

FIRST REGULAR SESSION

# HOUSE BILL NO. 362

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SCHARNHORST (Sponsor), DIECKHAUS, JONES (89),  
STREAM, LAIR, McNARY, SCHOELLER, TILLEY AND BRANDOM (Co-sponsors).

0944L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to the Missouri special needs scholarship tax credit program known as Bryce's Law.

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

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be  
2 known as section 135.1220, to read as follows:

**135.1220. 1. This section shall be known and may be cited as "Bryce's Law".**

**2. As used in this section, the following terms mean:**

3 (1) "Autism spectrum disorder", pervasive developmental disorder; Asperger  
4 syndrome; childhood disintegrative disorder; Rett syndrome; and autism;

5 (2) "Contribution", a donation of cash, stock, bonds, or other marketable  
6 securities, or real property;

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

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

9 (5) "Educational scholarships", grants to students to cover all or part of the tuition  
10 and fees at either a qualified nonpublic school or a qualified public school, including  
11 transportation;

12 (6) "Eligible student", any elementary or secondary student who attended public  
13 school in Missouri the preceding semester, or who will be attending school in Missouri for  
14 the first time, with an individualized education program, including but not limited to  
15 students who are mentally handicapped, speech and language impaired, deaf or hard of  
16 hearing, visually impaired, dual sensory impaired, physically impaired, emotionally

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

17 **handicapped, specific learning disabled, diagnosed with an autism spectrum disorder, or**  
18 **hospitalized or homebound due to illness or disability;**

19 **(7) "Parent", includes a guardian, custodian, or other person with authority to act**  
20 **on behalf of the child;**

21 **(8) "Program", the program established in this section;**

22 **(9) "Qualified school", either an accredited public elementary or secondary school**  
23 **outside of the district in which a student resides or an accredited nonpublic elementary or**  
24 **secondary school in Missouri that complies with all of the requirements of the program and**  
25 **complies with all state laws that apply to nonpublic schools regarding criminal background**  
26 **checks for employees and exclude from employment any person not permitted by state law**  
27 **to work in a nonpublic school;**

28 **(10) "Scholarship granting organization", a charitable organization which is**  
29 **exempt from federal income tax that complies with the requirements of this program and**  
30 **provides education scholarships to students attending qualified schools of their parents'**  
31 **choice, and that does not accept contributions on behalf of any eligible student from any**  
32 **taxpayer with any obligation to provide any support for the eligible student;**

33 **(11) "State tax liability", in the case of a business taxpayer, any liability incurred**  
34 **by such taxpayer under chapters 143, 147, 148, and 153, excluding sections 143.191 to**  
35 **143.265 and related provisions, and in the case of an individual taxpayer, any liability**  
36 **incurred by such taxpayer under chapter 143, excluding sections 143.191 to 143.265 and**  
37 **related provisions;**

38 **(12) "Taxpayer", a person, firm, a partner in a firm, corporation, or a shareholder**  
39 **in an S corporation doing business in the state of Missouri and subject to the state income**  
40 **tax imposed by the provisions of chapter 143, or a corporation subject to the annual**  
41 **corporation franchise tax imposed by the provisions of chapter 147, or an insurance**  
42 **company paying an annual tax on its gross premium receipts in this state, or other**  
43 **financial institution paying taxes to the state of Missouri or any political subdivision of this**  
44 **state under the provisions of chapter 148, or an express company which pays an annual tax**  
45 **on its gross receipts in this state under chapter 153, or an individual subject to the state**  
46 **income tax imposed by the provisions of chapter 143, or any charitable organization which**  
47 **is exempt from federal income tax and whose Missouri unrelated business taxable income,**  
48 **if any, would be subject to the state income tax imposed under chapter 143.**

49 **3. For all tax years beginning on or after January 1, 2011, a taxpayer shall be**  
50 **allowed to claim a tax credit against the taxpayer's state tax liability in an amount equal**  
51 **to eighty percent of the amount such taxpayer contributed to a scholarship granting**

52 organization. No taxpayer shall be issued more than eight hundred thousand dollars in tax  
53 credits authorized under this section per tax year.

54 4. The amount of the tax credit claimed shall not exceed fifty percent of a  
55 taxpayer's state tax liability for the taxable year for which the credit is claimed. However,  
56 any tax credit that cannot be claimed in the taxable year the contribution was made may  
57 be carried over to the next four succeeding taxable years until the full credit has been  
58 claimed.

