

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 1074

98TH GENERAL ASSEMBLY

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Reported from the Committee on Seniors, Families and Children, March 31, 2016, with recommendation that the Senate Committee Substitute do pass.

6574S.02C

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To repeal sections 209.600, 209.605, 209.610, and 209.630, RSMo, and to enact in lieu thereof four new sections relating to the assets of the achieving a better life experience program.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 209.600, 209.605, 209.610, and 209.630, RSMo, are  
2 repealed and four new sections enacted in lieu thereof, to be known as sections  
3 209.600, 209.605, 209.610, and 209.630, to read as follows:

209.600. [1.] As used in sections 209.600 to 209.645, except where the  
2 context clearly requires another interpretation, the following terms mean:

3 (1) "ABLE account", the same meaning as in **26 U.S.C.** Section 529A of the  
4 Internal Revenue Code;

5 (2) "Benefits", the payment of qualified disability expenses on behalf of a  
6 designated beneficiary from an ABLÉ account;

7 (3) "Board", the Missouri Achieving a Better Life Experience board  
8 established in section 209.605;

9 (4) "Designated beneficiary", the same meaning as in **26 U.S.C.** Section 529A  
10 of the Internal Revenue Code;

11 (5) "Eligible individual", the same meaning as in **26 U.S.C.** Section 529A of  
12 the Internal Revenue Code;

13 (6) "Financial institution", a bank, insurance company, or registered  
14 investment company;

15 (7) "Internal Revenue Code", the Internal Revenue Code of 1986, as

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

16 amended;

17 (8) "Missouri Achieving a Better Life Experience program" or "ABLE", the  
18 program created pursuant to sections 209.600 to 209.645;

19 (9) "Participant", a person who has entered into a participation agreement  
20 pursuant to sections 209.600 to 209.645 for the advance payment of qualified  
21 disability expenses on behalf of a designated beneficiary. Unless otherwise permitted  
22 under **26 U.S.C.** Section 529A of the Internal Revenue Code the participant shall be  
23 the designated beneficiary of the ABLE account, except that if the designated  
24 beneficiary of the account is a minor or has a custodian or other fiduciary appointed  
25 for the purpose of managing his or her financial affairs, the parent or custodian or  
26 other fiduciary of the designated beneficiary may serve as the participant if such  
27 form of ownership is permitted or not prohibited by **26 U.S.C.** Section 529A of the  
28 Internal Revenue Code;

29 (10) "Participation agreement", an agreement between a participant and the  
30 board pursuant to and conforming with the requirements of sections 209.600 to  
31 209.645; and

32 (11) "Qualified disability expenses", the same meaning as in **26 U.S.C.**  
33 Section 529A of the Internal Revenue Code.

209.605. 1. There is hereby created the "Missouri Achieving a Better Life  
2 Experience Program". The program shall be administered by the Missouri ABLE  
3 board which shall consist of the Missouri state treasurer who shall serve as chairman,  
4 the director of the department of health and senior services or his or her designee,  
5 the commissioner of the office of administration or his or her designee, the director  
6 of the department of economic development or his or her designee, two persons  
7 having demonstrable experience and knowledge in the areas of finance or the  
8 investment and management of public funds, one of whom is selected by the  
9 president pro tempore of the senate and one of whom is selected by the speaker of  
10 the house of representatives, and one person having demonstrable experience and  
11 knowledge in the area of banking or deposit rate determination and placement of  
12 depository certificates of deposit or other deposit investments. Such member shall be  
13 appointed by the governor with the advice and consent of the senate. The three  
14 appointed members shall be appointed to serve for terms of four years from the date  
15 of appointment, or until their successors shall have been appointed and  
16 qualified. The members of the board shall be subject to the provisions of section  
17 105.452. Any member who violates the provisions of section 105.452 shall be  
18 removed from the board.

