

FIRST REGULAR SESSION

SENATE BILL NO. 152

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOSKINS.

0849S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 166.440, and 166.456, RSMo, and to enact in lieu thereof eight new sections relating to the Missouri Education Program.

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Section A. Sections 166.400, 166.410, 166.415, 166.420, 2 166.425, 166.435, 166.440, and 166.456, RSMo, are repealed and 3 eight new sections enacted in lieu thereof, to be known as 4 sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 5 166.440, and 166.456, to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

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

166.410. Definitions. As used in sections 166.400 to 2 166.455, except where the context clearly requires another 3 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;

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

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

14 (4) "Eligible educational institution", an institution
15 of postsecondary education as defined in Section 529(e)(5)
16 of the Internal Revenue Code, and institutions of elementary
17 and secondary education as provided in Sections 529(c)(7),
18 **529(c)(8)**, and 529(e)(3) of the Internal Revenue Code, as
19 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;

27 (8) "Participant", a person who has entered into a
28 participation agreement pursuant to sections 166.400 to
29 166.455 for the advance payment of qualified education
30 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; and

34 (10) "Qualified higher education expenses" or
35 "qualified education expenses", the qualified costs of
36 tuition and fees and other expenses for attendance at an
37 eligible educational institution, as defined in Section
38 **[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 to the contrary, the [savings]
32 programs and services consistent with the purposes and
33 objectives of sections 166.400 to 166.455;

34 (2) Promulgate reasonable rules and regulations and
35 establish policies and procedures to implement sections
36 166.400 to 166.455, to permit the [savings] program to
37 qualify as a "qualified state tuition program" pursuant to

38 Section 529 of the Internal Revenue Code and to ensure the
39 [savings] program's compliance with all applicable laws;

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

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

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

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

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

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

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

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

70 (11) Effectuate and carry out all the powers granted
71 by sections 166.400 to 166.455, and have all other powers
72 necessary to carry out and effectuate the purposes,
73 objectives and provisions of sections 166.400 to 166.455
74 pertaining to the [savings] program; and

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

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

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

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

99 5. The funds shall be invested only in those
100 investments which a prudent person acting in a like capacity
101 and familiar with these matters would use in the conduct of

102 an enterprise of a like character and with like aims, as
103 provided in section 105.688. For new contracts entered into
104 after August 28, 2012, board members shall study investment
105 plans of other states and contract with or negotiate to
106 provide benefit options the same as or similar to other
107 states' qualified plans for the purpose of offering
108 additional options for members of the plan. The board may
109 delegate to duly appointed investment counselors authority
110 to act in place of the board in the investment and
111 reinvestment of all or part of the moneys and may also
112 delegate to such counselors the authority to act in place of
113 the board in the holding, purchasing, selling, assigning,
114 transferring or disposing of any or all of the securities
115 and investments in which such moneys shall have been
116 invested, as well as the proceeds of such investments and
117 such moneys. Such investment counselors shall be registered
118 as investment advisors with the United States Securities and
119 Exchange Commission. In exercising or delegating its
120 investment powers and authority, members of the board shall
121 exercise ordinary business care and prudence under the facts
122 and circumstances prevailing at the time of the action or
123 decision. No member of the board shall be liable for any
124 action taken or omitted with respect to the exercise of, or
125 delegation of, these powers and authority if such member
126 shall have discharged the duties of his or her position in
127 good faith and with that degree of diligence, care and skill
128 which a prudent person acting in a like capacity and
129 familiar with these matters would use in the conduct of an
130 enterprise of a like character and with like aims.

131 6. No investment transaction authorized by the board
132 shall be handled by any company or firm in which a member of
133 the board has a substantial interest, nor shall any member

134 of the board profit directly or indirectly from any such
135 investment.

136 7. No trustee or employee of the [savings] program
137 shall receive any gain or profit from any funds or
138 transaction of the [savings] program. Any trustee, employee
139 or agent of the [savings] program accepting any gratuity or
140 compensation for the purpose of influencing such trustee's,
141 employee's or agent's action with respect to the investment
142 or management of the funds of the [savings] program shall
143 thereby forfeit the office and in addition thereto be
144 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, including the following terms and
5 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, the deposit program
24 established pursuant to sections 166.500 to 166.529, and

25 other qualified tuition [savings] programs established under
26 Section 529 of the Internal Revenue Code, and no exemption
27 shall apply to assets and income expended for any other
28 purposes. Annual contributions made to the [savings]
29 program held by the board, the deposit program, and any
30 qualified tuition [savings] program established under
31 Section 529 of the Internal Revenue Code up to and including
32 eight thousand dollars per [participating] taxpayer, and up
33 to sixteen thousand dollars for married individuals filing a
34 joint tax return, shall be subtracted in determining
35 Missouri adjusted gross income pursuant to section 143.121.

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

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

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