59 5. The director shall determine, at least annually, which organizations in this state  
60 may be classified as scholarship granting organizations. The director may require of an  
61 organization seeking to be classified as a scholarship granting organization whatever  
62 information which is reasonably necessary to make such a determination. The director  
63 shall classify an organization as a scholarship granting organization if such organization  
64 meets the definition set forth in this section.

65 6. The director shall establish a procedure by which a taxpayer can determine if  
66 an organization has been classified as a scholarship granting organization. Scholarship  
67 granting organizations shall be permitted to decline a contribution from a taxpayer.

68 7. Each scholarship granting organization shall provide information to the director  
69 concerning the identity of each taxpayer making a contribution to the scholarship granting  
70 organization who is claiming a tax credit under this section and the amount of the  
71 contribution. The director shall provide the information to the director of revenue. The  
72 director shall be subject to the confidentiality and penalty provisions of section 32.057  
73 relating to the disclosure of tax information.

74 8. The director shall annually make a determination on the number of students in  
75 Missouri with an individualized education program. Up to ten percent of these students  
76 may receive a scholarship from a scholarship granting organization in that year. The  
77 director shall publicly announce the number of special needs scholarship opportunities  
78 available each year. Once a scholarship granting organization has decided to provide a  
79 student with a scholarship, it shall promptly notify the director. The director shall keep  
80 a running tally of the number of scholarships granted in the order in which they were  
81 reported. Once the tally reaches the annual limit of eligible students, the director shall  
82 notify all of the participating scholarship granting organizations that they may not issue  
83 any more scholarships and any more receipts for contributions. If the scholarship granting  
84 organizations have not expended all of their available scholarship funds in that year at the  
85 time when the limit is reached, the available scholarship funds may be carried over into the  
86 next year. These unexpended funds shall not be counted as part of the requirement in  
87 subdivision (3) of subsection 10 of this section for that year. Any receipt for a scholarship

88 contribution issued by a scholarship granting organization before the director has publicly  
89 announced the student limit has been reached shall be valid for a taxpayer claiming a  
90 credit.

91 **9. Notwithstanding any other law to the contrary, any tax credits granted under**  
92 **this section may be assigned, transferred, sold, or otherwise conveyed without consent or**  
93 **approval. Such taxpayer, hereinafter the assignor for purposes of this section, may sell,**  
94 **assign, exchange, or otherwise transfer earned tax credits:**

95 (1) For no less than seventy-five percent of the par value of such credits; and

96 (2) In an amount not to exceed one hundred percent of annual earned credits.

97 **10. Each scholarship granting organization participating in the program shall:**

98 (1) Notify the department of its intent to provide educational scholarships to  
99 students attending qualified schools;

100 (2) Provide a department-approved receipt to taxpayers for contributions made to  
101 the organization;

102 (3) Ensure that at least ninety percent of its revenue from donations is spent on  
103 educational scholarships, and that all revenue from interest or investments is spent on  
104 educational scholarships;

105 (4) Distribute periodic scholarship payments as checks made out to a student's  
106 parent and mailed to the qualified school where the student is enrolled. The parent or  
107 guardian must endorse the check before it can be deposited;

108 (5) Cooperate with the department to conduct criminal background checks on all  
109 of its employees and board members and exclude from employment or governance any  
110 individual who might reasonably pose a risk to the appropriate use of contributed funds;

111 (6) Ensure that scholarships are portable during the school year and can be used  
112 at any qualified school that accepts the eligible student according to a parent's wishes. If  
113 a student moves to a new qualified school during a school year, the scholarship amount  
114 may be prorated;

115 (7) Demonstrate its financial accountability by:

116 (a) Submitting a financial information report for the organization that complies  
117 with uniform financial accounting standards established by the department and conducted  
118 by a certified public accountant; and

119 (b) Having the auditor certify that the report is free of material misstatements;

120 (8) Demonstrate its financial viability, if the organization is to receive donations of  
121 fifty thousand dollars or more during the school year, by filing with the department prior  
122 to the start of the school year:

123           (a) A surety bond payable to the state in an amount equal to the aggregate amount  
124 of contributions expected to be received during the school year; or

125           (b) Financial information that demonstrates the financial viability of the  
126 scholarship granting organization.

127           **11. Each scholarship granting organization shall ensure participating schools that**  
128 **accept its scholarship students shall:**

129           (1) Comply with all health and safety laws or codes that apply to nonpublic schools;

130           (2) Hold a valid occupancy permit if required by its municipality;

131           (3) Certify that it will comply with 42 U.S.C. Section 1981, as amended; and

132           (4) Provide academic accountability to parents of the students in the program by  
133 regularly reporting to the parent on the student's progress.