19           2. In order to establish and administer the ABLE program, the board, in  
20 addition to its other powers and authority, shall have the power and authority to:

21           (1) Develop and implement the Missouri achieving a better life experience  
22 program;

23           (2) Promulgate reasonable rules and regulations and establish policies and  
24 procedures to implement sections 209.600 to 209.645 to permit the ABLE program to  
25 qualify as a "qualified ABLE program" pursuant to **26 U.S.C.** Section 529A of the  
26 Internal Revenue Code and to ensure ABLE program's compliance with all applicable  
27 laws;

28           (3) Develop and implement educational programs and related informational  
29 materials for participants, either directly or through a contractual arrangement with  
30 a financial institution for investment services, and their families, including special  
31 programs and materials to inform individuals with disabilities regarding methods for  
32 financing the lives of individuals with disabilities so as to maintain health,  
33 independence, and quality of life;

34           (4) Enter into agreements with any financial institution, or any state or  
35 federal agency or entity as required for the operation of the ABLE program pursuant  
36 to sections 209.600 to 209.645;

37           (5) Enter into participation agreements with participants;

38           (6) Accept any grants, gifts, legislative appropriations, and other moneys from  
39 the state, any unit of federal, state, or local government or any other person, firm,  
40 partnership, or corporation for deposit to the account of the ABLE program;

41           (7) Invest the funds received from participants in appropriate investment  
42 instruments to achieve long-term total return through a combination of capital  
43 appreciation and current income;

44           (8) Make appropriate payments and distributions on behalf of designated  
45 beneficiaries pursuant to participation agreements;

46           (9) Make refunds to participants upon the termination of participation  
47 agreements pursuant to the provisions, limitations, and restrictions set forth in  
48 sections 209.600 to 209.645 and the rules adopted by the board;

49           (10) Make provision for the payment of costs of administration and operation  
50 of the ABLE program;

51           (11) Effectuate and carry out all the powers granted by sections 209.600 to  
52 209.645, and have all other powers necessary to carry out and effectuate the  
53 purposes, objectives, and provisions of sections 209.600 to 209.645 pertaining to the  
54 ABLE program;

55 (12) Procure insurance, guarantees, or other protections against any loss in  
56 connection with the assets or activities of the ABLE program; and

57 (13) Enter into agreements with other states to allow residents of that state  
58 to participate in the Missouri achieving a better life experience program.

59 3. Four members of the board shall constitute a quorum. No vacancy in the  
60 membership of the board shall impair the right of a quorum to exercise all the rights  
61 and perform all the duties of the board. No action shall be taken by the board except  
62 upon the affirmative vote of a majority of the members present. Any member of the  
63 board may designate a proxy for that member who will enjoy the full voting  
64 privileges of that member for the one meeting so specified by such member. No more  
65 than three proxies shall be considered members of the board for purposes of  
66 establishing a quorum.

67 4. The board shall meet within the state of Missouri at the time set at a  
68 previously scheduled meeting or by the request of any four members of the  
69 board. Notice of the meeting shall be delivered to all members of the board in person  
70 or by depositing notice in a United States post office in a properly stamped and  
71 addressed envelope not less than six days prior to the date fixed for the  
72 meeting. The board may meet at any time by unanimous mutual consent. There  
73 shall be at least one meeting in each quarter.

74 5. The funds of the ABLE program shall be invested only in those  
75 investments which a prudent person acting in a like capacity and familiar with these  
76 matters would use in the conduct of an enterprise of a like character and with like  
77 aims, as provided in section 105.688. For new contracts entered into after August  
78 28, 2015, board members shall study investment plans of other states and contract  
79 with or negotiate to provide benefit options the same as or similar to other states'  
80 qualified plans for the purpose of offering additional options for members of the  
81 plan. The board may delegate to duly appointed investment counselors authority to  
82 act in place of the board in the investment and reinvestment of all or part of the  
83 moneys and may also delegate to such counselors the authority to act in place of the  
84 board in the holding, purchasing, selling, assigning, transferring, or disposing of any  
85 or all of the securities and investments in which such moneys shall have been  
86 invested, as well as the proceeds of such investments and such moneys. Such  
87 investment counselors shall be registered as investment advisors with the United  
88 States Securities and Exchange Commission. In exercising or delegating its  
89 investment powers and authority, members of the board shall exercise ordinary  
90 business care and prudence under the facts and circumstances prevailing at the time

