the appropriate use of contributed funds;

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

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

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

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

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

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

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

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

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

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

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

68 **(15) Demonstrate its financial accountability by:**

69 **(a) Submitting to the state treasurer annual audit financial**
70 **statements by a certified public accountant within six months of the**
71 **end of the educational assistance organization's fiscal year which shall**
72 **include:**

73 **a. The name and address of the educational assistance**
74 **organization;**

75 **b. The total number and total dollar amount of contributions**
76 **received during the previous calendar year; and**

77 **c. The total number and total dollar amount of scholarship**
78 **accounts opened during the previous calendar year; and**

79 **(b) Having an auditor certify that the report is free of material**
80 **misstatements;**

81 **(16) Demonstrate its financial viability, if it is to receive**
82 **donations of fifty thousand dollars or more during the school year, by**
83 **filing with the state treasurer before the start of the school year a**
84 **surety bond or insurance policy payable to the state in an amount equal**
85 **to the aggregate amount of contributions expected to be received**
86 **during the school year or other financial information that demonstrates**
87 **the financial viability of the educational assistance organization.**

88 **2. The state treasurer shall:**

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

91 **(2) Collect all test results;**

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

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

99 **3. An educational assistance organization may contract with a**
100 **private financial management firm to manage scholarship accounts**
101 **with the supervision of the state.**

 135.716. 1. The state treasurer shall provide a standardized
2 format for a receipt to be issued by an educational assistance
3 organization to a taxpayer to indicate the value of a contribution

4 received. The state treasurer shall require a taxpayer to provide a
5 copy of this receipt if claiming the tax credit authorized by the
6 program.

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

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

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

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

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

26 (2) Educational outcomes of qualified students.

135.719. 1. The state treasurer may promulgate rules to
2 implement the provisions of sections 135.712 to 135.719. Any rule or
3 portion of a rule, as that term is defined in section 536.010, that is
4 created under the authority delegated in this section shall become
5 effective only if it complies with and is subject to all of the provisions
6 of chapter 536 and, if applicable, section 536.028. This section and
7 chapter 536 are nonseverable and if any of the powers vested with the
8 general assembly pursuant to chapter 536 to review, to delay the
9 effective date, or to disapprove and annul a rule are subsequently held
10 unconstitutional, then the grant of rulemaking authority and any rule
11 proposed or adopted after August 28, 2020, 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
14 166.725.

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

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

4 (2) "Child with a disability":

5 (a) A child who is at least five years of age but less than
6 twenty-two years of age who has been evaluated and found to have at
7 least one of the following disabilities and who, because of the disability,
8 needs special education and related services:

9 a. An autism spectrum disorder;

10 b. Developmental delay;

11 c. Emotional disability;

12 d. Hearing impairment;

13 e. Other health impairments;

14 f. Specific learning disability;

15 g. Mild, moderate, or severe intellectual disability;

16 h. Multiple disabilities;

17 i. Multiple disabilities with severe sensory impairment;

18 j. Orthopedic impairment;

19 k. Preschool severe delay;

20 l. Speech or language impairment;

21 m. Traumatic brain injury; or

22 n. Visual impairment; and

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

25 a. A lack of appropriate instruction in reading, including
26 essential components of reading instruction;

27 b. A lack of appropriate instruction in mathematics; or

28 c. Difficulty in writing, speaking, or understanding the English
29 language due to an environmental background in which a language
30 other than English is primarily or exclusively used;

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

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

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

36 (6) "Private school", a school that is not a part of the public
37 school system of the state of Missouri and that charges tuition for the

38 rendering of elementary or secondary educational services;

39 (7) "Program", the Missouri empowerment scholarship accounts
40 program;

41 (8) "Qualified school", a charter school as defined in section
42 160.400, a home school as defined in section 167.031, a private school as
43 defined in this subsection, a public school as defined in section 160.011,
44 or a public or private virtual school that is incorporated in
45 Missouri. Charter schools, public schools, and public virtual schools
46 are "qualified schools" only to the extent that moneys deposited in a
47 qualified student's scholarship account shall be used for specific
48 services or individual classes consistent with the provisions of
49 subdivision (4) of subsection 1 of section 166.705;

