

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 152
AN ACT

To repeal sections 162.720, 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 166.440, and 166.456, RSMo, and to enact in lieu thereof nine new sections relating to education.

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

Section A. Sections 162.720, 166.400, 166.410, 166.415,
2 166.420, 166.425, 166.435, 166.440, and 166.456, RSMo, are
3 repealed and nine new sections enacted in lieu thereof, to be
4 known as sections 162.720, 166.400, 166.410, 166.415, 166.420,
5 166.425, 166.435, 166.440, and 166.456, to read as follows:

162.720. 1. (1) This subdivision shall apply to all
2 school years ending on or before June 30, 2023. Where a
3 sufficient number of children are determined to be gifted
4 and their development requires programs or services beyond
5 the level of those ordinarily provided in regular public
6 school programs, districts may establish special programs
7 for such gifted children.

8 (2) For all school years beginning on or after July 1,
9 2023, if three percent or more of students enrolled in a
10 school district are determined to be gifted and their
11 development requires programs or services beyond the level
12 of those ordinarily provided in regular public school
13 programs, the district shall establish a state-approved
14 gifted program for gifted children.

15 2. For all school years beginning on or after July 1,
16 2023, any teacher providing gifted services to students in

17 districts with an average daily attendance of more than
18 three hundred fifty students shall be certificated in gifted
19 education. In districts with an average daily attendance of
20 three hundred fifty students or fewer, any teacher providing
21 gifted services shall not be required to be certificated to
22 teach gifted education but such teacher shall annually
23 participate in at least six clock hours of professional
24 development focused on gifted services.

25 3. The state board of education shall determine
26 standards for such gifted programs and gifted services.
27 Approval of [such] gifted programs shall be made by the
28 state department of elementary and secondary education based
29 upon project applications submitted [by July fifteenth of
30 each year] at a time and in a form determined by the
31 department of elementary and secondary education.

32 [3.] 4. No district shall make a determination as to
33 whether a child is gifted based on the child's participation
34 in an advanced placement course or international
35 baccalaureate course. Districts shall determine a child is
36 gifted only if the child meets the definition of gifted
37 children as provided in section 162.675.

38 [4.] 5. Any district with a gifted education program
39 approved under subsection [2] 3 of this section shall have a
40 policy, approved by the board of education of the district,
41 that establishes a process that outlines the procedures and
42 conditions under which parents or guardians may request a
43 review of the decision that determined that their child did
44 not qualify to receive services through the district's
45 gifted education program.

46 [5.] 6. School districts and school district employees
47 shall be immune from liability for any and all acts or
48 omissions relating to the decision that a child did not

49 qualify to receive services through the district's gifted
50 education program.

51 7. The department of elementary and secondary
52 education may promulgate rules to implement the provisions
53 of this section and may develop a process to certify
54 teachers in gifted education. Any rule or portion of a
55 rule, as that term is defined in section 536.010, that is
56 created under the authority delegated in this section shall
57 become effective only if it complies with and is subject to
58 all of the provisions of chapter 536 and, if applicable,
59 section 536.028. This section and chapter 536 are
60 nonseverable and if any of the powers vested with the
61 general assembly pursuant to chapter 536 to review, to delay
62 the effective date, or to disapprove and annul a rule are
63 subsequently held unconstitutional, then the grant of
64 rulemaking authority and any rule proposed or adopted after
65 August 28, 2021, shall be invalid and void.

166.400. Sections 166.400 to [166.455] 166.456 shall
2 be known and may be cited as the "Missouri Education
3 [Savings] Program".

166.410. [Definitions.] As used in sections 166.400
2 to [166.455] 166.456, except where the context clearly
3 requires another interpretation, the following terms mean:

4 (1) "Beneficiary", any individual designated by a
5 participation agreement to benefit from payments for
6 qualified education expenses at an eligible educational
7 institution;

8 (2) "Benefits", the payment of qualified education
9 expenses on behalf of a beneficiary from a savings account
10 during the beneficiary's attendance at an eligible
11 educational institution;

12 (3) "Board", the Missouri education [savings] program
13 board established in section 166.415;

14 (4) "Eligible educational institution", an
15 [institution of postsecondary education] eligible
16 educational institution as defined in Section 529[(e) (5)] of
17 the Internal Revenue Code, [and institutions of elementary
18 and secondary education as provided in Sections 529(c) (7)
19 and 529(e) (3) of the Internal Revenue Code,] as amended;

