

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

1 educational scholarship under this program does not exceed an amount
2 equal to 3.5 times the income standard used to qualify for free meals under
3 the national school lunch act or has received an educational scholarship
4 under this program and has not graduated from high school or reached 21
5 years of age; (2) resides in Kansas while receiving an educational
6 scholarship; and (3) **(A)** was enrolled in an eligible public school in the
7 previous school year or **(B)** is eligible to enter an eligible public school in
8 the school year in which an educational scholarship is first sought for the
9 child and the child is under the age of ~~seven~~ **six** years and is a resident of
10 an eligible public school district;

11 (j) "enrollment" shall have the meaning ascribed thereto in K.S.A. 72-
12 6407, and amendments thereto;

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

16 (l) **"nonproficient pupil" means a pupil who has scored less than**
17 **proficient on the most recent mathematics or reading state**
18 **assessment;**

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

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

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

27 ~~(p)~~ (p) "scholarship granting organization" means an organization
28 **{owned and operated by a United States citizen or by an organization**
29 **headquartered in the United States}** that complies with the requirements
30 of this program and provides educational scholarships to students
31 attending qualified schools of their parents' choice;

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

34 (r) "school year" shall have the meaning ascribed thereto in K.S.A.
35 72-6408, and amendments thereto;

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

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

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

43 Sec. 3. (a) There is hereby established the Kansas education liberty

1 program. The program shall provide eligible students with an opportunity
2 to attend ~~qualified~~ schools of their parents' choice ~~by receiving~~
3 ~~scholarships funded by taxpayer contributions, a portion of which is~~
4 ~~eligible for a tax credit pursuant to section 6, and amendments thereto.~~

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

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

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

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

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

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

32 (2) upon granting an educational scholarship to an eligible student,
33 the scholarship granting organization shall report such information to the
34 state board;

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

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

1 financial information demonstrating the scholarship granting
2 organization's ability to pay an aggregate amount equal to the amount of
3 the contributions expected to be received during the school year, which
4 must be reviewed and approved of in writing by the state board;

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

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

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

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

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

41 (c) The scholarship granting organization shall ~~disperse~~ **disburse** not
42 less than 90% of contributions received pursuant to the program to eligible
43 students in the form of educational scholarships within 36 months of

1 receipt of such contributions. If such contributions have not been
2 ~~dispersed~~ **disbursed** within the applicable 36-month time period, then the
3 scholarship granting organization shall not accept new contributions until
4 90% of the received contributions have been ~~dispersed~~ **disbursed** in the
5 form of educational scholarships. Any income earned from contributions
6 must be ~~dispersed~~ **disbursed** in the form of educational scholarships.

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

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

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

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

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

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

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

42 (C) ~~educational scholarships provided to eligible students under the~~
43 ~~age of seven~~ **six** years shall not exceed an amount equal to 8% of the total

1 number of educational scholarships provided under this subsection in the
2 current school year; and

3 **(C) new educational scholarships provided to eligible students**
4 **shall be reasonably reflective of the composition of the district in**
5 **which such eligible student was enrolled in the previous school year,**
6 **including, but not limited to, the proportion of nonproficient pupils in**
7 **such district.**

8 **(e) A scholarship granting organization may continue to provide**
9 **an educational scholarship to an eligible student who received an**
10 **educational scholarship under this program in the year immediately**
11 **preceding the current school year. Such educational scholarship shall**
12 **be in the following amount:**

13 **(1) If the eligible student had been awarded an educational**
14 **scholarship under subsection (d)(1)(A), such educational scholarship**
15 **shall be in an amount equal to the amount provided to the eligible**
16 **student in the year immediately preceding the current school year or**
17 **75% of the product of the adjusted enrollment multiplied by the base**
18 **state aid per pupil, whichever is greater; or**

19 **(2) if the eligible student had been awarded an educational**
20 **scholarship under subsection (d)(1)(B), such educational scholarship**
21 **shall be in an amount equal to the amount provided to the eligible**
22 **student in the year immediately preceding the current school year or**
23 **75% of the base state aid per pupil, whichever is greater.**

24 **(f) A scholarship granting organization shall direct payments of an**
25 **educational scholarship to the qualified school on behalf of the eligible**
26 **student. Payment shall be made by check made payable to both the parent**
27 **and the qualified school. If an eligible student transfers to a new qualified**
28 **school during a school year, the scholarship granting organization shall**
29 **direct payment in a prorated amount to the original qualified school and**
30 **the new qualified school based on the eligible student's attendance. If the**
31 **eligible student transfers to a public elementary or secondary school**
32 **operated by a school district and enrolls in such public school after**
33 **September 20 of the current school year, the scholarship granting**
34 **organization shall direct payment in a prorated amount to the original**
35 **qualified school and the public school based on the eligible student's**
36 **attendance. The prorated amount to the public school shall be**
37 **considered a donation and shall be paid to the school district of such**
38 **public school in accordance with K.S.A. 72-8210, and amendments**
39 **thereto, to provide for the education of such eligible student.**

