

HOUSE BILL No. 2367

By By Committee on Taxation

3-3

1 AN ACT concerning schools; enacting the Kansas education liberty
2 program act; providing for educational scholarships; authorizing a tax
3 credit.

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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. The provisions of sections 1 through 6, and amendments
7 thereto, shall be known and may be cited as the Kansas education liberty
8 program act.

9 Sec. 2. As used in sections 1 through 6, and amendments thereto:

10 (a) "At-risk pupils" shall have the meaning ascribed thereto in
11 K.S.A. 72-6407, and amendments thereto.

12 (b) "Base state aid per pupil" shall have the meaning ascribed
13 thereto in K.S.A. 72-6410, and amendments thereto.

14 (c) "Contributions" means monetary gifts or donations and in-kind
15 contributions, gifts or donations that have an established market value.

16 (d) "Department" means the Kansas department of revenue.

17 (e) "Educational scholarship" means a grant to eligible students to
18 cover all or a portion of the costs of tuition, fees and expenses of the
19 qualified school.

20 (f) "Eligible student" means a child who: (1) Is a member of a
21 household whose total annual income during the year prior to receiving
22 an educational scholarship under this program does not exceed an amount
23 equal to 3.5 times the income standard used to qualify for free meals
24 under the national school lunch act or has received an educational
25 scholarship under this program and has not graduated from high school or
26 reached 21 years of age; (2) resides in Kansas while receiving an
27 educational scholarship; and (3) was enrolled in a public school in the
28 previous school year or is eligible to enter a public school in the school
29 year in which an educational scholarship is first sought for the child.

30 (g) "Low-income eligible student" means a child who is an eligible
31 student, as defined by subsection (f), and is eligible for free meals under
32 the national school lunch act.

33 (h) "Parent" includes a guardian, custodian or other person with
34 authority to act on behalf of the child.

35 (i) "Program" means the Kansas education liberty program
36 established in sections 1 through 6, and amendments thereto.

1 (j) "Qualified school" means any nonpublic elementary or secondary
2 school that complies with the requirements of the program and is
3 accredited by the state board of education.

4 (k) "Scholarship granting organization" means an organization that
5 complies with the requirements of this program and provides educational
6 scholarships to students attending qualified schools of their parents'
7 choice.

8 (l) "Secretary" means the secretary of revenue.

9 (m) "Special educational eligible student" means a child who is an
10 eligible student, as defined by subsection (f), and is an exceptional child
11 who receives special education services in the state of Kansas and has an
12 individualized education plan, as defined in K.S.A. 72-962, and
13 amendments thereto, in effect.

14 Sec. 3. (a) There is hereby established the Kansas education liberty
15 program. The program shall provide eligible students with an
16 opportunity to attend qualified schools of their parents' choice by
17 receiving scholarships funded by taxpayer contributions, a portion of
18 which is eligible for a tax credit pursuant to section 6, and amendments
19 thereto.

20 (b) The state board of education shall adopt rules and regulations
21 consistent with this act as necessary to implement and administer the
22 program.

23 (c) Each scholarship granting organization shall issue a receipt, in a
24 form prescribed by the secretary, to each contributing taxpayer indicating
25 the value of the contribution received. Each taxpayer shall provide a
26 copy of such receipt when claiming the tax credit established in section 6,
27 and amendments thereto.

28 (d) If the state board of education establishes that the scholarship
29 granting organization has substantially failed to comply with the
30 requirements of the program, the state board of education may bar that
31 scholarship granting organization from continued participation in the
32 program. If the state board of education bars the scholarship granting
33 organization from continued participation in the program, the state board
34 of education shall notify the secretary, the affected eligible students and
35 their parents of this decision in due course. Upon receipt of such
36 notification by the state board of education, the secretary shall bar that
37 scholarship granting organization from continued participation in the
38 program.

39 (e) If there is evidence of fraud, the state board of education shall
40 have the authority to conduct a financial review or an audit of the
41 scholarship granting organization that is related to the evidence.

