

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 627

AN ACT

To repeal sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 166.440, 166.456, 166.502, and 209.610, RSMo, and to enact in lieu thereof twelve new sections relating to elementary and secondary education.

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

Section A. Sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 166.440, 166.456, 166.502, and 209.610, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 166.440, 166.456, 166.461, 166.502, 167.195, and 209.610, to read as follows:

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

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

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

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

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

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

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

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

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

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

(9) "Participation agreement", an agreement between a participant and the board pursuant to and conforming with the requirements of sections 166.400 to 166.455; and

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

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

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

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

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

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

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

(5) Enter into participation agreements with participants;

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

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

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

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

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

(11) Effectuate and carry out all the powers granted by sections 166.400 to 166.455, and have all other powers necessary to carry out and effectuate the purposes,

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

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

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

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

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

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

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

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

7. No trustee or employee of the [savings] program shall receive any gain or profit from any funds or

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

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

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

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

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

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

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

(6) A participation agreement shall clearly and prominently disclose to participants the existence of any

load charge or similar charge assessed against the accounts of the participants for administration or services.

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

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

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

166.425. All money paid by a participant in connection with participation agreements shall be deposited as received and shall be promptly invested by the board. Contributions and earnings thereon accumulated on behalf of participants in the [savings] program may be used, as provided in the participation agreement, for qualified education expenses. Such contributions and earnings shall not be considered income for purposes of determining a participant's

eligibility for financial assistance under any state student aid program.

166.435. 1. Notwithstanding any law to the contrary, the assets of the [savings] program held by the board, the assets of any deposit program authorized in section 166.500, and the assets of any qualified tuition [savings] program established pursuant to Section 529 of the Internal Revenue Code and any income therefrom shall be exempt from all taxation by the state or any of its political subdivisions. Income earned or received from the [savings] program, deposit, or other qualified tuition [savings] programs established under Section 529 of the Internal Revenue Code, or refunds of qualified education expenses received by a beneficiary from an eligible educational institution in connection with withdrawal from enrollment at such institution which are contributed within sixty days of withdrawal to a qualified tuition [savings] program of which such individual is a beneficiary shall not be subject to state income tax imposed pursuant to chapter 143 and shall be eligible for any benefits provided in accordance with Section 529 of the Internal Revenue Code. The exemption from taxation pursuant to this section shall apply only to assets and income maintained, accrued, or expended pursuant to the requirements of the [savings] program established pursuant to sections 166.400 to 166.455, the deposit program established pursuant to sections 166.500 to 166.529, and other qualified tuition [savings] programs established under Section 529 of the Internal Revenue Code, and no exemption shall apply to assets and income expended for any other purposes. Annual contributions made to the [savings] program held by the board, the deposit program, and any qualified tuition [savings] program established under Section 529 of the Internal Revenue Code up to and including

eight thousand dollars per [participating] taxpayer, and up to sixteen thousand dollars for married individuals filing a joint tax return, shall be subtracted in determining Missouri adjusted gross income pursuant to section 143.121.

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

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

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

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

166.461. 1. This section shall be known and may be cited as the "Show Me Child Development Account Act".

2. As used in this section, the following terms mean:

(1) "Eligible educational institution", an institution:

(a) Of postsecondary education as defined in 20 U.S.C. Section 1002, as amended; or

(b) That offers a program of instruction:

a. Resulting in the award of a certificate, undergraduate degree, or other industry-recognized credential; and

b. That has been designated by the coordinating board for higher education as preparing students to enter an area of occupational shortage as determined by the coordinating board;

(2) "Parent", the parent, legal guardian, custodian, or other person having care and custody over a qualified child;

(3) "Program", the Missouri children's development account program created in this section;

(4) "Program fund", the Missouri children's development account program fund created in this section;

(5) "Qualified child":

(a) An individual born on or after January 1, 2022, and who is a resident of this state at the time of birth and at the time that the scholarship grant is applied for or received; or

