

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 349**  
**101ST GENERAL ASSEMBLY**

0711H.03C

DANA RADEMAN MILLER, Chief Clerk

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**AN ACT**

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

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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 ten 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, and 166.720, to read as follows:

**135.712. 1. Sections 135.712 to 135.719 and sections 166.700 to 166.720 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) "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, that 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 in sections 135.712 to 135.719, derived from contributions for which a credit is claimed under sections 135.712 to 135.719;**

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

**(3) "Program", the Missouri empowerment scholarship accounts program established under sections 135.712 to 135.719 and sections 166.700 to 166.720;**

**(4) "Qualified student", the same meaning as used in section 166.700;**

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.

16 (5) "Qualifying contribution", a donation of cash, stocks, bonds, or other  
17 marketable securities for purposes of claiming a tax credit under sections 135.712 to  
18 135.719;

19 (6) "Scholarship account", a savings account created by the Missouri  
20 empowerment scholarship accounts program;

21 (7) "Taxpayer", any of the following that files a Missouri income tax return and  
22 is not a dependent of any other taxpayer:

23 (a) An individual subject to the state income tax imposed by chapter 143;

24 (b) An individual, firm, partner in a firm, corporation, or shareholder in an S  
25 corporation doing business in this state and subject to the state income tax imposed by  
26 chapter 143; or

27 (c) An express company that pays an annual tax on its gross receipts in this state  
28 under chapter 153.

135.713. 1. For all fiscal years beginning on or after July 1, 2021, any taxpayer who  
2 makes a qualifying contribution to an educational assistance organization may claim a  
3 credit against the tax otherwise due under chapter 143, other than taxes withheld under  
4 sections 143.191 to 143.265, and chapter 153 in an amount equal to one hundred percent  
5 of the amount the taxpayer contributed during the tax year for which the credit is claimed.  
6 No taxpayer shall claim a credit under sections 135.712 to 135.719 for any contribution  
7 made by the taxpayer, or an agent of the taxpayer, on behalf of the taxpayer's dependent  
8 or, in the case of a business taxpayer, on behalf of the business's agent's dependent.

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

15 3. The cumulative amount of tax credits that may be allocated to all taxpayers  
16 contributing to educational assistance organizations in any one calendar year shall not  
17 exceed fifty million dollars. If the amount of tax credits in any tax year exceeds ninety  
18 percent of the tax credits available, the amount of tax credits available shall increase by ten  
19 percent in the subsequent year. The state treasurer shall establish a procedure by which,  
20 from the beginning of the calendar year until August first, the cumulative amount of tax  
21 credits shall be allocated on a first-come, first-served basis among all educational assistance  
22 organizations. If an educational assistance organization fails to use all, or some percentage  
23 to be determined by the state treasurer, of its allocated tax credits during this period, the

24 state treasurer may reallocate these unused tax credits to those educational assistance  
25 organizations that have used all, or some percentage to be determined by the state  
26 treasurer, of their allocated tax credits during this period. The state treasurer may  
27 establish more than one period and reallocate more than once during each calendar year.  
28 The state treasurer shall establish the procedure described in this subsection in such a  
29 manner as to ensure that taxpayers can claim all the tax credits possible up to the  
30 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 accounts to  
3 qualified students;
- 4 (2) Demonstrate to the state treasurer that it is exempt from federal income tax  
5 under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- 6 (3) Provide a state treasurer-approved receipt to taxpayers for contributions made  
7 to the organization;
- 8 (4) Ensure that:
  - 9 (a) One hundred percent of its revenues from interest or investments is spent on  
10 scholarship accounts;
  - 11 (b) At least ninety percent of its revenues from qualifying contributions is spent on  
12 scholarship accounts; and
  - 13 (c) Marketing and administrative expenses do not exceed the following limits of its  
14 remaining revenue from contributions:
    - 15 a. Ten percent for the first two hundred fifty thousand dollars;
    - 16 b. Eight percent for the next five hundred thousand dollars; and
    - 17 c. Three percent thereafter;
- 18 (5) Distribute scholarship account payments either four times per year or in a single  
19 lump sum at the beginning of the year as requested by the parent of a qualified student,  
20 not to exceed a total grant amount equal to the state adequacy target as defined in section  
21 163.011 and calculated by the department of elementary and secondary education, in the  
22 form of a deposit into the scholarship account of the qualified student;
- 23 (6) Provide the state treasurer, upon request, with criminal background checks on  
24 all its employees and board members and exclude from employment or governance any  
25 individual who might reasonably pose a risk to the appropriate use of contributed funds;
- 26 (7) Demonstrate its financial accountability by:
  - 27 (a) Submitting to the state treasurer annual audit financial statements by a certified  
28 public accountant within six months of the end of the educational assistance organization's  
29 fiscal year; and