42 Sec. 4. (a) To be eligible to participate in the program, a scholarship
43 granting organization shall comply with the following:

1 (1) The scholarship granting organization shall notify the secretary
2 and the state board of education of the scholarship granting organization's
3 intent to provide educational scholarships to students attending qualified
4 schools;

5 (2) in accordance with the rules and regulations established by the
6 secretary and the state board of education, the scholarship granting
7 organization shall provide evidence that the scholarship granting
8 organization is exempt from federal income taxation pursuant to section
9 501(c)(3) of the federal internal revenue code of 1986 to the state board
10 of education;

11 (3) upon receipt of contributions in an aggregate amount or value in
12 excess of \$50,000, during a school year, a scholarship granting
13 organization shall file with the state board of education either: (A) A
14 surety bond payable to the state in an amount equal to the aggregate
15 amount of contributions expected to be received during the school year;
16 or (B) financial information demonstrating the scholarship granting
17 organization's ability to pay an aggregate amount equal to the amount of
18 the contributions expected to be received during the school year, which
19 must be reviewed and approved of in writing by the state board of
20 education;

21 (4) scholarship granting organizations that provide other nonprofit
22 services in addition to providing educational scholarships shall not
23 commingle contributions made under the program with other
24 contributions made to such organization. A scholarship granting
25 organization under this paragraph shall also file with the state board of
26 education, prior to the commencement of each school year, either: (A) A
27 surety bond payable to the state in an amount equal to the aggregate
28 amount of contributions expected to be received during the school year;
29 or (B) financial information demonstrating the nonprofit organization's
30 ability to pay an aggregate amount equal to the amount of the
31 contributions expected to be received during the school year, which must
32 be reviewed and approved of in writing by the state board of education;

33 (5) the scholarship granting organization shall ensure that each
34 qualified school receiving educational scholarships from the scholarship
35 granting organization is in compliance with the requirements of the
36 program and has maintained its accreditation with the state board of
37 education; and

38 (6) if a scholarship granting organization decides to limit the number
39 or type of qualified schools who will receive educational scholarships, the
40 scholarship granting organization shall provide, in writing, to any
41 contributor and the state board of education the name or names of those
42 qualified schools.

43 (b) Any scholarship granting organization shall not provide

1 educational scholarships for students to attend any qualified school with
2 paid staff or paid board members, or relatives thereof, in common with
3 the scholarship granting organization.

4 (c) The scholarship granting organization shall disperse 90% of
5 contributions received pursuant to the program to eligible students in the
6 form of educational scholarships within 36 months of receipt of such
7 contributions. If such contributions have not been dispersed within the
8 applicable 36-month time period, then the scholarship granting
9 organization shall not accept new contributions until 90% of the received
10 contributions have been dispersed in the form of educational
11 scholarships. Any income earned from contributions must be dispersed in
12 the form of educational scholarships.

13 (d) Prior to the commencement of each school year, a scholarship
14 granting organization shall provide educational scholarships to first-time
15 recipients in the following order:

16 (1) To low-income eligible students: (A) in a number proportional
17 to the percentage of at-risk pupils in the district where the scholarship
18 granting organization provides the majority of its scholarships; and (B) in
19 an amount equal to 90% or less of the amount of base state aid per pupil.

20 (2) To special educational eligible students in an amount equal to
21 150% or less of the amount of base state aid per pupil.

22 (3) To eligible students: (A) in a number proportional to the
23 percentage of students who are neither considered at-risk pupils nor
24 pupils receiving special education and related services in the district
25 where the scholarship granting organization provides the majority of its
26 scholarships; and (B) in an amount equal to 90% or less of the amount of
27 base state aid per pupil.

28 (e) A scholarship granting organization shall make payments of an
29 educational scholarship to the qualified school on behalf of the eligible
30 student. Payment shall be made by check made payable to both the
31 parent and the qualified school. If an eligible student transfers to a new
32 qualified school during a school year, the scholarship granting
33 organization shall pay a prorated amount to the original qualified school
34 and the new qualified school based on the student's attendance.

