

HOUSE BILL No. 2664

By Representative Kiegerl

2-8

1 AN ACT creating the Kansas empowerment scholarship act; amending
2 K.S.A. 2011 Supp. 72-6407 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 New Section 1. As used in sections 1 through 6, and amendments
6 thereto, unless the context otherwise requires:

7 (a) "Account" means a Kansas empowerment scholarship account.

8 (b) "Department" means the Kansas department of education.

9 (c) "Exceptional child" has the same meaning ascribed thereto in
10 K.S.A. 72-962, and amendments thereto, but shall not include gifted
11 children, as that term is defined in K.S.A. 72-962, and amendments
12 thereto.

13 (d) "Individualized education plan" or "IEP" has the same meaning
14 ascribed thereto in K.S.A. 72-962, and amendments thereto.

15 (e) "Parent" includes a guardian, custodian or other person with
16 authority to act on behalf of the child.

17 (f) "Postsecondary institution" means any public or private university,
18 municipal university, community college, technical college and career
19 technical education school, and includes any entity resulting from the
20 consolidation or affiliation of any two or more of such postsecondary
21 educational institutions.

22 (g) "Program" means the Kansas empowerment scholarship program
23 established by section 2, and amendments thereto.

24 (h) "Qualified school" means any elementary or secondary school, or
25 other institution located in this state that is operated by an entity other
26 than a school district for the purpose of educating exceptional children,
27 and which complies with all nondiscrimination policies set forth in 42
28 U.S.C. § 1981.

29 (i) "Qualified student" means an exceptional child who has in effect
30 or is eligible for an individualized education plan, and who: (1) Was
31 enrolled in public school during the previous school year; or (2)
32 participated in the Kansas empowerment scholarship program during the
33 previous school year and whose parent renews the empowerment
34 scholarship program agreement in accordance with section 2, and
35 amendments thereto.

36 (j) "Resident school district" means the school district in which the

1 qualified student resides.

2 (k) "State board" means the state board of education.

3 New Sec. 2. (a) There is hereby established the Kansas
4 empowerment scholarship program. The program shall be administered by
5 the department. The department shall establish a Kansas empowerment
6 scholarship account for each qualified student whose parent satisfies the
7 requirements of sections 1 through 6, and amendments thereto. Such
8 accounts are established to provide options for the education of qualified
9 students in this state.

10 (b) In order to establish an account, the parent of a qualified student
11 shall enter into a written agreement with the department. Such agreement
12 shall require the parent to agree to the following:

13 (1) To provide an education for the qualified student in at least those
14 subjects required by K.S.A. 72-1101, 72-1103 and 72-1117, and
15 amendments thereto, and that such education may be provided by a
16 qualified school of the parent's choice;

17 (2) to not enroll the qualified student in any school, including any
18 public charter school, that is operated by a school district, and to release
19 the resident school district of such qualified student from any and all
20 obligations to provide an education for the qualified student; and

21 (3) to use the funds in the account solely for those purposes set forth
22 in section 3, and amendments thereto.

23 (c) The agreement between the parent and the department shall be
24 executed on or before August 1 of each school year for a qualified student
25 enrolling in a qualified school for the fall semester, and on or before
26 December 1 of each school year for a qualified student enrolling in a
27 qualified school for the spring semester.

28 (d) An agreement entered into pursuant to this section shall have a
29 term of one year, but may be renewed annually upon the the written
30 consent of the parties thereto, subject to the provisions of sections 1
31 through 6, and amendments thereto.

32 (e) A parent's decision to enter into an agreement pursuant to this
33 section constitutes a nonpublic placement of the qualified student for
34 purposes of the individuals with disabilities education act (20 U.S.C. §
35 1400 et seq.).

36 (f) A qualified student with an established account enrolled at a
37 qualified school shall not be counted as a pupil by the resident school
38 district for the purposes of determining enrollment pursuant to the school
39 district finance and quality performance act.

40 New Sec. 3. (a) Upon execution of an agreement in accordance
41 with section 2, and amendments thereto, the department shall establish an
42 account in the state treasury in the name of the qualified student. Upon
43 establishment of such account, the department shall notify the resident

1 school district of the establishment of such an account for the qualified
2 student.

