

HOUSE BILL No. 2767

By Committee on Taxation

2-23

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

4

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

6 Section 1. The provisions of sections 1 through 6, and
7 amendments thereto, shall be known and may be cited as the Kansas
8 education liberty 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 K.S.A.
11 72-6407, and amendments thereto;

12 (b) "adjusted enrollment" means enrollment, as defined by subsection
13 (j), adjusted by adding: (1) At-risk pupil weighting, in accordance with
14 K.S.A. 72-6414, and amendments thereto; (2) high density at-risk pupil
15 weighting, in accordance with K.S.A. 2011 Supp. 72-6455, and
16 amendments thereto; and (3) high enrollment weighting, in accordance
17 with K.S.A. 2011 Supp. 72-6442b, and amendments thereto;

18 (c) "base state aid per pupil" shall have the meaning ascribed thereto
19 in K.S.A. 72-6410, and amendments thereto;

20 (d) "contributions" means monetary gifts or donations and in-kind
21 contributions, gifts or donations that have an established market value;

22 (e) "department" means the Kansas department of revenue;

23 (f) "declining enrollment" shall have the meaning ascribed thereto in
24 subsection (a)(2) of K.S.A. 2011 Supp. 72-6451, and amendments thereto;

25 (g) "educational scholarship" means a grant to eligible students to
26 cover all or a portion of the costs of tuition, fees and expenses of a
27 qualified school;

28 (h) "eligible public school" means a public school located in a school
29 district that was assigned a high density at-risk pupil weighting, as defined
30 by K.S.A. 72-6407, and amendments thereto, but not a low enrollment
31 weighting, as defined by K.S.A. 72-6407, and amendments thereto, in
32 school year 2012-2013;

33 (i) "eligible student" means a child who: (1) Is a member of a
34 household whose total annual income during the year prior to receiving an
35 educational scholarship under this program does not exceed an amount
36 equal to 3.5 times the income standard used to qualify for free meals under

1 the national school lunch act or has received an educational scholarship
2 under this program and has not graduated from high school or reached 21
3 years of age; (2) resides in Kansas while receiving an educational
4 scholarship; and (3) was enrolled in an eligible public school in the
5 previous school year or is eligible to enter an eligible public school in the
6 school year in which an educational scholarship is first sought for the child
7 and the child is under the age of seven years and is a resident of an eligible
8 public school district;

9 (j) "enrollment" shall have the meaning ascribed thereto in K.S.A. 72-
10 6407, and amendments thereto;

11 (k) "low-income eligible student" means a child who is an eligible
12 student, as defined by subsection (i), and is eligible for free meals under
13 the national school lunch act;

14 (l) "parent" includes a guardian, custodian or other person with
15 authority to act on behalf of the child;

16 (m) "program" means the Kansas education liberty program
17 established in sections 1 through 6, and amendments thereto;

18 (n) "qualified school" means any nonpublic elementary or secondary
19 school that complies with the requirements of the program and is
20 accredited by either the state board, independent schools association of the
21 central states or independent schools association of the southwest;

22 (o) "scholarship granting organization" means an organization that
23 complies with the requirements of this program and provides educational
24 scholarships to students attending qualified schools of their parents'
25 choice;

26 (p) "school year" shall have the meaning ascribed thereto in K.S.A.
27 72-6408, and amendments thereto;

28 (q) "secretary" means the secretary of revenue;

29 (r) "special educational eligible student" means a child who is an
30 eligible student, as defined by subsection (i), and is an exceptional child
31 who receives special education services in the state of Kansas and has an
32 individualized education plan, as defined in K.S.A. 72-962, and
33 amendments thereto, in effect; and

34 (s) "state board" means the state board of education.

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

40 (b) Each scholarship granting organization shall issue a receipt, in a
41 form prescribed by the secretary, to each contributing taxpayer indicating
42 the value of the contribution received. Each taxpayer shall provide a copy
43 of such receipt when claiming the tax credit established in section 6, and

1 amendments thereto.

2 (c) Prior to awarding an educational scholarship to an eligible
3 student, unless such student is under the age of seven years, the
4 scholarship granting organization shall receive written verification from
5 the state board that such student is an eligible student under this program.

6 (d) Upon receipt of information in accordance with subsection (a)(2)
7 of section 4, and amendments thereto, the state board shall inform the
8 scholarship granting organization if such student has already been
9 designated to receive an educational scholarship by another scholarship
10 granting organization.

