

As Amended by House Committee

Session of 2012

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 7, 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 7, 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) **(A)** was enrolled in an eligible public school in the  
5 previous school year or **(B)** is eligible to enter an eligible public school in  
6 the school year in which an educational scholarship is first sought for the  
7 child and the child is under the age of ~~seven~~ **six** years and is a resident of  
8 an eligible 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) **"nonproficient pupil" means a pupil who has scored less than**  
15 **proficient on the most recent mathematics or reading state**  
16 **assessment;**

17 (m) "parent" includes a guardian, custodian or other person with  
18 authority to act on behalf of the child;

19 ~~(n)~~ (n) "program" means the Kansas education liberty program  
20 established in sections 1 through ~~6~~ **7**, and amendments thereto;

21 ~~(o)~~ (o) "qualified school" means any nonpublic elementary or  
22 secondary school that complies with the requirements of the program and  
23 is accredited by either the state board, independent schools association of  
24 the central states or independent schools association of the southwest;

25 ~~(p)~~ (p) "scholarship granting organization" means an organization  
26 that complies with the requirements of this program and provides  
27 educational scholarships to students attending qualified schools of their  
28 parents' choice;

29 ~~(q)~~ (q) **"school district" or "district" means any unified school**  
30 **district organized and operating under the laws of this state;**

31 (r) "school year" shall have the meaning ascribed thereto in K.S.A.  
32 72-6408, and amendments thereto;

33 ~~(s)~~ (s) "secretary" means the secretary of revenue;

34 ~~(t)~~ (t) "special educational eligible student" means a child who is an  
35 eligible student, as defined by subsection (i), and is an exceptional child  
36 who receives special education services in the state of Kansas and has an  
37 individualized education plan, as defined in K.S.A. 72-962, and  
38 amendments thereto, in effect; and

39 ~~(u)~~ (u) "state board" means the state board of education.

40 Sec. 3. (a) There is hereby established the Kansas education liberty  
41 program. The program shall provide eligible students with an opportunity  
42 to attend ~~qualified~~ schools of their parents' choice ~~by receiving~~  
43 ~~scholarships funded by taxpayer contributions, a portion of which is~~

1 eligible for a tax credit pursuant to section 6, and amendments thereto.

2 (b) Each scholarship granting organization shall issue a receipt, in a  
3 form prescribed by the secretary, to each contributing taxpayer indicating  
4 the value of the contribution received. Each taxpayer shall provide a copy  
5 of such receipt when claiming the tax credit established in section 6 7, and  
6 amendments thereto.

7 (c) Prior to awarding an educational scholarship to an eligible  
8 student, unless such student is under the age of ~~seven~~ six years, the  
9 scholarship granting organization shall receive written verification from  
10 the state board that such student is an eligible student under this program,  
11 **and whether such eligible student qualifies as a nonproficient pupil,**  
12 **low-income eligible student or special educational eligible student,**  
13 **provided the state board and the board of education of the school**  
14 **district in which the eligible student was enrolled the previous school**  
15 **year have received written consent from such eligible student's parent**  
16 **authorizing the release of such information.**

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

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

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

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

29 (2) upon granting an educational scholarship to an eligible student,  
30 the scholarship granting organization shall report such information to the  
31 state board;

32 (3) the scholarship granting organization shall provide verification to  
33 the secretary that the scholarship granting organization is exempt from  
34 federal income taxation pursuant to section 501(c)(3) of the federal  
35 internal revenue code of 1986;

36 (4) upon receipt of contributions in an aggregate amount or value in  
37 excess of \$50,000, during a school year, a scholarship granting  
38 organization shall file with the state board either: (A) A surety bond  
39 payable to the state in an amount equal to the aggregate amount of  
40 contributions expected to be received during the school year; or (B)  
41 financial information demonstrating the scholarship granting  
42 organization's ability to pay an aggregate amount equal to the amount of  
43 the contributions expected to be received during the school year, which

1 must be reviewed and approved of in writing by the state board;

2 (5) scholarship granting organizations that provide other nonprofit  
3 services in addition to providing educational scholarships shall not  
4 commingle contributions made under the program with other contributions  
5 made to such organization. A scholarship granting organization under this  
6 subsection shall also file with the state board, prior to the commencement  
7 of each school year, either: (A) A surety bond payable to the state in an  
8 amount equal to the aggregate amount of contributions expected to be  
9 received during the school year; or (B) financial information  
10 demonstrating the nonprofit organization's ability to pay an aggregate  
11 amount equal to the amount of the contributions expected to be received  
12 during the school year, which must be reviewed and approved of in writing  
13 by the state board;