(b) An adoptee with a valid decree of adoption who was born on or after January 1, 2022, whose adopting parent was a resident of this state at the time the decree of adoption was entered and who is a resident at the time that the scholarship grant is applied for or received;

(6) "Qualified higher education expenses", the costs of tuition and fees and other expenses for attendance at an

eligible educational institution or a rollover to a qualified Missouri achieving a better life experience program;

(7) "Scholarship grant", an amount not to exceed one hundred dollars provided to the parent of a qualified child for qualified higher education expenses under this section that is deposited in a savings account as provided in subsection 7 of this section.

3. There is hereby created the "Missouri Children's Development Account Program". The program shall be administered by the state treasurer as provided in this section.

4. Upon receiving a certification of live birth in this state as provided in chapter 193, the department of health and senior services shall notify the state treasurer and transmit any data related to the child that the treasurer deems necessary for the administration of this section to determine whether the child is a qualified child. Such information shall include, but not be limited to, the child's:

- (1) Full name;
- (2) Date of birth;
- (3) Parent's full name; and
- (4) Parent's address.

5. (1) Upon receiving notification of a live birth and determining whether the child is a qualified child under this section, the state treasurer shall notify the parent of each qualified child about the program. The notification shall include an explanation of the program and the opportunity for the parent to exclude the qualified child from the program. Any qualified child who is not excluded by the parent shall be deemed to be enrolled in the program.

(2) For any information obtained from the department of health and senior services under this section, the state treasurer shall be subject to the same disclosure restrictions and confidentiality requirements that apply to the department. Any information obtained directly by the treasurer under this section shall be confidential, shall not be deemed a public record, and shall not be subject to the provisions of chapter 610.

6. (1) There is hereby created in the state treasury the "Missouri Children's Development Account Program Fund", which shall receive deposits, make disbursements, and be administered in compliance with the provisions of this section.

(2) Subject to appropriation and the availability of moneys in the program fund, moneys in the program fund shall be used to provide scholarship grants and to pay for personal service, equipment, and other expenses of the treasurer related to the administration of this section. Nothing in this section shall be construed to prevent the general assembly from making appropriations to the program fund from other permissible sources.

(3) Notwithstanding any other provisions of law to the contrary, moneys shall be deposited in the program fund and administered in accordance with the following provisions:

(a) On a daily basis, the state treasurer shall apportion any interest or other increment derived from the investment of funds in an amount proportionate to the average daily balance of funds in the state treasury. The treasurer shall use a method in accordance with generally accepted accounting principles in apportioning and distributing that interest or increment. After satisfying the requirements of section 30.605 and prior to distributing that interest or increment, the treasurer shall deduct the

costs incurred by the treasurer in administering this section in proportion to the average daily balance of the amounts deposited to each fund in the state treasury. The treasurer shall then deposit the identified portion of the daily interest receipts in the program fund. All other remaining interest received on the investment of state funds shall be allocated and deposited to funds in the state treasury as required by law;

(b) The total costs for scholarship grants, personal service, equipment, and other expenses of the treasurer related to this section, exclusive of any personal service, equipment, and other expenses attributable to positions wholly dedicated to the functions described in chapter 447, and any banking fees and other banking-related costs, shall not exceed thirty-five basis points, or thirty-five-hundredths of one percent, of the total of the average daily fund balance of funds in the state treasury.

(4) Notwithstanding the provisions of section 33.080 to the contrary, moneys in the program fund shall not lapse to the general revenue fund at the end of the biennium.

(5) The provisions of this section shall not apply to the state road fund created in section 226.220, the motor fuel tax fund created in section 142.345, the state highways and transportation department fund created in section 226.200, the state transportation fund created in section 226.225, or the state road bond fund created in Article IV, Section 30(b) of the Constitution of Missouri.