35 (f) By June 1 of each year, a scholarship granting organization shall
36 submit a report to the state board of education for the educational
37 scholarships provided in the immediately preceding 12 months submitted
38 in a form and manner as prescribed by the state board of education. Such
39 report shall be in a form and manner as prescribed by the state board of
40 education, approved and signed by a certified public accountant, and shall
41 contain the following information:

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

43 (2) the total number and total dollar amount of contributions

1 received during the 12-month reporting period; and

2 (3) the total number and total dollar amount of educational
3 scholarships awarded during the 12-month reporting period, the total
4 number and total dollar amount of educational scholarships awarded
5 during the 12-month reporting period to low-income eligible students, the
6 total number and total dollar amount of educational scholarships awarded
7 during the 12-month reporting period to special educational eligible
8 students, and the percentage of first-time recipients of educational
9 scholarships who were continuously enrolled in a public school during
10 the 12-month reporting period.

11 Sec. 5. To be eligible to participate in the program, a qualified
12 school receiving educational scholarships from a scholarship granting
13 organization shall comply with the following:

14 (a) A qualified school shall be required to operate in Kansas and
15 comply with all state laws that apply to an accredited nonpublic school
16 regarding criminal background checks for employees;

17 (b) a qualified school shall exclude from employment, any persons
18 not permitted by state law to work in an accredited nonpublic school; and

19 (c) a qualified school shall comply with all health and safety
20 regulations.

21 Sec. 6. (a) There shall be allowed a credit against the income tax
22 liability imposed upon a taxpayer pursuant to the Kansas income tax act,
23 the privilege tax liability imposed upon a taxpayer pursuant to the
24 privilege tax imposed upon any national banking association, state bank,
25 trust company or savings and loan association pursuant to article 11 of
26 chapter 79 of the Kansas Statutes Annotated, and amendments thereto,
27 and the premium tax liability imposed upon a taxpayer pursuant to the
28 premiums tax and privilege fees imposed upon an insurance company
29 pursuant to K.S.A. 40-252, and amendments thereto, as follows:

30 (1) For tax year 2011, an amount equal to 20% of the amount
31 contributed to a scholarship granting organization authorized pursuant to
32 section 1 et seq., and amendments thereto;

33 (2) for tax year 2012, an amount equal to 30% of the amount
34 contributed to any such scholarship granting organization;

35 (3) for tax year 2013, an amount equal to 40% of the amount
36 contributed to any such scholarship granting organization; and

37 (4) for tax year 2014, and all tax years thereafter, an amount equal to
38 50% of the amount contributed to any such scholarship granting
39 organization.

40 (b) The credit shall be claimed and deducted from the taxpayer's tax
41 liability during the tax year in which the contribution was made to any
42 such scholarship granting organization.

43 (c) For tax years 2011 through 2013, in no event shall the total

1 amount of credits allowed under this section exceed \$10,000,000 for any
2 one fiscal year.

3 (d) If the amount of any such tax credit claimed by a taxpayer
4 exceeds the taxpayer's income, privilege or premium tax liability, such
5 excess amount may be carried over for deduction from the taxpayer's
6 income, privilege or premium tax liability in the next succeeding year or
7 years until the total amount of the credit has been deducted from tax
8 liability, except that no such credit shall be carried over for deduction
9 after the third taxable year succeeding the tax year in which the
10 contribution was made to any such scholarship granting organization.

11 (e) No credit under this section shall be claimed by a taxpayer who
12 may be claimed as a dependent by another taxpayer for federal income
13 tax purposes.

14 (f) The secretary shall adopt rules and regulations regarding filing of
15 documents that support the amount of credit claimed pursuant to this
16 section.

17 Sec. 7. This act shall take effect and be in force from and after its
18 publication in the statute book.

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