

FIRST REGULAR SESSION

# SENATE BILL NO. 32

99TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR EMERY.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To amend chapters 135 and 166, RSMo, by adding thereto ten new sections relating to educational scholarships, with a penalty provision.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapters 135 and 166, RSMo, are amended by adding thereto  
2 ten new sections, to be known as sections 135.712, 135.713, 135.714, 135.716,  
3 135.719, 166.700, 166.705, 166.710, 166.715, and 166.720, to read as follows:

135.712. 1. Sections 135.712 to 135.719 and sections 166.700 to  
2 166.720 establish the "Missouri Empowerment Scholarship Accounts  
3 Program" to provide options toward ensuring the education of students  
4 in this state.

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

7 (1) "Department", the department of economic development;

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

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

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

20 (5) "Parent", a parent, guardian, custodian, or other person with

21 authority to act on behalf of the qualified student;

22 (6) "Program", the Missouri empowerment scholarship accounts  
23 program established under sections 135.712 to 135.719 and sections  
24 166.700 to 166.720;

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

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

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

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

135.713. 1. For all tax years beginning on or after January 1,  
2 2017, any taxpayer who makes a qualifying contribution to an  
3 educational assistance organization may claim a credit against the tax  
4 otherwise due under chapter 143, other than taxes withheld under  
5 sections 143.191 to 143.265, and chapter 153, in an amount equal to one  
6 hundred percent of the amount the taxpayer contributed during the tax  
7 year for which the credit is claimed. No taxpayer shall claim a credit  
8 under sections 135.712 to 135.719 for any contribution made by the  
9 taxpayer, or an agent of the taxpayer, on behalf of the taxpayer's  
10 dependent, or in the case of a business taxpayer, on behalf of the  
11 business's agent's dependent.

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

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 twenty-five million dollars,  
22 which amount shall annually be adjusted by the department for  
23 inflation based on the consumer price index for all urban consumers for  
24 the Midwest region, as defined and officially recorded by the United  
25 States Department of Labor or its successor. The director shall  
26 establish a procedure by which, from the beginning of the calendar  
27 year until some point in time later in the calendar year to be  
28 determined by the director, the cumulative amount of tax credits are  
29 equally apportioned among all educational assistance organizations. If  
30 an educational assistance organization fails to use all, or some  
31 percentage to be determined by the director, of its apportioned tax  
32 credits during this predetermined period of time, the director may  
33 reapportion these unused tax credits to those educational assistance  
34 organizations that have used all, or some percentage to be determined  
35 by the director, of their apportioned tax credits during this  
36 predetermined period of time. The director may establish more than  
37 one period of time and reapportion more than once during each  
38 calendar year. To the maximum extent possible, the director shall  
39 establish the procedure described in this subsection in such a manner  
40 as to ensure that taxpayers can claim all the tax credits possible up to  
41 the cumulative amount of tax credits available for the calendar year.

135.714. 1. Each educational assistance organization shall:

- 2           (1) Notify the department of its intent to provide scholarship  
3 accounts to qualified students;
- 4           (2) Demonstrate to the department that it is exempt from federal  
5 income tax under Section 501(c)(3) of the Internal Revenue Code of  
6 1986, as amended;
- 7           (3) Provide a department-approved receipt to taxpayers for  
8 contributions made to the organization;
- 9           (4) Ensure that:
  - 10           (a) One hundred percent of its revenues from interest or  
11 investments is spent on scholarship accounts;
  - 12           (b) At least ninety percent of its revenues from qualifying  
13 contributions is spent on scholarship accounts; and
  - 14           (c) Marketing and administrative expenses shall not exceed the

15 following limits of its remaining revenue from contributions: ten  
16 percent for the first two hundred fifty thousand dollars, eight percent  
17 for the next five hundred thousand dollars, and three percent  
18 thereafter;

19 (5) Distribute scholarship accounts payments either four times  
20 per year or in a single lump sum at the beginning of the year as  
21 requested by the parent or guardian of a qualified student, not to  
22 exceed a total grant amount equal to the state adequacy target as  
23 defined in section 163.011 and calculated by the department of  
24 elementary and secondary education, in the form of a deposit into the  
25 scholarship account of the qualified student;

