

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By \_\_\_\_\_

1 AMEND Senate Committee Substitute for Senate Bill No. 217, Page 4, Section 135.647, Line 92, by  
2 inserting immediately after all of said section and line the following:

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

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

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

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

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

16 (4) "Program", the Missouri empowerment scholarship accounts program established under sections  
17 135.712 to 135.719 and sections 166.700 to 166.720;

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

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

21 (7) "Scholarship account", a savings account created by the Missouri empowerment scholarship  
22 accounts program authorized by sections 166.700 to 166.720;

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

28 135.713. 1. For all fiscal years beginning on or after July 1, 2018, any taxpayer who makes a  
29 qualifying contribution to an educational assistance organization may claim a credit against the tax otherwise  
30 due under chapter 143, other than taxes withheld under sections 143.191 to 143.265, and chapter 153, in an  
31 amount equal to one hundred percent of the amount the taxpayer contributed during the tax year for which  
32 the credit is claimed. No taxpayer shall claim a credit under sections 135.712 to 135.719 for any  
33 contribution made by the taxpayer, or an agent of the taxpayer, on behalf of the taxpayer's dependent, or in  
34 the case of a business taxpayer, on behalf of the business's agent's dependent.

35 2. If the amount of the tax credit claimed exceeds the taxpayer's state tax liability for the tax year for  
36 which the credit is claimed, then the excess of the tax credit shall be considered an overpayment of the tax  
37 and refunded to the taxpayer. The state treasurer shall certify the tax credit amount to the taxpayer and to the  
38 department of revenue. All tax credits authorized under the program shall not be transferred, sold, or  
39 assigned.

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

3. The cumulative amount of tax credits that may be allocated to all taxpayers contributing to educational assistance organizations in any one calendar year shall not exceed twenty-five million dollars, which amount shall annually be adjusted by the state treasurer for inflation based on the consumer price index for all urban consumers for the Midwest region, as defined and officially recorded by the United States Department of Labor or its successor. The state treasurer shall establish a procedure by which, from the beginning of the calendar year until August first, the cumulative amount of tax credits shall be allocated on a first come, first served basis among all educational assistance organizations. If an educational assistance organization fails to use all, or some percentage to be determined by the state treasurer, of its allocated tax credits during this predetermined period of time, the state treasurer may reallocate these unused tax credits to those educational assistance organizations that have used all, or some percentage to be determined by the state treasurer, of their allocated tax credits during this predetermined period of time. The state treasurer may establish more than one period of time and reallocate more than once during each calendar year. The state treasurer shall establish the procedure described in this subsection in such a manner as to ensure that taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits available for the calendar year.

135.714. 1. Each educational assistance organization shall:

(1) Notify the state treasurer of its intent to provide scholarship accounts to qualified students;

(2) Demonstrate to the state treasurer that it is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(3) Provide a state treasurer-approved receipt to taxpayers for contributions made to the organization;

(4) Ensure that:

(a) One hundred percent of its revenues from interest or investments is spent on scholarship accounts;

(b) At least ninety percent of its revenues from qualifying contributions is spent on scholarship accounts; and

(c) Marketing and administrative expenses shall not exceed the following limits of its remaining revenue from contributions: ten percent for the first two hundred fifty thousand dollars, eight percent for the next five hundred thousand dollars, and three percent thereafter;

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

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

(7) Demonstrate its financial accountability by:

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

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

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

2. The audit shall include:

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

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

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

(4) The total number and total dollar amount of scholarship accounts opened during the previous

1 calendar year.

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

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

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

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

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

17 5. The state treasurer shall issue a report on the state of the Missouri empowerment scholarship  
 18 accounts program five years 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; and

20 (2) Educational outcomes of qualified students.

21 6. (1) There is hereby created in the state treasury the "Missouri Empowerment Scholarship  
 22 Accounts Fund", which shall consist of money collected under this section. The state treasurer shall be  
 23 custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve  
 24 disbursements. The fund shall be a dedicated fund and money in the fund shall be used solely by the state  
 25 treasurer for the purpose of sections 135.712 to 135.719.