91 of the action or decision. No member of the board shall be liable for any action taken  
92 or omitted with respect to the exercise of, or delegation of, these powers and authority  
93 if such member shall have discharged the duties of his or her position in good faith  
94 and with that degree of diligence, care, and skill which a prudent person acting in  
95 a like capacity and familiar with these matters would use in the conduct of an  
96 enterprise of a like character and with like aims.

97 6. No investment transaction authorized by the board shall be handled by  
98 any company or firm in which a member of the board has a substantial interest, nor  
99 shall any member of the board profit directly or indirectly from any such investment.

100 7. No member of the board or employee of the ABLE program shall receive  
101 any gain or profit from any funds or transaction of the ABLE program. Any member  
102 of the board, employee, or agent of the ABLE program accepting any gratuity or  
103 compensation for the purpose of influencing such member of the board's, employee's,  
104 or agent's action with respect to the investment or management of the funds of the  
105 ABLE program shall thereby forfeit the office and in addition thereto be subject to  
106 the penalties prescribed for bribery.

209.610. 1. The board may enter into ABLE program participation  
2 agreements with participants on behalf of designated beneficiaries pursuant to the  
3 provisions of sections 209.600 to 209.645, including the following terms and  
4 conditions:

5 (1) A participation agreement shall stipulate the terms and conditions of the  
6 ABLE program in which the participant makes contributions;

7 (2) A participation agreement shall specify the method for calculating the  
8 return on the contribution made by the participant;

9 (3) A participation agreement shall clearly and prominently disclose to  
10 participants the risk associated with depositing moneys with the board;

11 (4) Participation agreements shall be organized and presented in a way and  
12 with language that is easily understandable by the general public; and

13 (5) A participation agreement shall clearly and prominently disclose to  
14 participants the existence of any load charge or similar charge assessed against the  
15 accounts of the participants for administration or services.

16 2. The board shall establish the maximum amount of contributions which  
17 may be made annually to an ABLE account, which shall be the same as the amount  
18 allowed by **26 U.S.C.** Section 529A of the Internal Revenue Code of 1986, as  
19 amended.

20 3. The board shall establish a total contribution limit for savings accounts

21 established under the ABLE program with respect to a designated beneficiary which  
22 shall in no event be less than the amount established as the contribution limit by the  
23 Missouri higher education savings program board for qualified tuition savings  
24 programs established under sections 166.400 to 166.450. No contribution shall be  
25 made to an ABLE account for a designated beneficiary if it would cause the balance  
26 of the ABLE account of the designated beneficiary to exceed the total contribution  
27 limit established by the board. The board may establish other requirements that it  
28 deems appropriate to provide adequate safeguards to prevent contributions on behalf  
29 of a designated beneficiary from exceeding what is necessary to provide for the  
30 qualified disability expenses of the designated beneficiary.

31 4. The board shall establish the minimum length of time that contributions  
32 and earnings must be held by the ABLE program to qualify as tax exempt pursuant  
33 to section 209.625. Any contributions or earnings that are withdrawn or distributed  
34 from an ABLE account prior to the expiration of the minimum length of time, as  
35 established by the board, shall be subject to a penalty pursuant to section 209.620.

209.630. The assets of the ABLE program shall at all times be preserved,  
2 invested, [and] expended, **and distributed** only for the purposes set forth in this  
3 section **and 26 U.S.C. Section 529A of the Internal Revenue Code of 1986, as**  
4 **amended**, and in accordance with the participation agreements[, and no property  
5 rights therein shall exist in favor of the state].

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