3 (b) The maximum annual amount which may be credited to an
4 account shall be an amount equal to 90% of the amount of general state aid
5 and supplemental state aid the resident school district is entitled to receive
6 per pupil for the immediately preceding school year.

7 (c) The department shall certify to the director of accounts and
8 reports the amount to be credited to each account. Upon receipt of such
9 certification the state treasurer shall credit each account the amount so
10 certified by the department.

11 (d) Funds deposited in a qualified student's account may be accessed
12 by such qualified student's parent, but shall only be expended by the parent
13 of such qualified student for the following:

14 (1) Tuition or fees charged by a qualified school;

15 (2) textbooks or other supplies required by a qualified school;

16 (3) educational therapies or services provided by a licensed or
17 accredited education provider;

18 (4) tutoring services provided by an accredited tutor;

19 (5) curriculum materials;

20 (6) tuition or fees charged by a private online learning program;

21 (7) fees for any nationally standardized norm-referenced achievement
22 test, advanced placement examination or other exam related to admission
23 to a postsecondary institution;

24 (8) contributions to a qualified state tuition program established
25 pursuant to section 529 of the internal revenue code of 1986;

26 (9) tuition or fees charged by a postsecondary institution; or

27 (10) textbooks or other supplies required by a postsecondary
28 institution.

29 (e) A qualified school or postsecondary institution providing
30 education services purchased with funds from an account shall not share,
31 refund or rebate any portion of such funds with the parent or qualified
32 student in any manner.

33 (f) Upon the occurrence of any of the following the qualified student's
34 account shall be closed and any remaining balance in such account shall be
35 deposited in the state treasury to the credit of the state general fund:

36 (1) The graduation of the qualified student from a postsecondary
37 institution;

38 (2) the conclusion of any period of time consisting of four
39 consecutive years that occurs after the qualified student graduates from
40 high school and during which the qualified student does not enroll in a
41 postsecondary institution; or

42 (3) if the qualified student does not graduate from high school, then
43 the conclusion of any period of time consisting of four consecutive years

1 that occurs after the qualified student reaches the age of 18.

2 New Sec. 4. (a) The department shall conduct, or contract for the
3 performance of, annual audits of a random sample of the accounts
4 established pursuant to section 3, and amendments thereto, to ensure
5 compliance with the provisions of sections 1 through 6, and amendments
6 thereto. The department may conduct, or contract for the performance of,
7 any other audits of accounts as the department deems necessary to ensure
8 compliance with the provisions of sections 1 through 6, and amendments
9 thereto.

10 (b) Upon notice and an opportunity for a hearing, the department may
11 determine a parent or qualified student ineligible for an account. If an
12 account has been established, the department shall notify the state treasurer
13 of its determination and such account shall be closed and any remaining
14 balance in such account shall be deposited in the state treasury to the credit
15 of the state general fund. Any parent or qualified student aggrieved by a
16 decision of the department may appeal such decision to the state board and
17 the state board shall review such decision in accordance with the
18 provisions of the Kansas administrative procedure act.

19 (c) The department may refer cases of suspected substantial misuse of
20 funds to the office of the attorney general for further investigation of
21 fraudulent use of funds.

22 (d) For the purposes of paying the expenses incurred in administering
23 accounts, the department may receive an amount equal to not more than
24 3% of the amount determined under subsection (b) of section 3, and
25 amendments thereto. Such amount shall be deducted from the amount to
26 be credited to the account and shall be credited to the operating
27 expenditures fund of the department. Such deduction shall be reflected in
28 the certification submitted by the department under subsection (c) of
29 section 3, and amendments thereto.

30 New Sec. 5. A qualified school that accepts a payment pursuant to
31 sections 1 through 6, and amendments thereto, shall be autonomous and
32 shall not be considered an agent of the state. The state board or any other
33 state agency may not in any way regulate the educational program of such
34 qualified school. The creation of the program does not in any way expand
35 the regulatory authority of the state, its officers or any school district to
36 impose any additional regulation of such qualified schools beyond those
37 reasonably necessary to enforce the requirements of the program. Such
38 qualified schools shall be given the maximum freedom to provide for the
39 educational needs of their students without governmental control.

