

# SENATE BILL NO. 28

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

0812S.02I

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 166.440, 166.456, and 209.610, RSMo, and to enact in lieu thereof ten new sections relating to savings accounts for education expenses.

*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Section A. Sections 166.400, 166.410, 166.415, 166.420, 2 166.425, 166.435, 166.440, 166.456, and 209.610, RSMo, are 3 repealed and ten new sections enacted in lieu thereof, to be 4 known as sections 166.400, 166.410, 166.415, 166.420, 166.425, 5 166.435, 166.440, 166.456, 166.461, and 209.610, to read as 6 follows:

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;

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

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

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

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

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

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

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

36 (10) "Qualified higher education expenses" or  
37 "qualified education expenses", the qualified costs of  
38 tuition and fees and other expenses for attendance at an  
39 eligible educational institution, as defined in Section  
40 [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 savings  
34 program to qualify as a "qualified state tuition program"  
35 pursuant to Section 529 of the Internal Revenue Code. No  
36 contribution may be made to a savings account for a  
37 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.

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

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

**4 (1) "Eligible educational institution", an  
5 institution:**

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

**8 (b) That offers a program of instruction:**

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

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

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

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

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

23 (5) "Qualified child":

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

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

33 (6) "Qualified higher education expenses", the costs  
34 of tuition and fees and other expenses for attendance at an  
35 eligible educational institution or a rollover to a  
36 qualified Missouri Achieving a Better Life Experience  
37 Program;

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

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

47 4. Upon receiving a certification of live birth in  
48 this state as provided in chapter 193, the department of  
49 health and senior services shall notify the state treasurer  
50 and transmit any data related to the child that the  
51 treasurer deems necessary for the administration of this  
52 section to determine whether the child is a qualified child.

53 Such information shall include, but not be limited to, the  
54 child's:

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

59 5. (1) Upon receiving notification of a live birth  
60 and determining whether the child is a qualified child under  
61 this section, the state treasurer shall notify the parent of  
62 each qualified child about the program. The notification  
63 shall include an explanation of the program and the  
64 opportunity for the parent to exclude the qualified child  
65 from the program. Any qualified child who is not excluded  
66 by the parent shall be deemed to be enrolled in the program.

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

75 6. (1) There is hereby created in the state treasury  
76 the "Missouri Children's Development Account Program Fund",  
77 which shall receive deposits, make disbursements, and be  
78 administered in compliance with the provisions of this  
79 section.

80 (2) Subject to appropriation and the availability of  
81 moneys in the program fund, moneys in the program fund shall  
82 be used to provide scholarship grants and to pay for  
83 personal service, equipment, and other expenses of the  
84 treasurer related to the administration of this section.

85 Nothing in this section shall be construed to prevent the  
86 general assembly from making appropriations to the program  
87 fund from other permissible sources.

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

91 (a) On a daily basis, the state treasurer shall  
92 apportion any interest or other increment derived from the  
93 investment of funds in an amount proportionate to the  
94 average daily balance of funds in the state treasury. The  
95 treasurer shall use a method in accordance with generally  
96 accepted accounting principles in apportioning and  
97 distributing that interest or increment. After satisfying  
98 the requirements of section 30.605 and prior to distributing  
99 that interest or increment, the treasurer shall deduct the  
100 costs incurred by the treasurer in administering this  
101 section in proportion to the average daily balance of the  
102 amounts deposited to each fund in the state treasury. The  
103 treasurer shall then deposit the identified portion of the  
104 daily interest receipts in the program fund. All other  
105 remaining interest received on the investment of state funds  
106 shall be allocated and deposited to funds in the state  
107 treasury as required by law;

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

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

120           (5) The provisions of this section shall not apply to  
121 the state road fund created in section 226.220, the motor  
122 fuel tax fund created in section 142.345, the state highways  
123 and transportation department fund created in section  
124 226.200, the state transportation fund created in section  
125 226.225, and the state road bond fund created in Article IV,  
126 Section 30(b) of the Constitution of Missouri.

127           7. (1) The state treasurer shall establish a separate  
128 savings account under sections 166.400 to 166.456, or  
129 through another means determined by the state treasurer, for  
130 each qualified child and shall deposit scholarship grants in  
131 such separate savings accounts or in a master account to be  
132 allocated to such separate accounts.

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

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

142           (4) The State Treasurer may receive contributions from  
143 any person or legal entity to the account on behalf of, and  
144 make grants to, eligible children to pay for qualified  
145 higher education expenses.

146           8. The state treasurer may promulgate all necessary  
147 rules and regulations for the administration of this  
148 section. Any rule or portion of a rule, as that term is

149 defined in section 536.010, that is created under the  
150 authority delegated in this section shall become effective  
151 only if it complies with and is subject to all of the  
152 provisions of chapter 536 and, if applicable, section  
153 536.028. This section and chapter 536 are nonseverable, and  
154 if any of the powers vested with the general assembly  
155 pursuant to chapter 536 to review, to delay the effective  
156 date, or to disapprove and annul a rule are subsequently  
157 held unconstitutional, then the grant of rulemaking  
158 authority and any rule proposed or adopted after August 28,  
159 2021, shall be invalid and void.

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

6 (1) A participation agreement shall stipulate the  
7 terms and conditions of the ABLE 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) A participation agreement shall clearly and  
13 prominently disclose to participants the risk associated  
14 with depositing moneys with the board;

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

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



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

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

43           4. The board shall establish the minimum length of  
44 time that contributions and earnings must be held by the  
45 ABLE program to qualify as tax exempt pursuant to section  
46 209.625. Any contributions or earnings that are withdrawn  
47 or distributed from an ABLE account prior to the expiration  
48 of the minimum length of time, as established by the board,  
49 shall be subject to a penalty pursuant to section 209.620.

✓