26 (6) Provide the department, upon request, with criminal  
27 background checks on all its employees and board members, and  
28 exclude from employment or governance any individual that might  
29 reasonably pose a risk to the appropriate use of contributed funds;

30 (7) Demonstrate its financial accountability by:

31 (a) Submitting to the department a financial information report  
32 for the organization that complies with uniform financial accounting  
33 standards established by the department and is conducted by a  
34 certified public accountant; and

35 (b) Having an auditor certify that the report is free of material  
36 misstatements; and

37 (8) Demonstrate its financial viability, if it is to receive  
38 donations of fifty thousand dollars or more during the school year, by  
39 filing with the department before the start of the school year a surety  
40 bond payable to the state in an amount equal to the aggregate amount  
41 of contributions expected to be received during the school year.

42 2. An educational assistance organization shall publicly report  
43 to the department by June first of each year the following information  
44 prepared by a certified public accountant regarding its grants in the  
45 previous calendar year:

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

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

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

52           (4) The total number and total dollar amount of scholarship  
53 accounts opened during the previous calendar year; and

54           (5) The total number and total dollar amount of scholarship  
55 accounts opened during the previous year to qualified students  
56 qualifying for the federal free and reduced price school lunch program.

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

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

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

9           3. The department may conduct either a financial review or an  
10 audit of an educational assistance organization if the department  
11 possesses evidence of fraud committed by the organization.

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

20           5. The department shall receive no more than two percent of the  
21 qualifying contributions for marketing and administrative expenses or  
22 the costs incurred in administering the program, whichever is less. The  
23 director shall establish procedures to ensure the percentage of funds  
24 for administration of the program is directed to the department of  
25 economic development in a timely manner with the necessary  
26 information to verify the correct amount has been transmitted. The  
27 remaining funds shall be distributed to the educational assistance  
28 organizations.

          135.719. 1. The department and the department of revenue may

2 promulgate rules to implement the provisions of sections 135.712 to  
3 135.719. Any rule or portion of a rule, as that term is defined in section  
4 536.010 that is created under the authority delegated in this section  
5 shall become effective only if it complies with and is subject to all of  
6 the provisions of chapter 536, and, if applicable, section 536.028. This  
7 section and chapter 536 are nonseverable and if any of the powers  
8 vested with the general assembly pursuant to chapter 536, to review, to  
9 delay the effective date, or to disapprove and annul a rule are  
10 subsequently held unconstitutional, then the grant of rulemaking  
11 authority and any rule proposed or adopted after August 28, 2017, shall  
12 be invalid and void.

13 2. Under section 23.253 of the Missouri sunset act:

14 (1) The provisions of the new program authorized under sections  
15 135.712 to 135.719 shall automatically sunset on December thirty-first  
16 six years after the effective date of sections 135.712 to 135.719 unless  
17 reauthorized by an act of the general assembly; and

18 (2) If such program is reauthorized, the program authorized  
19 under sections 135.712 to 135.719 shall automatically sunset on  
20 December thirty-first twelve years after the effective date of the  
21 reauthorization of sections 135.712 to 135.719; and

22 (3) Sections 135.712 to 135.719 shall terminate on September first  
23 of the calendar year immediately following the calendar year in which  
24 the program authorized under sections 135.712 to 135.719 is sunset.