40 New Sec. 6. The state board and the state treasurer shall adopt rules
41 and regulations deemed necessary to implement the provisions of sections
42 1 through 6, and amendments thereto. The department and the state
43 treasurer shall coordinate a set of procedures to implement the provisions

1 of sections 1 through 6, and amendments thereto.

2 Sec. 7. K.S.A. 2011 Supp. 72-6407 is hereby amended to read as
3 follows: 72-6407. (a) (1) "Pupil" means any person who is regularly
4 enrolled in a district and attending kindergarten or any of the grades one
5 through 12 maintained by the district or who is regularly enrolled in a
6 district and attending kindergarten or any of the grades one through 12 in
7 another district in accordance with an agreement entered into under
8 authority of K.S.A. 72-8233, and amendments thereto, or who is regularly
9 enrolled in a district and attending special education services provided for
10 preschool-aged exceptional children by the district.

11 (2) Except as otherwise provided in paragraph (3) *or* (4) of this
12 subsection, a pupil in attendance full time shall be counted as one pupil. A
13 pupil in attendance part time shall be counted as that proportion of one
14 pupil (to the nearest $\frac{1}{10}$) that the pupil's attendance bears to full-time
15 attendance. A pupil attending kindergarten shall be counted as $\frac{1}{2}$ pupil. A
16 pupil enrolled in and attending an institution of postsecondary education
17 which is authorized under the laws of this state to award academic degrees
18 shall be counted as one pupil if the pupil's postsecondary education
19 enrollment and attendance together with the pupil's attendance in either of
20 the grades 11 or 12 is at least $\frac{5}{6}$ time, otherwise the pupil shall be counted
21 as that proportion of one pupil (to the nearest $\frac{1}{10}$) that the total time of the
22 pupil's postsecondary education attendance and attendance in grade 11 or
23 12, as applicable, bears to full-time attendance. A pupil enrolled in and
24 attending an area vocational school, area vocational-technical school or
25 approved vocational education program shall be counted as one pupil if the
26 pupil's vocational education enrollment and attendance together with the
27 pupil's attendance in any of grades nine through 12 is at least $\frac{5}{6}$ time,
28 otherwise the pupil shall be counted as that proportion of one pupil (to the
29 nearest $\frac{1}{10}$) that the total time of the pupil's vocational education
30 attendance and attendance in any of grades nine through 12 bears to full-
31 time attendance. A pupil enrolled in a district and attending a non-virtual
32 school and also attending a virtual school shall be counted as that
33 proportion of one pupil (to the nearest $\frac{1}{10}$) that the pupil's attendance at the
34 non-virtual school bears to full-time attendance. Except as provided by this
35 section for preschool-aged exceptional children and virtual school pupils, a
36 pupil enrolled in a district and attending special education and related
37 services, provided for by the district shall be counted as one pupil. A pupil
38 enrolled in a district and attending special education and related services
39 provided for by the district and also attending a virtual school shall be
40 counted as that proportion of one pupil (to the nearest $\frac{1}{10}$) that the pupil's
41 attendance at the non-virtual school bears to full-time attendance. A pupil
42 enrolled in a district and attending special education and related services
43 for preschool-aged exceptional children provided for by the district shall

1 be counted as $\frac{1}{2}$ pupil. A preschool-aged at-risk pupil enrolled in a district
2 and receiving services under an approved at-risk pupil assistance plan
3 maintained by the district shall be counted as $\frac{1}{2}$ pupil. A pupil in the
4 custody of the secretary of social and rehabilitation services or in the
5 custody of the commissioner of juvenile justice and enrolled in unified
6 school district No. 259, Sedgwick county, Kansas, but housed, maintained,
7 and receiving educational services at the Judge James V. Riddel Boys
8 Ranch, shall be counted as two pupils. Except as provided in section 1 of
9 chapter 76 of the 2009 Session Laws of the state of Kansas, and
10 amendments thereto, a pupil in the custody of the secretary of social and
11 rehabilitation services or in the custody of the commissioner of juvenile
12 justice and enrolled in unified school district No. 409, Atchison, Kansas,
13 but housed, maintained and receiving educational services at the youth
14 residential center located on the grounds of the former Atchison juvenile
15 correctional facility, shall be counted as two pupils.