20 (5) "Financial institution", a bank, insurance company
21 or registered investment company;

22 (6) "Internal Revenue Code", the Internal Revenue Code
23 of 1986, as amended;

24 (7) "Missouri education [savings] program" or
25 "[savings] program", the program created pursuant to
26 sections 166.400 to [166.455] 166.456;

27 (8) "Participant", a person who has entered into a
28 participation agreement pursuant to sections 166.400 to
29 [166.455] 166.456 for the advance payment of qualified
30 education expenses on behalf of a beneficiary;

31 (9) "Participation agreement", an agreement between a
32 participant and the board pursuant to and conforming with
33 the requirements of sections 166.400 to [166.455] 166.456;
34 and

35 (10) "Qualified higher education expenses" or
36 "qualified education expenses", the qualified costs of
37 tuition and fees and other expenses for attendance at an
38 eligible educational institution, as defined in Section
39 [529(e) (3)] 529 of the Internal Revenue Code, as amended.

166.415. 1. There is hereby created the "Missouri
2 Education [Savings] Program". The program shall be
3 administered by the Missouri education [savings] program
4 board which shall consist of the Missouri state treasurer
5 who shall serve as chairman, the commissioner of the
6 department of higher education and workforce development,
7 the commissioner of education, the commissioner of the

8 office of administration, the director of the department of
9 economic development, two persons having demonstrable
10 experience and knowledge in the areas of finance or the
11 investment and management of public funds, one of whom is
12 selected by the president pro tem of the senate and one of
13 whom is selected by the speaker of the house of
14 representatives, and one person having demonstrable
15 experience and knowledge in the area of banking or deposit
16 rate determination and placement of depository certificates
17 of deposit or other deposit investments. Such member shall
18 be appointed by the governor with the advice and consent of
19 the senate. The three appointed members shall be appointed
20 to serve for terms of four years from the date of
21 appointment, or until their successors shall have been
22 appointed and shall have qualified. The members of the
23 board shall be subject to the conflict of interest
24 provisions of section 105.452. Any member who violates the
25 conflict of interest provisions shall be removed from the
26 board. In order to establish and administer the [savings]
27 program, the board, in addition to its other powers and
28 authority, shall have the power and authority to:

29 (1) Develop and implement the Missouri education
30 [savings] program and, notwithstanding any provision of
31 sections 166.400 to [166.455] 166.456 to the contrary, the
32 [savings] programs and services consistent with the purposes
33 and objectives of sections 166.400 to [166.455] 166.456;

34 (2) Promulgate reasonable rules and regulations and
35 establish policies and procedures to implement sections
36 166.400 to [166.455] 166.456, to permit the [savings]
37 program to qualify as a "qualified state tuition program"
38 pursuant to Section 529 of the Internal Revenue Code and to
39 ensure the [savings] program's compliance with all
40 applicable laws;

41 (3) Develop and implement educational programs and
42 related informational materials for participants, either
43 directly or through a contractual arrangement with a
44 financial institution for investment services, and their
45 families, including special programs and materials to inform
46 families with young children regarding methods for financing
47 education and training;

48 (4) Enter into agreements with any financial
49 institution, the state or any federal or other agency or
50 entity as required for the operation of the [savings]
51 program pursuant to sections 166.400 to [166.455] 166.456;

52 (5) Enter into participation agreements with
53 participants;

54 (6) Accept any grants, gifts, legislative
55 appropriations, and other moneys from the state, any unit of
56 federal, state, or local government or any other person,
57 firm, partnership, or corporation for deposit to the account
58 of the [savings] program;

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

63 (8) Make appropriate payments and distributions on
64 behalf of beneficiaries pursuant to participation agreements;

65 (9) Make refunds to participants upon the termination
66 of participation agreements pursuant to the provisions,
67 limitations, and restrictions set forth in sections 166.400
68 to [166.455] 166.456 and the rules adopted by the board;

69 (10) Make provision for the payment of costs of
70 administration and operation of the [savings] program;

71 (11) Effectuate and carry out all the powers granted
72 by sections 166.400 to [166.455] 166.456, and have all other
73 powers necessary to carry out and effectuate the purposes,

74 objectives and provisions of sections 166.400 to [166.455]
75 166.456 pertaining to the [savings] program; and

76 (12) Procure insurance, guarantees or other
77 protections against any loss in connection with the assets
78 or activities of the [savings] program.