11 (e) In each school year, each eligible student under this program shall
12 not receive more than one educational scholarship under this program.

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

15 (1) The scholarship granting organization shall notify the secretary
16 and the state board of the scholarship granting organization's intent to
17 provide educational scholarships to students attending qualified schools;

18 (2) upon granting an educational scholarship to an eligible student,
19 the scholarship granting organization shall report such information to the
20 state board;

21 (3) the scholarship granting organization shall provide verification to
22 the secretary that the scholarship granting organization is exempt from
23 federal income taxation pursuant to section 501(c)(3) of the federal
24 internal revenue code of 1986;

25 (4) upon receipt of contributions in an aggregate amount or value in
26 excess of \$50,000, during a school year, a scholarship granting
27 organization shall file with the state board either: (A) A surety bond
28 payable to the state in an amount equal to the aggregate amount of
29 contributions expected to be received during the school year; or (B)
30 financial information demonstrating the scholarship granting
31 organization's ability to pay an aggregate amount equal to the amount of
32 the contributions expected to be received during the school year, which
33 must be reviewed and approved of in writing by the state board;

34 (5) scholarship granting organizations that provide other nonprofit
35 services in addition to providing educational scholarships shall not
36 commingle contributions made under the program with other contributions
37 made to such organization. A scholarship granting organization under this
38 subsection shall also file with the state board, prior to the commencement
39 of each school year, either: (A) A surety bond payable to the state in an
40 amount equal to the aggregate amount of contributions expected to be
41 received during the school year; or (B) financial information
42 demonstrating the nonprofit organization's ability to pay an aggregate
43 amount equal to the amount of the contributions expected to be received

1 during the school year, which must be reviewed and approved of in writing
2 by the state board;

3 (6) the scholarship granting organization shall ensure that each
4 qualified school receiving educational scholarships from the scholarship
5 granting organization is in compliance with the requirements of the
6 program and has maintained its accreditation either with the state board,
7 independent schools association of the central states or independent
8 schools association of the southwest;

9 (7) at the end of the calendar year, the scholarship granting
10 organization shall have its accounts examined and audited by a certified
11 public accountant. Such audit shall include, but not be limited to,
12 information verifying that the educational scholarships awarded by the
13 scholarship granting organization were distributed to the eligible students
14 determined by the state board under subsection (c) of section 3, and
15 amendments thereto, and information specified in section 4, and
16 amendments thereto. Prior to filing a copy of the audit with the state board,
17 such audit shall be duly verified and certified by a certified public
18 accountant; and

19 (8) if a scholarship granting organization decides to limit the number
20 or type of qualified schools who will receive educational scholarships, the
21 scholarship granting organization shall provide, in writing, the name or
22 names of those qualified schools to any contributor and the state board.

23 (b) Any scholarship granting organization shall not provide
24 educational scholarships for students to attend any qualified school with
25 paid staff or paid board members, or relatives thereof, in common with the
26 scholarship granting organization.

27 (c) The scholarship granting organization shall disperse not less than
28 90% of contributions received pursuant to the program to eligible students
29 in the form of educational scholarships within 36 months of receipt of such
30 contributions. If such contributions have not been dispersed within the
31 applicable 36-month time period, then the scholarship granting
32 organization shall not accept new contributions until 90% of the received
33 contributions have been dispersed in the form of educational scholarships.
34 Any income earned from contributions must be dispersed in the form of
35 educational scholarships.

36 (d) Prior to the commencement of each school year, a scholarship
37 granting organization shall provide educational scholarships to first-time
38 recipients in accordance with the requirements of this subsection.

39 (1) The number of new educational scholarships awarded each school
40 year shall be provided in the following order:

41 (A) To low-income or special educational eligible students: (i) In a
42 number not less than the proportion to the percentage of at-risk pupils in
43 the district where the residence of the low-income eligible student is

1 located plus 10%; and (ii) in an amount equal to 75% of the product of the
2 adjusted enrollment multiplied by the base state aid per pupil; and

3 (B) any remaining educational scholarships not previously provided
4 under subsection (d)(1)(A) shall be provided to eligible students in an
5 amount equal to 75% of the base state aid per pupil.