16 (3) A pupil residing at the Flint Hills job corps center shall not be
17 counted. A pupil confined in and receiving educational services provided
18 for by a district at a juvenile detention facility shall not be counted. A pupil
19 enrolled in a district but housed, maintained, and receiving educational
20 services at a state institution or a psychiatric residential treatment facility
21 shall not be counted.

22 (4) *A pupil with a Kansas empowerment scholarship account who is*
23 *enrolled at a qualified school, as that term is defined in section 1, and*
24 *amendments thereto, shall not be counted.*

25 (b) "Preschool-aged exceptional children" means exceptional
26 children, except gifted children, who have attained the age of three years
27 but are under the age of eligibility for attendance at kindergarten.

28 (c) "At-risk pupils" means pupils who are eligible for free meals
29 under the national school lunch act and who are enrolled in a district which
30 maintains an approved at-risk pupil assistance plan.

31 (d) "Preschool-aged at-risk pupil" means an at-risk pupil who has
32 attained the age of four years, is under the age of eligibility for attendance
33 at kindergarten, and has been selected by the state board in accordance
34 with guidelines consonant with guidelines governing the selection of
35 pupils for participation in head start programs.

36 (e) "Enrollment" means: (1) (A) Subject to the provisions of
37 paragraph (1)(B), for districts scheduling the school days or school hours
38 of the school term on a trimestral or quarterly basis, the number of pupils
39 regularly enrolled in the district on September 20 plus the number of
40 pupils regularly enrolled in the district on February 20 less the number of
41 pupils regularly enrolled on February 20 who were counted in the
42 enrollment of the district on September 20; and for districts not specified
43 in this paragraph (1), the number of pupils regularly enrolled in the district

1 on September 20; (B) a pupil who is a foreign exchange student shall not
2 be counted unless such student is regularly enrolled in the district on
3 September 20 and attending kindergarten or any of the grades one through
4 12 maintained by the district for at least one semester or two quarters or
5 the equivalent thereof;

6 (2) if enrollment in a district in any school year has decreased from
7 enrollment in the preceding school year, enrollment of the district in the
8 current school year means whichever is the greater of (A) enrollment in
9 the preceding school year minus enrollment in such school year of
10 preschool-aged at-risk pupils, if any such pupils were enrolled, plus
11 enrollment in the current school year of preschool-aged at-risk pupils, if
12 any such pupils are enrolled, or (B) the sum of enrollment in the current
13 school year of preschool-aged at-risk pupils, if any such pupils are
14 enrolled and the average (mean) of the sum of (i) enrollment of the district
15 in the current school year minus enrollment in such school year of
16 preschool-aged at-risk pupils, if any such pupils are enrolled and (ii)
17 enrollment in the preceding school year minus enrollment in such school
18 year of preschool-aged at-risk pupils, if any such pupils were enrolled and
19 (iii) enrollment in the school year next preceding the preceding school year
20 minus enrollment in such school year of preschool-aged at-risk pupils, if
21 any such pupils were enrolled; or

22 (3) the number of pupils as determined under K.S.A. 72-6447 or
23 K.S.A. 2011 Supp. 72-6448, and amendments thereto.

24 (f) "Adjusted enrollment" means: (1) Enrollment adjusted by adding
25 at-risk pupil weighting, program weighting, low enrollment weighting, if
26 any, high density at-risk pupil weighting, if any, medium density at-risk
27 pupil weighting, if any, nonproficient pupil weighting, if any, high
28 enrollment weighting, if any, declining enrollment weighting, if any,
29 school facilities weighting, if any, ancillary school facilities weighting, if
30 any, cost of living weighting, if any, special education and related services
31 weighting, and transportation weighting to enrollment; or (2) adjusted
32 enrollment as determined under K.S.A. 2011 Supp. 72-6457 or 72-6458,
33 and amendments thereto.

34 (g) "At-risk pupil weighting" means an addend component assigned
35 to enrollment of districts on the basis of enrollment of at-risk pupils.

36 (h) "Program weighting" means an addend component assigned to
37 enrollment of districts on the basis of pupil attendance in educational
38 programs which differ in cost from regular educational programs.