79 2. Any member of the board may designate a proxy for
80 that member who will enjoy the full voting privileges of
81 that member for the one meeting so specified by that
82 member. No more than three proxies shall be considered
83 members of the board for the purpose of establishing a
84 quorum.

85 3. Four members of the board shall constitute a
86 quorum. No vacancy in the membership of the board shall
87 impair the right of a quorum to exercise all the rights and
88 perform all the duties of the board. No action shall be
89 taken by the board except upon the affirmative vote of a
90 majority of the members present.

91 4. The board shall meet within the state of Missouri
92 at the time set at a previously scheduled meeting or by the
93 request of any four members of the board. Notice of the
94 meeting shall be delivered to all other trustees in person
95 or by depositing notice in a United States post office in a
96 properly stamped and addressed envelope not less than six
97 days prior to the date fixed for the meeting. The board may
98 meet at any time by unanimous mutual consent. There shall
99 be at least one meeting in each quarter.

100 5. The funds shall be invested only in those
101 investments which a prudent person acting in a like capacity
102 and familiar with these matters would use in the conduct of
103 an enterprise of a like character and with like aims, as
104 provided in section 105.688. For new contracts entered into
105 after August 28, 2012, board members shall study investment
106 plans of other states and contract with or negotiate to

107 provide benefit options the same as or similar to other
108 states' qualified plans for the purpose of offering
109 additional options for members of the plan. The board may
110 delegate to duly appointed investment counselors authority
111 to act in place of the board in the investment and
112 reinvestment of all or part of the moneys and may also
113 delegate to such counselors the authority to act in place of
114 the board in the holding, purchasing, selling, assigning,
115 transferring or disposing of any or all of the securities
116 and investments in which such moneys shall have been
117 invested, as well as the proceeds of such investments and
118 such moneys. Such investment counselors shall be registered
119 as investment advisors with the United States Securities and
120 Exchange Commission. In exercising or delegating its
121 investment powers and authority, members of the board shall
122 exercise ordinary business care and prudence under the facts
123 and circumstances prevailing at the time of the action or
124 decision. No member of the board shall be liable for any
125 action taken or omitted with respect to the exercise of, or
126 delegation of, these powers and authority if such member
127 shall have discharged the duties of his or her position in
128 good faith and with that degree of diligence, care and skill
129 which a prudent person acting in a like capacity and
130 familiar with these matters would use in the conduct of an
131 enterprise of a like character and with like aims.

132 6. No investment transaction authorized by the board
133 shall be handled by any company or firm in which a member of
134 the board has a substantial interest, nor shall any member
135 of the board profit directly or indirectly from any such
136 investment.

137 7. No trustee or employee of the [savings] program
138 shall receive any gain or profit from any funds or
139 transaction of the [savings] program. Any trustee, employee

140 or agent of the [savings] program accepting any gratuity or
141 compensation for the purpose of influencing such trustee's,
142 employee's or agent's action with respect to the investment
143 or management of the funds of the [savings] program shall
144 thereby forfeit the office and in addition thereto be
145 subject to the penalties prescribed for bribery.

166.420. 1. The board may enter into [savings]
2 program participation agreements with participants on behalf
3 of beneficiaries pursuant to the provisions of sections
4 166.400 to [166.455] 166.456, including the following terms
5 and conditions:

6 (1) A participation agreement shall stipulate the
7 terms and conditions of the [savings] program in which the
8 participant makes contributions;

9 (2) A participation agreement shall specify the method
10 for calculating the return on the contribution made by the
11 participant;

12 (3) The execution of a participation agreement by the
13 board shall not guarantee that the beneficiary named in any
14 participation agreement will be admitted to an eligible
15 educational institution, be allowed to continue to attend an
16 eligible educational institution after having been admitted
17 or will graduate from an eligible educational institution;

18 (4) A participation agreement shall clearly and
19 prominently disclose to participants the risk associated
20 with depositing moneys with the board;

21 (5) Participation agreements shall be organized and
22 presented in a way and with language that is easily
23 understandable by the general public; and

24 (6) A participation agreement shall clearly and
25 prominently disclose to participants the existence of any
26 load charge or similar charge assessed against the accounts
27 of the participants for administration or services.

28 2. The board shall establish the maximum amount which
29 may be contributed annually [by a participant] with respect
30 to a beneficiary.