7. (1) The state treasurer shall establish a separate savings account under sections 166.400 to 166.456, or through another means determined by the state treasurer, for each qualified child and shall deposit scholarship grants in such separate savings accounts or in a master account to be allocated to such separate accounts.

(2) Any separate savings account established under this subsection shall be exempt for purposes of determining eligibility for public assistance, provided that the federal rules for such programs permit such an exemption.

(3) Any amount in any separate savings account established under this subsection that is unused for qualified higher education expenses and remains in such savings account when the qualified child becomes thirty years of age shall revert to the program fund.

(4) The state treasurer may receive contributions from any person or legal entity to the account on behalf of and make grants to eligible children to pay for qualified higher education expenses.

8. The state treasurer may promulgate all necessary rules and regulations for the administration of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2021, shall be invalid and void.

166.502. As used in sections 166.500 to 166.529, except where the context clearly requires another interpretation, the following terms mean:

(1) "Beneficiary", any individual designated by a participation agreement to benefit from payments for

qualified higher education expenses at an eligible educational institution;

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

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

(4) "Eligible educational institution", an institution of postsecondary education as defined in Section 529(e) (5) of the Internal Revenue Code;

(5) "Financial institution", a depository institution and any intermediary that brokers certificates of deposits;

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

(7) "Missouri higher education deposit program" or "deposit program", the program created pursuant to sections 166.500 to 166.529;

(8) "Participant", a person who has entered into a participation agreement pursuant to sections 166.500 to 166.529 for the advance payment of qualified higher education expenses on behalf of a beneficiary;

(9) "Participation agreement", an agreement between a participant and the board pursuant to and conforming with the requirements of sections 166.500 to 166.529;

(10) "Qualified higher education expenses", the qualified costs of tuition and fees and other expenses for attendance at an eligible educational institution, as defined in Section 529(e) (3) of the Internal Revenue Code of 1986, as amended.

167.195. 1. A parent or guardian may file with the school board a formal objection to any school policy, practice, or procedure which applies to the parent,

guardian, or his or her child, including any instructional material or method not required by state statute, rule, or regulation, which infringes on the parent's or guardian's parental rights, including, but not limited to, decisions on the child's care and custody, upbringing, education, religious instruction, place of habitation, or physical or mental health care. School boards shall provide by general rule not inconsistent with this section for the procedure and conduct for filing and responding to such objections.

2. Within thirty days of receipt of the objection, the school board shall issue a response denying the parent's objection or describing an implementation plan to immediately exempt the child from the policy, practice, or procedure to which the parent or guardian objected. The school board may deny any objection alleging a de minimis infringement of parental rights or if the requested accommodation is unreasonable. An alleged infringement of parental rights shall be considered de minimis if it is not related to the content of curriculum or instruction and does not have a material impact on the child's care and custody, upbringing, education, religious instruction, place of habitation, or physical or mental health care.

3. A parent or guardian whose formal objection has been denied shall have the right to appeal such decision to the department of elementary and secondary education. The appeal shall be taken within fifteen days of the decision of the school board and may be taken by filing a notice of appeal with the department. Such appeal shall be heard as provided in chapter 536.

4. In addition to any other remedy which may be available in an agency action brought pursuant to this section, or in a civil action arising therefrom, a parent or guardian shall be awarded the greater of one thousand five

hundred dollars or the total amount of the parent's or guardian's contributions to local property taxes in the preceding year if the school district fails to show by clear and convincing evidence that it complied with subsection 2 of this section. Such award shall be used only for the educational expenses of the parent's or guardian's child.

5. The department may promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2021, shall be invalid and void.

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

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

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

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

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

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

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

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

4. The board shall establish the minimum length of time that contributions and earnings must be held by the ABLE program to qualify as tax exempt pursuant to section 209.625. Any contributions or earnings that are withdrawn or distributed from an ABLE account prior to the expiration

of the minimum length of time, as established by the board,
shall be subject to a penalty pursuant to section 209.620.