30           **(b) Having an auditor certify that the report is free of material misstatements; and**  
31           **(8) Ensure that participating students take the state achievement tests or nationally**  
32 **norm-referenced tests that measure learning gains in math and English language arts, and**  
33 **provide for value-added assessment, in grades that require testing under the statewide**  
34 **assessment system set forth in section 160.518;**

35           **(9) Allow costs of the testing requirements to be covered by the scholarships**  
36 **distributed by the educational assistance organization;**

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

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

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

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

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

50           **(a) Their level of satisfaction with the child's academic achievement, including**  
51 **academic achievement at the schools the child attends through the scholarship program**  
52 **versus academic achievement at the school previously attended;**

53           **(b) Their level of satisfaction with school safety at the schools the child attends**  
54 **through the scholarship program versus safety at the schools previously attended;**

55           **(15) Demonstrate its financial viability, if it is to receive donations of fifty thousand**  
56 **dollars or more during the school year, by filing with the state treasurer before the start**  
57 **of the school year a surety bond payable to the state in an amount equal to the aggregate**  
58 **amount of contributions expected to be received during the school year or other financial**  
59 **information that demonstrates the financial viability of the educational assistance**  
60 **organization.**

61           **2. The annual audit required under this section shall include:**

62           **(1) The name and address of the educational assistance organization;**

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

65           **(3) The total number and total dollar amount of contributions received during the**  
66 **previous calendar year; and**

67           **(4) The total number and total dollar amount of scholarship accounts opened**  
68 **during the previous calendar year.**

69           **3. The state treasurer shall:**

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

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

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

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

79           **4. An educational assistance organization may contract with private financial**  
80 **management firms to manage scholarship accounts with the supervision of the state.**

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

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

7           **3. The state treasurer or state auditor may conduct an investigation if the state**  
8 **treasurer possesses evidence of fraud committed by the educational assistance**  
9 **organization.**

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

17           **5. The state treasurer shall issue a report on the state of the program five years**  
18 **after it goes into effect. The report shall include, but is not limited to:**

19           **(1) Information regarding the finances of the educational assistance organizations;**  
20 **and**

21           **(2) Educational outcomes of qualified students.**

22           **6. (1) There is hereby created in the state treasury the "Missouri Empowerment**  
23 **Scholarship Accounts Fund", which shall consist of moneys collected under this section.**  
24 **The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and**  
25 **30.180, the state treasurer may approve disbursements. The fund shall be a dedicated**  
26 **fund, and moneys in the fund shall be used solely by the state treasurer for the purposes**  
27 **of sections 135.712 to 135.719.**

28           **(2) Notwithstanding the provisions of section 33.080 to the contrary, any moneys**  
29 **remaining in the fund at the end of the biennium shall not revert to the credit of the**  
30 **general revenue fund.**

31           **(3) The state treasurer shall invest moneys in the fund in the same manner as other**  
32 **funds are invested. Any interest and moneys earned on such investments shall be credited**  
33 **to the fund.**

34           **7. No more than two percent of the qualifying contributions may be deposited in**  
35 **the Missouri empowerment scholarship accounts fund to be used by the state treasurer for**  
36 **marketing and administrative expenses or the costs incurred in administering the program,**  
37 **whichever is less. The state treasurer shall establish procedures to ensure the percentage**  
38 **of funds for administration of the program is directed to the state treasurer in a timely**  
39 **manner with the necessary information to verify the correct amount has been transmitted.**