14 (6) the scholarship granting organization shall ensure that each  
15 qualified school receiving educational scholarships from the scholarship  
16 granting organization is in compliance with the requirements of the  
17 program and has maintained its accreditation either with the state board,  
18 independent schools association of the central states or independent  
19 schools association of the southwest;

20 (7) at the end of the calendar year, the scholarship granting  
21 organization shall have its accounts examined and audited by a certified  
22 public accountant. Such audit shall include, but not be limited to,  
23 information verifying that the educational scholarships awarded by the  
24 scholarship granting organization were distributed to the eligible students  
25 determined by the state board under subsection (c) of section 3, and  
26 amendments thereto, and information specified in section 4, and  
27 amendments thereto. Prior to filing a copy of the audit with the state board,  
28 such audit shall be duly verified and certified by a certified public  
29 accountant; and

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

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

38 (c) The scholarship granting organization shall ~~disperse~~ **disburse** not  
39 less than 90% of contributions received pursuant to the program to eligible  
40 students in the form of educational scholarships within 36 months of  
41 receipt of such contributions. If such contributions have not been  
42 ~~dispersed~~ **disbursed** within the applicable 36-month time period, then the  
43 scholarship granting organization shall not accept new contributions until

1 90% of the received contributions have been ~~dispersed~~ **disbursed** in the  
2 form of educational scholarships. Any income earned from contributions  
3 must be ~~dispersed~~ **disbursed** in the form of educational scholarships.

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

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

9 (A) To low-income or special educational eligible students: (i) In a  
10 number not less than the proportion to the percentage of at-risk pupils in  
11 the district where the residence of the low-income eligible student is  
12 located plus 10%; and (ii) in an amount equal to 75% of the product of the  
13 adjusted enrollment multiplied by the base state aid per pupil, **except that**  
14 **if such eligible student is under the age of six years, then the monetary**  
15 **amount under this paragraph shall be proportional to such eligible**  
16 **student's attendance in the qualified school;** and

17 (B) any remaining educational scholarships not previously provided  
18 under subsection (d)(1)(A) shall be provided to eligible students in an  
19 amount equal to 75% of the base state aid per pupil, **except that if such**  
20 **eligible student is under the age of six years, then the monetary**  
21 **amount under this paragraph shall be proportional to such eligible**  
22 **student's attendance in the qualified school.**

23 (2) ~~The total number of~~ New educational scholarships awarded each  
24 school year under subsection (d)(1) shall be limited ~~to the following as~~  
25 **follows:**

26 (A) ~~If the district does not have a declining enrollment, the total~~  
27 ~~number of educational scholarships shall not exceed an amount equal to~~  
28 ~~2% of the previous year's enrollment of the district where the residence of~~  
29 ~~the eligible student is located~~ **No scholarship granting organization shall**  
30 **award a new educational scholarship to an eligible student unless such**  
31 **scholarship granting organization has obtained a certificate of**  
32 **eligibility under section 5, and amendments thereto, for such eligible**  
33 **student;**

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

38 (C) ~~educational scholarships provided to eligible students under the~~  
39 ~~age of seven~~ **six** years shall not exceed an amount equal to 8% of the total  
40 number of educational scholarships provided under this subsection in the  
41 current school year; **and**

42 (C) **new educational scholarships provided to eligible students**  
43 **shall be reasonably reflective of the composition of the district in**

1 which such eligible student was enrolled in the previous school year,  
2 including, but not limited to, the proportion of nonproficient pupils in  
3 such district.

4 (e) A scholarship granting organization may continue to provide  
5 an educational scholarship to an eligible student who received an  
6 educational scholarship under this program in the year immediately  
7 preceding the current school year. Such educational scholarship shall  
8 be in the following amount:

9 (1) If the eligible student had been awarded an educational  
10 scholarship under subsection (d)(1)(A), such educational scholarship  
11 shall be in an amount equal to the amount provided to the eligible  
12 student in the year immediately preceding the current school year or  
13 75% of the product of the adjusted enrollment multiplied by the base  
14 state aid per pupil, whichever is greater; or

15 (2) if the eligible student had been awarded an educational  
16 scholarship under subsection (d)(1)(B), such educational scholarship  
17 shall be in an amount equal to the amount provided to the eligible  
18 student in the year immediately preceding the current school year or  
19 75% of the base state aid per pupil, whichever is greater.