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

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

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

36 135.719. 1. The state treasurer and the department of revenue may promulgate rules to implement  
 37 the provisions of sections 135.712 to 135.719. Any rule or portion of a rule, as that term is defined in  
 38 section 536.010 that is created under the authority delegated in this section shall become effective only if it  
 39 complies with and is subject to all of the provisions of chapter 536, and, if applicable, section 536.028. This  
 40 section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant  
 41 to chapter 536, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held  
 42 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28,  
 43 2017, shall be invalid and void.

44 2. The provisions of section 23.253 of the Missouri sunset act shall not apply to sections 135.712 to  
 45 135.719 and sections 166.700 to 166.720.

46 166.700. As used in sections 166.700 to 166.720, the following terms mean:

47 (1) "Child with a disability":

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

51 a. An autism spectrum disorder;

52 b. Developmental delay;

53 c. Emotional disability;

- 1 d. Hearing impairment;
- 2 e. Other health impairments;
- 3 f. Specific learning disability;
- 4 g. Mild, moderate, or severe intellectual disability;
- 5 h. Multiple disabilities;
- 6 i. Multiple disabilities with severe sensory impairment;
- 7 j. Orthopedic impairment;
- 8 k. Preschool severe delay;
- 9 l. Speech or language impairment;
- 10 m. Traumatic brain injury; or
- 11 n. Visual impairment; and
- 12 (b) Shall not include a child if the determining factor for the classification is one or more of the
- 13 following:
  - 14 a. A lack of appropriate instruction in reading, including essential components of reading
  - 15 instruction;
  - 16 b. A lack of appropriate instruction in mathematics; or
  - 17 c. Difficulty in writing, speaking, or understanding the English language due to an environmental
  - 18 background in which a language other than English is primarily or exclusively used;
  - 19 (2) "Curriculum", a complete course of study for a particular content area or grade level, including
  - 20 any supplemental materials;
  - 21 (3) "Educational assistance organization", the same meaning as used in section 135.712;
  - 22 (4) "Parent", the same meaning as used in section 135.712;
  - 23 (5) "Private school", a school that is not a part of the public school system of the state of Missouri
  - 24 and that charges tuition for the rendering of elementary or secondary educational services;
  - 25 (6) "Program", the Missouri empowerment scholarship accounts program;
  - 26 (7) "Qualified school", a home school as defined in section 167.031, a private school as defined in
  - 27 this subsection, a public school as defined in section 160.011, or a public or private virtual school that is
  - 28 located in Missouri and that does not discriminate on the basis of race, color, or national origin;
  - 29 (8) "Qualified student", a resident of this state who:
    - 30 (a) Is any of the following:
      - 31 a. Identified by a district as a child with a disability;
      - 32 b. A child with a disability who is eligible to receive services from a school district under the
      - 33 Individuals with Disabilities Education Act;
      - 34 c. A child of a parent in active military service;
      - 35 d. A child who is a ward of the juvenile court and who is residing with a prospective permanent
      - 36 placement and for whom the case plan is adoption or permanent guardianship; or
      - 37 e. A child who was a ward of the juvenile court and who achieved permanency through adoption
      - 38 permanent guardianship; and
      - 39 (b) Did any of the following:
        - 40 a. Attended a public school as a full-time student for at least one semester from the previous twelve
        - 41 months and who transferred from a public school under a contract to participate in the Missouri
        - 42 empowerment scholarship accounts program;
        - 43 b. Previously participated in the Missouri empowerment scholarship account program; or
        - 44 c. Is a child who is eligible to begin kindergarten under sections 160.051 to 160.055.
    - 45 166.705. 1. A parent of a qualified student may establish a Missouri empowerment scholarship
    - 46 account for the student by entering into a written agreement with an educational assistance organization. The
    - 47 agreement shall provide that:
      - 48 (1) The qualified student shall enroll in a qualified school and receive an education in at least the
      - 49 subjects of reading, grammar, mathematics, social studies, and science;
      - 50 (2) The qualified student shall not be enrolled in a school operated by the qualified student's district
      - 51 of residence or a charter school and shall release the district of residence from all obligations to educate the
      - 52 qualified student while the qualified student is enrolled in the program; except that, this subdivision shall not
      - 53 relieve the student's district of residence from the obligation to conduct an evaluation for disabilities;