31 3. The board shall establish a total contribution
32 limit for savings accounts established under the [savings]
33 program with respect to a beneficiary to permit the
34 [savings] program to qualify as a "qualified state tuition
35 program" pursuant to Section 529 of the Internal Revenue
36 Code. No contribution may be made to a savings account for
37 a beneficiary if it would cause the balance of all savings
38 accounts of the beneficiary to exceed the total contribution
39 limit established by the board. The board may establish
40 other requirements that it deems appropriate to provide
41 adequate safeguards to prevent contributions on behalf of a
42 beneficiary from exceeding what is necessary to provide for
43 the qualified education expenses of the beneficiary.

44 4. The board shall establish the minimum length of
45 time that contributions and earnings must be held by the
46 [savings] program to qualify pursuant to section 166.435.
47 Any contributions or earnings that are withdrawn or
48 distributed from a savings account prior to the expiration
49 of the minimum length of time, as established by the board,
50 shall be subject to a penalty pursuant to section 166.430.

 166.425. All money paid by a participant in connection
2 with participation agreements shall be deposited as received
3 and shall be promptly invested by the board. Contributions
4 and earnings thereon accumulated on behalf of participants
5 in the [savings] program may be used, as provided in the
6 participation agreement, for qualified education expenses.
7 Such contributions and earnings shall not be considered
8 income for purposes of determining a participant's
9 eligibility for financial assistance under any state student
10 aid program.

166.435. 1. Notwithstanding any law to the contrary,
2 the assets of the [savings] program held by the board, the
3 assets of any deposit program authorized in section 166.500,
4 and the assets of any qualified tuition [savings] program
5 established pursuant to Section 529 of the Internal Revenue
6 Code and any income therefrom shall be exempt from all
7 taxation by the state or any of its political subdivisions.
8 Income earned or received from the [savings] program,
9 deposit, or other qualified tuition [savings] programs
10 established under Section 529 of the Internal Revenue Code,
11 or refunds of qualified education expenses received by a
12 beneficiary from an eligible educational institution in
13 connection with withdrawal from enrollment at such
14 institution which are contributed within sixty days of
15 withdrawal to a qualified tuition [savings] program of which
16 such individual is a beneficiary shall not be subject to
17 state income tax imposed pursuant to chapter 143 and shall
18 be eligible for any benefits provided in accordance with
19 Section 529 of the Internal Revenue Code. The exemption
20 from taxation pursuant to this section shall apply only to
21 assets and income maintained, accrued, or expended pursuant
22 to the requirements of the [savings] program established
23 pursuant to sections 166.400 to [166.455] 166.456, the
24 deposit program established pursuant to sections 166.500 to
25 166.529, and other qualified tuition [savings] programs
26 established under Section 529 of the Internal Revenue Code,
27 and no exemption shall apply to assets and income expended
28 for any other purposes. Annual contributions made to the
29 [savings] program held by the board, the deposit program,
30 and any qualified tuition [savings] program established
31 under Section 529 of the Internal Revenue Code up to and
32 including eight thousand dollars per [participating]
33 taxpayer, and up to sixteen thousand dollars for married

34 individuals filing a joint tax return, shall be subtracted
35 in determining Missouri adjusted gross income pursuant to
36 section 143.121.

37 2. If any deductible contributions to or earnings from
38 any such program referred to in this section are distributed
39 and not used to pay qualified education expenses, not
40 transferred as allowed by 26 U.S.C. Section 529(c)(3)(C)(i),
41 as amended, and any Internal Revenue Service regulations or
42 guidance issued in relation thereto, or are not held for the
43 minimum length of time established by the appropriate
44 Missouri board, then the amount so distributed shall be
45 included in the Missouri adjusted gross income of the
46 participant, or, if the participant is not living, the
47 beneficiary.

48 3. The provisions of this section shall apply to tax
49 years beginning on or after January 1, 2008, and the
50 provisions of this section with regard to sections 166.500
51 to 166.529 shall apply to tax years beginning on or after
52 January 1, 2004.

166.440. The assets of the [savings] program shall at
2 all times be preserved, invested and expended only for the
3 purposes set forth in this section and in accordance with
4 the participation agreements, and no property rights therein
5 shall exist in favor of the state.

166.456. All personally identifiable information
2 concerning participants and beneficiaries of accounts
3 established within the Missouri education [savings] program
4 pursuant to sections 166.400 to 166.456 shall be
5 confidential, and any disclosure of such information shall
6 be restricted to purposes directly connected with the
7 administration of the program.