20 (f) 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. **If the  
27 eligible student transfers to a public elementary or secondary school  
28 operated by a school district and enrolls in such public school after  
29 September 20 of the current school year, the scholarship granting  
30 organization shall direct payment in a prorated amount to the original  
31 qualified school and the public school based on the eligible student's  
32 attendance. The prorated amount to the public school shall be  
33 considered a donation and shall be paid to the school district of such  
34 public school in accordance with K.S.A. 72-8210, and amendments  
35 thereto, to provide for the education of such eligible student.**

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

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

43 (2) the name and address of each eligible student receiving an

1 educational scholarship by the scholarship granting organization;

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

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

15 **Sec. 5. (a) Prior to the commencement of each school year, upon**  
16 **application by the scholarship granting organization, the state board**  
17 **shall issue a certificate of eligibility to a scholarship granting**  
18 **organization, subject to the following limitations:**

19 (1) **The total number of certificates of eligibility issued for each**  
20 **district shall not exceed an amount equal to 2% of the previous year's**  
21 **enrollment of the district of an eligible public school, except that if the**  
22 **district has a declining enrollment, then such number shall not exceed**  
23 **an amount equal to 1% of the previous year's enrollment of such**  
24 **district;**

25 (2) **the scholarship granting organization shall provide**  
26 **documentation to the state board, verifying that the scholarship**  
27 **granting organization has offered a new educational scholarship to an**  
28 **eligible student subject to receipt of a certificate of eligibility; and**

29 (3) **the certificate of eligibility shall be restricted to the eligible**  
30 **student on the application.**

31 (b) **The state board is authorized to adopt rules and regulations**  
32 **fixing the amount of the fee for the certificate of eligibility but such**  
33 **amount shall not exceed \$20.**

34 (c) **There is hereby established in the state treasury the Kansas**  
35 **education liberty program fee fund which shall be administered by the**  
36 **state board. All expenditures from the Kansas education liberty**  
37 **program fee fund shall be for the administration of certificates of**  
38 **eligibility to scholarship granting organizations in accordance with**  
39 **this section. All expenditures from the Kansas education liberty**  
40 **program fee fund shall be made in accordance with appropriation acts**  
41 **upon warrants of the director of accounts and reports issued pursuant**  
42 **to vouchers approved by the state board or the designee of the state**  
43 **board. All moneys received under this section for the issuance of**

1 **certificates of eligibility shall be deposited in the state treasury in**  
2 **accordance with the provisions of K.S.A. 74-4215, and amendments**  
3 **thereto, and shall be credited to the Kansas education liberty program**  
4 **fee fund.**

5 **(d) The state board shall adopt rules and regulations to**  
6 **implement the provisions of this section.**

7 ~~Sec. 5.~~ **6.** (a) (1) To qualify for the tax credit allowed by this act, each  
8 tax year the scholarship granting organization shall apply to the state board  
9 for a certification that the following requirements were met:

10 (A) That the scholarship granting organization is in substantial  
11 compliance with the program based on information received in the annual  
12 audit and yearly report filed by the scholarship granting organization with  
13 the state board; and

14 (B) that the qualified schools receiving educational scholarships from  
15 the scholarship granting organization are accredited by either the state  
16 board, independent schools association of the central states or independent  
17 schools association of the southwest.

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

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

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

26 ~~Sec. 6.~~ **7.** (a) There shall be allowed a credit against the income tax  
27 liability imposed upon a taxpayer pursuant to the Kansas income tax act,  
28 the privilege tax liability imposed upon a taxpayer pursuant to the  
29 privilege tax imposed upon any national banking association, state bank,  
30 trust company or savings and loan association pursuant to article 11 of  
31 chapter 79 of the Kansas Statutes Annotated, and amendments thereto, and  
32 the premium tax liability imposed upon a taxpayer pursuant to the  
33 premiums tax and privilege fees imposed upon an insurance company  
34 pursuant to K.S.A. 40-252, and amendments thereto, for tax years  
35 commencing after December 31, 2012, an amount equal to ~~90%~~ **100%** of  
36 the amount contributed to a scholarship granting organization authorized  
37 pursuant to section 1 et seq., and amendments thereto.

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

41 (c) **The amount of the credit shall not exceed \$100,000 for any one**  
42 **taxpayer in any one taxable year.**

43 (d) If the amount of any such tax credit claimed by a taxpayer



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

8 ~~(d)~~ **(e)** No credit under this section shall be claimed by a taxpayer  
9 who may be claimed as a dependent by another taxpayer for federal  
10 income tax purposes.

11 ~~(e)~~ **(f)** The secretary shall adopt rules and regulations regarding filing  
12 of documents that support the amount of credit claimed pursuant to this  
13 section.

14 ~~Sec. 7.~~ **8.** This act shall take effect and be in force from and after  
15 January 1, 2013, and its publication in the statute book.  
16