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

3 (1) "Child with a disability":

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

8 a. An autism spectrum disorder;

9 b. Developmental delay;

10 c. Emotional disability;

11 d. Hearing impairment;

12 e. Other health impairments;

13 f. Specific learning disability;

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

- 15           h. Multiple disabilities;
- 16           i. Multiple disabilities with severe sensory impairment;
- 17           j. Orthopedic impairment;
- 18           k. Preschool severe delay;
- 19           l. Speech or language impairment;
- 20           m. Traumatic brain injury; or
- 21           n. Visual impairment; and
- 22           (b) Shall not include a child if the determining factor for the
- 23 classification is one or more of the following:
- 24           a. A lack of appropriate instruction in reading, including
- 25 essential components of reading instruction;
- 26           b. A lack of appropriate instruction in mathematics; or
- 27           c. Difficulty in writing, speaking, or understanding the English
- 28 language due to an environmental background in which a language
- 29 other than English is primarily or exclusively used;
- 30           (2) "Curriculum", a complete course of study for a particular
- 31 content area or grade level, including any supplemental materials;
- 32           (3) "Department", the department of elementary and secondary
- 33 education;
- 34           (4) "Educational assistance organization", the same meaning as
- 35 used in section 135.712;
- 36           (5) "Eligible postsecondary institution", any approved private
- 37 institution or approved public institution as defined in section
- 38 173.1102;
- 39           (6) "Parent", the same meaning as used in section 135.712;
- 40           (7) "Private school", a school that is not a part of the public
- 41 school system of the state of Missouri and that charges tuition for the
- 42 rendering of elementary or secondary educational services;
- 43           (8) "Program", the Missouri empowerment scholarship accounts
- 44 program;
- 45           (9) "Qualified school", a home school as defined in section
- 46 167.031, a private school as defined in this subsection, or a preschool
- 47 for children with a disability, that is located in Missouri and that does
- 48 not discriminate on the basis of race, color, or national origin;
- 49           (10) "Qualified student", a resident of this state who:
- 50           (a) Is any of the following:
- 51           a. Identified as having a disability under Section 504 of the

52 **Rehabilitation Act of 1973;**

53 **b. Identified by a district as a child with a disability;**

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

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 or permanent guardianship;**

62 **(b) Who did any of the following:**

63 **a. Attended a public school as a full-time student for at least the**  
64 **first one hundred days of the prior school year and who transferred**  
65 **from a public school under a contract to participate in the Missouri**  
66 **empowerment scholarship account program; or**

67 **b. Previously participated in the Missouri empowerment**  
68 **scholarship account program; or**

69 **(c) Is a child who is eligible to begin kindergarten under sections**  
70 **160.051 to 160.055.**

**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 reading, grammar,**  
7 **mathematics, social studies, and science;**

8 **(2) The qualified student shall not be enrolled in a school**  
9 **operated by a district or a charter school and shall release the district**  
10 **of residence from all obligations to educate the qualified student;**  
11 **except that, this subdivision shall not relieve the student's district of**  
12 **residence from the obligation to conduct an evaluation for disabilities;**

13 **(3) The qualified student shall receive a grant, in the form of**  
14 **money deposited pursuant to section 135.714, in the qualified student's**  
15 **Missouri empowerment scholarship account;**

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



- 19           (a) Tuition or fees at a qualified school;
- 20           (b) Textbooks required by a qualified school;
- 21           (c) Educational therapies or services for the qualified student
- 22 from a licensed or accredited practitioner or provider, including
- 23 licensed or accredited paraprofessionals or educational aides;
- 24           (d) Tutoring services provided by a tutor accredited by a state,
- 25 regional, or national accrediting organization;
- 26           (e) Curriculum;
- 27           (f) Tuition or fees for a nonpublic online learning program;
- 28           (g) Fees for a nationally standardized norm-referenced
- 29 achievement test, advanced placement examinations, international
- 30 baccalaureate examinations, or any exams related to college or
- 31 university admission;
- 32           (h) Contributions to a qualified tuition program established
- 33 under 26 U.S.C. Section 529 for the benefit of the qualified student;
- 34           (i) Tuition or fees at an eligible postsecondary institution;
- 35           (j) Textbooks required by an eligible postsecondary institution;
- 36           (k) Fees for management of the empowerment scholarship
- 37 account by firms selected by the educational assistance organization;
- 38           (l) Services provided by a public school, including individual
- 39 classes and extracurricular programs; and
- 40           (m) Insurance or surety bond payments as required by the
- 41 department; and
- 42           (5) Moneys deposited in the qualified student's account shall not
- 43 be used for any of the following:
- 44           (a) Computer hardware or other technological devices;
- 45           (b) Transportation of the pupil; or
- 46           (c) Consumable educational supplies including, but not limited
- 47 to, paper, pens, pencils, or markers.