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

51 (a) Is any of the following:

52 a. Identified by a district as a child with a disability;

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

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

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

60 e. A child who was a ward of the juvenile court and who
61 achieved permanency through adoption permanent guardianship;

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

66 (b) Did any of the following:

67 a. Attended a public school as a full-time student for at least one
68 semester from the previous twelve months and who transferred from a
69 public school under a contract to participate in the Missouri
70 empowerment scholarship accounts program;

71 b. Previously participated in the Missouri empowerment
72 scholarship accounts program;

73 c. Is a child who is eligible to begin kindergarten under sections
74 160.051 to 160.055; or

75 d. Is attending school for the first time.

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) Computer hardware or other technological devices that are
39 used to help meet a qualified student's educational needs and that are
40 approved by an educational assistance organization; and

41 (k) Fees for summer education programs and specialized after-
42 school education programs;

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

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

47 (b) Tuition at a private school located outside of the state of
48 Missouri.

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

60 3. A signed agreement under this section shall satisfy the
61 compulsory school attendance requirements of section 167.031.

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

66 5. If a qualified student withdraws from the program by
67 enrolling in a school other than a qualified school, or is disqualified
68 from the program under the provisions of section 166.710, the qualified
69 student's Missouri empowerment scholarship account shall be closed
70 and any remaining funds shall be returned to the educational
71 assistance organization for redistribution to other qualified
72 students. Under such circumstances, the obligation to provide an
73 education for such student shall transfer back to the student's district

74 of residence.

75 **6. Any funds remaining in a qualified student's scholarship**
76 **account at the end of a school year shall remain in the account and**
77 **shall not be returned to the educational assistance organization. Any**
78 **funds remaining in a qualified student's scholarship account upon**
79 **graduation from a qualified school shall be returned to the educational**
80 **assistance organization for redistribution to other qualified students.**

81 **7. Moneys received under sections 166.700 to 166.725 shall not**
82 **constitute Missouri taxable income to the parent of the qualified**
83 **student.**

166.710. 1. Beginning in the 2022-2023 school year, the
2 **educational assistance organization shall conduct or contract for**
3 **annual audits of empowerment scholarship accounts to ensure**
4 **compliance with the requirements of subsection 1 of section**
5 **166.705. The educational assistance organization shall also conduct or**
6 **contract for random, quarterly, and annual audits of empowerment**
7 **scholarship 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 disqualified**
10 **from program participation if the state treasurer, or his or her**
11 **designee, finds the party has committed an intentional program**
12 **violation consisting of any misrepresentation or other act that**
13 **materially violates any law or rule governing the program. The state**
14 **treasurer may remove any parent or qualified student from eligibility**
15 **for a Missouri empowerment scholarship program account. A parent**
16 **may appeal the state treasurer's decision to the administrative hearing**
17 **commission. A parent may appeal the administrative hearing**
18 **commission's decision to the circuit court of the county in which the**
19 **student resides.**

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

23 **4. The state treasurer shall promulgate the following rules to**
24 **implement and administer the Missouri empowerment scholarship**
25 **accounts program:**

- 26 **(1) Rules for conducting examinations of use of account funds;**
27 **(2) Rules for conducting random, quarterly, and annual reviews**

28 of accounts;

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

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

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, 2020, 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 166.725.

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

166.720. 1. Sections 166.700 to 166.725 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 166.725 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 166.725 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.

**166.725. All personally identifiable information concerning
2 eligible students and the parents of eligible students within the
3 Missouri empowerment scholarship accounts program pursuant to
4 sections 135.712 to 135.719 and sections 166.700 to 166.725 shall be
5 confidential, and any disclosure of such information shall be restricted
6 to purposes directly connected with administration of the program.**

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