134           **12. Scholarship granting organizations shall not provide educational scholarships**  
135 **for students to attend any school with paid staff or board members who are relatives**  
136 **within the first degree of consanguinity or affinity.**

137           **13. A scholarship granting organization shall publicly report to the department, by**  
138 **June first of each year, the following information prepared by a certified public accountant**  
139 **regarding its grants in the previous calendar year:**

140           (1) The name and address of the scholarship granting organization;

141           (2) The total number and total dollar amount of contributions received during the  
142 previous calendar year; and

143           (3) The total number and total dollar amount of educational scholarships awarded  
144 during the previous calendar year, and the total number and total dollar amount of  
145 educational scholarships awarded during the previous year to students eligible for free and  
146 reduced lunch.

147           **14. The department shall adopt rules and regulations consistent with this section**  
148 **as necessary to implement the program.**

149           **15. The department shall provide a standardized format for a receipt to be issued**  
150 **by a scholarship granting organization to a taxpayer to indicate the value of a contribution**  
151 **received. The department shall require a taxpayer to provide a copy of this receipt when**  
152 **claiming the Missouri special needs scholarship tax credit.**

153           **16. The department shall provide a standardized format for scholarship granting**  
154 **organizations to report the information in this section.**

155           **17. The department may conduct either a financial review or audit of a scholarship**  
156 **granting organization.**

157           **18. If the department believes that a scholarship granting organization has**  
158 **intentionally and substantially failed to comply with the requirements of this section, the**

159 department may hold a hearing before the director, or his or her designee, to bar a  
160 scholarship granting organization from participating in the program. The director, or his  
161 or her designee, shall issue a decision within thirty days. A scholarship granting  
162 organization may appeal the director's decision to the administrative hearing commission  
163 for a hearing in accordance with the provisions of chapter 621.

164       **19. If the scholarship granting organization is barred from participating in the**  
165 **program, the department shall notify affected scholarship students and their parents of**  
166 **this decision within fifteen days.**

167       **20. Any rule or portion of a rule, as that term is defined in section 536.010, that is**  
168 **created under the authority delegated in this section shall become effective only if it**  
169 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
170 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**  
171 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
172 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
173 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2011,**  
174 **shall be invalid and void.**

175       **21. The department shall conduct a study of the program with funds other than**  
176 **state funds. The department may contract with one or more qualified researchers who**  
177 **have previous experience evaluating similar programs. The department may accept grants**  
178 **to assist in funding this study.**

179       **22. The study shall assess:**

180       **(1) The level of participating students' satisfaction with the program;**

181       **(2) The level of parental satisfaction with the program;**

182       **(3) The percentage of participating students who were bullied or harassed because**  
183 **of their special needs status at their resident school district compared to the percentage so**  
184 **bullied or harassed at their qualified school;**

185       **(4) The percentage of participating students who exhibited behavioral problems at**  
186 **their resident school district compared to the percentage exhibiting behavioral problems**  
187 **at their qualified school;**

188       **(5) The class size experienced by participating students at their resident school**  
189 **district and at their qualified school; and**

190       **(6) The fiscal impact to the state and resident school districts of the program.**

191       **23. The study shall be completed using appropriate analytical and behavioral**  
192 **sciences methodologies to ensure public confidence in the study.**

193       **24. The department shall provide the general assembly with a final copy of the**  
194 **evaluation of the program by December 31, 2014.**

195           **25. The public and nonpublic participating schools from which students transfer**  
196 **to participate in the program shall cooperate with the research effort by providing student**  
197 **assessment instrument scores and any other data necessary to complete this study.**

198           **26. The general assembly may require periodic updates on the status of the study**  
199 **from the department. The individuals completing the study shall make their data and**  
200 **methodology available for public review while complying with the requirements of the**  
201 **Family Educational Rights and Privacy Act, as amended.**

202           **27. Under section 23.253 of the Missouri sunset act:**

203           **(1) The provisions of the new program authorized under this section shall sunset**  
204 **automatically on December thirty-first six years after the effective date of this section**  
205 **unless reauthorized by an act of the general assembly; and**

206           **(2) If such program is reauthorized, the program authorized under this section**  
207 **shall sunset automatically on December thirty-first twelve years after the effective date of**  
208 **the reauthorization of this section; and**

209           **(3) This section shall terminate on September first of the calendar year immediately**  
210 **following the calendar year in which the program authorized under this section is sunset.**