40 **(g) By June 1 of each year, a scholarship granting organization**
41 **shall submit a report to the state board for the educational scholarships**
42 **provided in the immediately preceding 12 months. Such report shall be in**
43 **a form and manner as prescribed by the state board, approved and signed**

1 by a certified public accountant, and shall contain the following
2 information:

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

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

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

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

19 **{(h) (1) No scholarship granting organization shall provide an**
20 **eligible student with an educational scholarship established by**
21 **funding from any contributions made by any relative of such eligible**
22 **student.**

23 **(2) No scholarship granting organization shall accept a**
24 **contribution from any source with the express or implied condition**
25 **that such contribution be directed toward an educational scholarship**
26 **for a particular eligible student.}**

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

31 **(1) The total number of certificates of eligibility issued for each**
32 **district shall not exceed an amount equal to 2% of the previous year's**
33 **enrollment of the district of an eligible public school, except that if the**
34 **district has a declining enrollment, then such number shall not exceed**
35 **an amount equal to 1% of the previous year's enrollment of such**
36 **district;**

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

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

43 **(b) The state board is authorized to adopt rules and regulations**

1 **fixing the amount of the fee for the certificate of eligibility but such**
2 **amount shall not exceed \$20.**

3 **(c) There is hereby established in the state treasury the Kansas**
4 **education liberty program fee fund which shall be administered by the**
5 **state board. All expenditures from the Kansas education liberty**
6 **program fee fund shall be for the administration of certificates of**
7 **eligibility to scholarship granting organizations in accordance with**
8 **this section. All expenditures from the Kansas education liberty**
9 **program fee fund shall be made in accordance with appropriation acts**
10 **upon warrants of the director of accounts and reports issued pursuant**
11 **to vouchers approved by the state board or the designee of the state**
12 **board. All moneys received under this section for the issuance of**
13 **certificates of eligibility shall be deposited in the state treasury in**
14 **accordance with the provisions of K.S.A. 74-4215, and amendments**
15 **thereto, and shall be credited to the Kansas education liberty program**
16 **fee fund.**

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

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

22 (A) That the scholarship granting organization is in substantial
23 compliance with the program based on information received in the annual
24 audit and yearly report filed by the scholarship granting organization with
25 the state board; and

26 (B) that the qualified schools receiving educational scholarships from
27 the scholarship granting organization are accredited by either the state
28 board, independent schools association of the central states or independent
29 schools association of the southwest.

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

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

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

38 ~~Sec. 6-~~ **7.** (a) There shall be allowed a credit against the income tax
39 liability imposed upon a taxpayer pursuant to the Kansas income tax act,
40 the privilege tax liability imposed upon a taxpayer pursuant to the
41 privilege tax imposed upon any national banking association, state bank,
42 trust company or savings and loan association pursuant to article 11 of
43 chapter 79 of the Kansas Statutes Annotated, and amendments thereto, and

1 the premium tax liability imposed upon a taxpayer pursuant to the
2 premiums tax and privilege fees imposed upon an insurance company
3 pursuant to K.S.A. 40-252, and amendments thereto, for tax years
4 commencing after December 31, 2012, an amount equal to ~~90%~~ **100%** of
5 the amount contributed to a scholarship granting organization authorized
6 pursuant to section 1 et seq., and amendments thereto.

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

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

12 (d) If the amount of any such tax credit claimed by a taxpayer
13 exceeds the taxpayer's income, privilege or premium tax liability, such
14 excess amount may be carried over for deduction from the taxpayer's
15 income, privilege or premium tax liability in the next succeeding year or
16 years until the total amount of the credit has been deducted from tax
17 liability, except that no such credit shall be carried over for deduction after
18 the third taxable year succeeding the tax year in which the contribution
19 was made to any such scholarship granting organization.

20 ~~(d)~~ (e) No credit under this section shall be claimed by a taxpayer
21 who may be claimed as a dependent by another taxpayer for federal
22 income tax purposes.

23 ~~(e)~~ (f) The secretary shall adopt rules and regulations regarding filing
24 of documents that support the amount of credit claimed pursuant to this
25 section.

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

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