1       (3) The qualified student shall receive a grant, in the form of money deposited pursuant to section  
 2 135.714, in the qualified student's Missouri empowerment scholarship account;

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

5       (a) Tuition or fees at a qualified school;

6       (b) Textbooks required by a qualified school;

7       (c) Educational therapies or services for the qualified student from a licensed or accredited  
 8 practitioner or provider, including licensed or accredited paraprofessionals or educational aides;

9       (d) Tutoring services provided by a tutor accredited by a state, regional, or national accrediting  
 10 organization;

11       (e) Curriculum;

12       (f) Tuition or fees for a nonpublic online learning program;

13       (g) Fees for a nationally standardized norm-referenced achievement test, advanced placement  
 14 examinations, international baccalaureate examinations, or any exams related to college or university  
 15 admission;

16       (h) Fees for management of the empowerment scholarship account by firms selected by the  
 17 educational assistance organization;

18       (i) Services provided by a public school, including individual classes and extracurricular programs;

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

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

22       (l) Fees for summer education programs and specialized after-school education programs;

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

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

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

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

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

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

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

45       6. Any funds remaining in a qualified student's scholarship account at the end of a school year shall  
 46 remain in the account and shall not be returned to the educational assistance organization. Any funds  
 47 remaining in a qualified student's scholarship account upon graduation from a qualified school shall be  
 48 returned to the educational assistance organization for redistribution to other qualified students.

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

51       8. Any qualified student under subparagraph d of paragraph (a) of subdivision (10) of section  
 52 166.700 who receives a scholarship under the provisions of this section shall continue to be eligible to  
 53 receive his or her scholarship upon a legal adoption.

166.710. 1. Beginning in the 2019-2020 school year, the state treasurer shall conduct or contract for annual audits of empowerment scholarship accounts to ensure compliance with the requirements of subsection 1 of section 166.705. The state treasurer shall also conduct or contract for random, quarterly, and annual audits of empowerment scholarship accounts as needed to ensure compliance with the requirements of subsection 1 of section 166.705.

2. A parent or qualified student or vendor may be disqualified from program participation if the state treasurer, or his or her designee, finds the party has committed an intentional program violation consisting of any misrepresentation or other act that materially violates any law or rule governing the program. The state treasurer may remove any parent or qualified student from eligibility for a Missouri empowerment scholarship program account. A parent may appeal the state treasurer's decision to the administrative hearing commission. A parent may appeal the administrative hearing commission's decision to the circuit court of the county in which the student resides.

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

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

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

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

(3) Creating an online anonymous fraud reporting service;

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

(5) A surety bond requirement for account holders.

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

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

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

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

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

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

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

166.725. The provisions of sections 135.712 to 135.719 and sections 166.700 to 166.720 shall be effective in any fiscal year immediately subsequent to any fiscal year in which the amount appropriated and expended for subsections 1 and 2 of section 163.031 is equal to or exceeds the amount necessary to fund the entire entitlement calculation determined by subsections 1 and 2 of section 163.031 and the amount appropriated and expended for pupil transportation under section 163.161 equals or exceeds twenty-one percent of the allowable costs of providing pupil transportation as provided in said section and shall remain effective in all school years thereafter, irrespective of the amount appropriated for subsections 1 and 2 of section 163.031 and under section 163.161 in any succeeding year."; and

- 1 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.