6 (2) The total number of new educational scholarships awarded each
7 school year under subsection (d)(1) shall be limited to the following:

8 (A) If the district does not have a declining enrollment, the total
9 number of educational scholarships shall not exceed an amount equal to
10 2% of the previous year's enrollment of the district where the residence of
11 the eligible student is located;

12 (B) if the district has a declining enrollment, the total number of
13 educational scholarships shall not exceed an amount equal to 1% of the
14 previous year's enrollment of the district where the residence of the
15 eligible student is located; and

16 (C) educational scholarships provided to eligible students under the
17 age of seven years shall not exceed an amount equal to 8% of the total
18 number of educational scholarships provided under this subsection in the
19 current school year.

20 (e) A scholarship granting organization shall direct payments of an
21 educational scholarship to the qualified school on behalf of the eligible
22 student. Payment shall be made by check made payable to both the parent
23 and the qualified school. If an eligible student transfers to a new qualified
24 school during a school year, the scholarship granting organization shall
25 direct payment in a prorated amount to the original qualified school and
26 the new qualified school based on the eligible student's attendance.

27 (f) By June 1 of each year, a scholarship granting organization shall
28 submit a report to the state board for the educational scholarships provided
29 in the immediately preceding 12 months. Such report shall be in a form
30 and manner as prescribed by the state board, approved and signed by a
31 certified public accountant, and shall contain the following information:

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

33 (2) the name and address of each eligible student receiving an
34 educational scholarship by the scholarship granting organization;

35 (3) the total number and total dollar amount of contributions received
36 during the 12-month reporting period; and

37 (4) the total number and total dollar amount of educational
38 scholarships awarded during the 12-month reporting period, the total
39 number and total dollar amount of educational scholarships awarded
40 during the 12-month reporting period to low-income eligible students, the
41 total number and total dollar amount of educational scholarships awarded
42 during the 12-month reporting period to special educational eligible
43 students and the percentage of first-time recipients of educational

1 scholarships who were continuously and previously enrolled in a public
2 school during the 12-month reporting period.

3 Sec. 5. (a) (1) To qualify for the tax credit allowed by this act, each
4 tax year the scholarship granting organization shall apply to the state board
5 for a certification that the following requirements were met:

6 (A) That the scholarship granting organization is in substantial
7 compliance with the program based on information received in the annual
8 audit and yearly report filed by the scholarship granting organization with
9 the state board; and

10 (B) that the qualified schools receiving educational scholarships from
11 the scholarship granting organization are accredited by either the state
12 board, independent schools association of the central states or independent
13 schools association of the southwest.

14 (2) The state board shall prescribe the form of the application, which
15 shall include, but not be limited to, the information set forth in subsection
16 (a)(1).

17 (b) If the state board determines that the requirements under this
18 section were met by the scholarship granting organization, the state board
19 shall issue a certificate of compliance to the director of taxation.

20 (c) The state board shall adopt rules and regulations to implement the
21 provisions of this section.

22 Sec. 6. (a) There shall be allowed a credit against the income tax
23 liability imposed upon a taxpayer pursuant to the Kansas income tax act,
24 the privilege tax liability imposed upon a taxpayer pursuant to the
25 privilege tax imposed upon any national banking association, state bank,
26 trust company or savings and loan association pursuant to article 11 of
27 chapter 79 of the Kansas Statutes Annotated, and amendments thereto, and
28 the premium tax liability imposed upon a taxpayer pursuant to the
29 premiums tax and privilege fees imposed upon an insurance company
30 pursuant to K.S.A. 40-252, and amendments thereto, for tax years
31 commencing after December 31, 2012, an amount equal to 90% of the
32 amount contributed to a scholarship granting organization authorized
33 pursuant to section 1 *et seq.*, and amendments thereto.

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

37 (c) If the amount of any such tax credit claimed by a taxpayer
38 exceeds the taxpayer's income, privilege or premium tax liability, such
39 excess amount may be carried over for deduction from the taxpayer's
40 income, privilege or premium tax liability in the next succeeding year or
41 years until the total amount of the credit has been deducted from tax
42 liability, except that no such credit shall be carried over for deduction after
43 the third taxable year succeeding the tax year in which the contribution

1 was made to any such scholarship granting organization.

2 (d) No credit under this section shall be claimed by a taxpayer who
3 may be claimed as a dependent by another taxpayer for federal income tax
4 purposes.

5 (e) The secretary shall adopt rules and regulations regarding filing of
6 documents that support the amount of credit claimed pursuant to this
7 section.

8 Sec. 7. This act shall take effect and be in force from and after
9 January 1, 2013 and its publication in the statute book.

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