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

10           **2. The provisions of section 23.253 of the Missouri sunset act shall not apply to**  
11 **sections 135.712 to 135.719.**

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

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

4           **(2) "District", the same meaning as used in section 160.011;**

5           **(3) "Educational assistance organization", the same meaning as used in section**  
6 **135.712;**

- 7 (4) "Parent", the same meaning as used in section 135.712;
- 8 (5) "Private school", a school that is not a part of the public school system of the  
9 state of Missouri and that charges tuition for the rendering of elementary or secondary  
10 educational services;
- 11 (6) "Program", the same meaning as used in section 135.712;
- 12 (7) "Qualified school", any of the following entities that is incorporated in Missouri  
13 and that does not discriminate on the basis of race, color, or national origin:
- 14 (a) A charter school as defined in section 160.400;
- 15 (b) A home school as defined in section 167.031;
- 16 (c) A private school;
- 17 (d) A public school as defined in section 160.011; or
- 18 (e) A public or private virtual school;
- 19 (8) "Qualified student", any elementary or secondary school student who is a  
20 resident of this state who:
- 21 (a) Has an approved "individualized education plan" (IEP) developed under the  
22 federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq.,  
23 as amended; or
- 24 (b) Is a member of a household whose total annual income does not exceed an  
25 amount equal to two hundred percent of the income standard used to qualify for free and  
26 reduced price lunches, and meets at least one of the following qualifications:
- 27 a. Attended a public school as a full-time student for at least one semester during  
28 the previous twelve months;
- 29 b. Is a child who is eligible to begin kindergarten under sections 160.051 to 160.055;
- 30 or
- 31 c. Is attending public school in Missouri for the first time.
- 166.705. 1. A parent of a qualified student may establish a Missouri empowerment  
2 scholarship account for the student by entering into a written agreement with an  
3 educational assistance organization. The agreement shall provide that:
- 4 (1) The qualified student shall enroll in a qualified school and receive an education  
5 in at least the subjects of English language arts, mathematics, social studies, and science;
- 6 (2) Except for a qualified student who is in the custody of the state, the qualified  
7 student shall not be enrolled in a public school operated by, or a charter school located  
8 within, the qualified student's district of residence and shall release the district of residence  
9 from all obligations to educate the qualified student while the qualified student is enrolled  
10 in the program. This subdivision shall not be construed to relieve the student's district of  
11 residence from the obligation to conduct an evaluation for disabilities;

12           **(3) The qualified student shall receive a grant, in the form of moneys deposited in**  
13 **accordance with section 135.714, in the qualified student's Missouri empowerment**  
14 **scholarship account;**

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

17           **(a) Tuition or fees at a qualified school;**

18           **(b) Textbooks required by a qualified school;**

19           **(c) Educational therapies or services from a licensed or accredited practitioner or**  
20 **provider including, but not limited to, licensed or accredited paraprofessionals or**  
21 **educational aides;**

22           **(d) Tutoring services;**

23           **(e) Curriculum;**

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

25           **(g) Fees for a nationally standardized norm-referenced achievement test, advanced**  
26 **placement examinations, international baccalaureate examinations, or any examinations**  
27 **related to college or university admission;**

28           **(h) Fees for management of the Missouri empowerment scholarship account by**  
29 **firms selected by the educational assistance organization;**

30           **(i) Services provided by a public school including, but not limited to, individual**  
31 **classes and extracurricular programs;**

32           **(j) Insurance or surety bond payments as required by the state treasurer;**

33           **(k) Computer hardware or other technological devices that are used to help meet**  
34 **the qualified student's educational needs and that are approved by an educational**  
35 **assistance organization;**

36           **(l) Fees for summer education programs and specialized after-school education**  
37 **programs;**

38           **(m) Transportation costs for mileage to and from a qualified school; and**

39           **(5) Moneys deposited in the qualified student's Missouri empowerment scholarship**  
40 **account shall not be used for the following:**