39 (i) "Low enrollment weighting" means an addend component
40 assigned to enrollment of districts pursuant to K.S.A. 72-6412, and
41 amendments thereto, on the basis of costs attributable to maintenance of
42 educational programs by such districts in comparison with costs
43 attributable to maintenance of educational programs by districts having to

1 which high enrollment weighting is assigned pursuant to K.S.A. 2011
2 Supp. 72-6442b, and amendments thereto.

3 (j) "School facilities weighting" means an addend component
4 assigned to enrollment of districts on the basis of costs attributable to
5 commencing operation of new school facilities.

6 (k) "Transportation weighting" means an addend component assigned
7 to enrollment of districts on the basis of costs attributable to the provision
8 or furnishing of transportation.

9 (l) "Cost of living weighting" means an addend component assigned
10 to enrollment of districts to which the provisions of K.S.A. 2011 Supp. 72-
11 6449, and amendments thereto, apply on the basis of costs attributable to
12 the cost of living in the district.

13 (m) "Ancillary school facilities weighting" means an addend
14 component assigned to enrollment of districts to which the provisions of
15 K.S.A. 72-6441, and amendments thereto, apply on the basis of costs
16 attributable to commencing operation of new school facilities. Ancillary
17 school facilities weighting may be assigned to enrollment of a district only
18 if the district has levied a tax under authority of K.S.A. 72-6441, and
19 amendments thereto, and remitted the proceeds from such tax to the state
20 treasurer. Ancillary school facilities weighting is in addition to assignment
21 of school facilities weighting to enrollment of any district eligible for such
22 weighting.

23 (n) "Juvenile detention facility" has the meaning ascribed thereto by
24 72-8187, and amendments thereto.

25 (o) "Special education and related services weighting" means an
26 addend component assigned to enrollment of districts on the basis of costs
27 attributable to provision of special education and related services for
28 pupils determined to be exceptional children.

29 (p) "Virtual school" means any school or educational program that:
30 (1) Is offered for credit; (2) uses distance-learning technologies which
31 predominately use internet-based methods to deliver instruction; (3)
32 involves instruction that occurs asynchronously with the teacher and pupil
33 in separate locations; (4) requires the pupil to make academic progress
34 toward the next grade level and matriculation from kindergarten through
35 high school graduation; (5) requires the pupil to demonstrate competence
36 in subject matter for each class or subject in which the pupil is enrolled as
37 part of the virtual school; and (6) requires age-appropriate pupils to
38 complete state assessment tests.

39 (q) "Declining enrollment weighting" means an addend component
40 assigned to enrollment of districts to which the provisions of K.S.A. 2011
41 Supp. 72-6451, and amendments thereto, apply on the basis of reduced
42 revenues attributable to the declining enrollment of the district.

43 (r) "High enrollment weighting" means an addend component

1 assigned to enrollment of districts pursuant to K.S.A. 2011 Supp. 72-
2 6442b, and amendments thereto, on the basis of costs attributable to
3 maintenance of educational programs by such districts as a correlate to low
4 enrollment weighting assigned to enrollment of districts pursuant to
5 K.S.A. 72-6412, and amendments thereto.

6 (s) "High density at-risk pupil weighting" means an addend
7 component assigned to enrollment of districts to which the provisions of
8 K.S.A. 2011 Supp. 72-6455, and amendments thereto, apply.

9 (t) "Nonproficient pupil" means a pupil who is not eligible for free
10 meals under the national school lunch act and who has scored less than
11 proficient on the mathematics or reading state assessment during the
12 preceding school year and who is enrolled in a district which maintains an
13 approved proficiency assistance plan.

14 (u) "Nonproficient pupil weighting" means an addend component
15 assigned to enrollment of districts on the basis of enrollment of
16 nonproficient pupils pursuant to K.S.A. 2011 Supp. 72-6454, and
17 amendments thereto.

18 (v) "Psychiatric residential treatment facility" has the meaning
19 ascribed thereto by K.S.A. 72-8187, and amendments thereto.

20 (w) "Medium density at-risk pupil weighting" means an addend
21 component assigned to enrollment of districts to which the provisions of
22 K.S.A. 2011 Supp. 72-6459, and amendments thereto, apply.

23 Sec. 8. K.S.A. 2011 Supp. 72-6407 is hereby repealed.

24 Sec. 9. This act shall take effect and be in force from and after its
25 publication in the statute book.

26