48           2. Missouri empowerment scholarship accounts are renewable on  
49 an annual basis upon request of the parent of a qualified  
50 student. Notwithstanding any changes to the qualified student's  
51 multidisciplinary evaluation team plan, a student who has previously  
52 qualified for a Missouri empowerment scholarship account shall remain  
53 eligible to apply for renewal until the student completes high school  
54 and submits scores from a nationally standardized norm-referenced  
55 achievement test, advanced placement examination, international

56 baccalaureate examination, or any exam related to college or university  
57 admission purchased with Missouri empowerment scholarship account  
58 funds to the department.

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

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

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

74 6. Any funds remaining in a qualified student's scholarship  
75 account at the end of a school year shall remain in the account and  
76 shall not be returned to the educational assistance organization. Any  
77 funds remaining in a qualified student's scholarship account upon  
78 graduation from a qualified school may be used for the purposes of  
79 postsecondary education as specified in subdivision (4) of subsection  
80 1 of this section. Any funds remaining in a qualified student's account  
81 after graduation from an eligible postsecondary institution, or after a  
82 period of four years following graduation from a qualified school,  
83 whichever occurs first, shall be returned to the educational assistance  
84 organization for redistribution to other qualified students.

85 7. Moneys received under sections 166.700 to 166.720 shall not  
86 constitute Missouri taxable income to the parent of the qualified  
87 student.

166.710. 1. The department shall conduct or contract for annual  
2 audits of empowerment scholarship accounts to ensure compliance with  
3 the requirements of subsection 1 of section 166.705. The department  
4 shall also conduct or contract for random, quarterly, and annual audits  
5 of empowerment scholarship accounts as needed to ensure compliance

6 with the requirements of subsection 1 of section 166.705.

7       2. A parent or qualified student or vendor may be disqualified  
8 from program participation if, after a hearing before the commissioner  
9 of education or his or her designee, the party is found to have  
10 committed an intentional program violation consisting of any  
11 misrepresentation or other act that materially violates any law or rule  
12 governing the program. The department may remove any parent or  
13 qualified student from eligibility for a Missouri empowerment  
14 scholarship program account. A parent may appeal the department's  
15 decision to the state board of education. A parent may appeal the state  
16 board of education's decision to the circuit court of the county in which  
17 the student resides.

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

21       4. The department shall promulgate rules to implement and  
22 administer the Missouri empowerment scholarship accounts program  
23 including, but not limited to:

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

31       5. Any rule or portion of a rule, as that term is defined in section  
32 536.010 that is created under the authority delegated in this section  
33 shall become effective only if it complies with and is subject to all of  
34 the provisions of chapter 536, and, if applicable, section 536.028. This  
35 section and chapter 536 are nonseverable and if any of the powers  
36 vested with the general assembly pursuant to chapter 536, to review, to  
37 delay the effective date, or to disapprove and annul a rule are  
38 subsequently held unconstitutional, then the grant of rulemaking  
39 authority and any rule proposed or adopted after August 28, 2017, shall  
40 be invalid and void.

166.715. 1. A person commits a class A misdemeanor if they are  
2 found to have knowingly used moneys granted under section 135.714 for

3 purposes other than those provided for in sections 166.700 to 166.720.

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

166.720. 1. Sections 166.700 to 166.720 do not permit any  
2 governmental agency to exercise control or supervision over any  
3 qualified school in which a qualified student enrolls.

4       2. A qualified school that accepts a payment from a parent under  
5 sections 166.700 to 166.720 shall not be an agent of the state or federal  
6 government.

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

11       4. In any legal proceeding challenging the application of sections  
12 166.700 to 166.720 to a qualified school, the state shall bear the burden  
13 of establishing that the law is necessary and does not impose any undue  
14 burden on qualified schools.

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