41           **(a) Consumable educational supplies including, but not limited to, paper, pens,**  
42 **pencils, or markers; and**

43           **(b) Tuition at a private school located outside of the state of Missouri.**

44           **2. Missouri empowerment scholarship accounts are renewable on an annual basis**  
45 **upon request of the parent of a qualified student. Notwithstanding any changes to the**  
46 **qualified student's multidisciplinary evaluation team plan, a student who has previously**  
47 **qualified for a Missouri empowerment scholarship account shall remain eligible to apply**



48 for renewal until the student completes high school and submits scores to the state  
49 treasurer from a nationally standardized norm-referenced achievement test, advanced  
50 placement examination, international baccalaureate examination, or any examination  
51 related to college or university admission purchased with Missouri empowerment  
52 scholarship account funds.

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

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

58       5. If a qualified student withdraws from the program by enrolling in a school other  
59 than a qualified school or is disqualified from the program under the provisions of section  
60 166.710, the qualified student's Missouri empowerment scholarship account shall be closed  
61 and any remaining funds shall be returned to the educational assistance organization for  
62 redistribution to other qualified students. Under such circumstances, the obligation to  
63 provide an education for such student shall transfer back to the student's district of  
64 residence.

65       6. Any funds remaining in a qualified student's Missouri empowerment scholarship  
66 account at the end of a school year shall remain in the account and shall not be returned  
67 to the educational assistance organization. Any funds remaining in a qualified student's  
68 Missouri empowerment scholarship account upon graduation from a qualified school shall  
69 be returned to the educational assistance organization for redistribution to other qualified  
70 students.

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

      166.710. 1. Beginning in the 2023-24 school year and continuing thereafter, the  
2 state treasurer shall conduct or contract for annual audits, and may conduct or contract  
3 for random and quarterly audits as needed, of Missouri empowerment scholarship  
4 accounts to ensure compliance with the requirements of subsection 1 of section 166.705.

5       2. A parent, qualified student, or vendor may be disqualified from program  
6 participation if the state treasurer, or the state treasurer's designee, finds the party has  
7 committed an intentional program violation consisting of any misrepresentation or other  
8 act that materially violates any law or rule governing the program. The state treasurer  
9 may remove any parent or qualified student from eligibility for a Missouri empowerment  
10 scholarship account. A parent may appeal the state treasurer's decision to the

11 **administrative hearing commission. A parent may appeal the administrative hearing**  
12 **commission's decision to the circuit court of the county in which the student resides.**

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

16 **4. The state treasurer shall promulgate rules containing the following to implement**  
17 **and administer the program:**

18 **(1) Procedures for conducting examinations of use of account funds;**

19 **(2) Procedures for conducting random, quarterly, and annual reviews of accounts;**

20 **(3) Creation of an online anonymous fraud reporting service;**

21 **(4) Creation of an anonymous telephone hotline for fraud reporting; and**

22 **(5) A surety bond requirement for account holders.**

23 **5. Any rule or portion of a rule, as that term is defined in section 536.010, that is**  
24 **created under the authority delegated in this section shall become effective only if it**  
25 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
26 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**  
27 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
28 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
29 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2021,**  
30 **shall be invalid and void.**

**166.715. 1. A person commits a class A misdemeanor if the person is found to have**  
2 **knowingly used moneys granted under section 135.714 for purposes other than those**  
3 **provided for in sections 166.700 to 166.720.**

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

**166.720. 1. Sections 166.700 to 166.720 shall not be construed to permit any**  
2 **governmental agency to exercise control or supervision over any qualified school in which**  
3 **a qualified student enrolls other than a qualified school that is a public school.**

4 **2. A qualified school, other than a qualified school that is a public school, that**  
5 **accepts a payment from a parent under sections 166.700 to 166.720 shall not be considered**  
6 **an agent of the state or federal government due to its acceptance of the payment.**

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

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

13           **5. The provisions of section 23.253 of the Missouri sunset act shall not apply to**  
14 **sections 166.700 to 166.720.**

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