

SECOND REGULAR SESSION

SENATE BILL NO. 811

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS FLOTRON AND LYBYER.

Read 1st time January 22, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S1931.03I

AN ACT

To repeal sections 166.200, 166.201, 166.203, 166.207, 166.215, 166.218, 166.220, 166.225, 166.228, 166.231, 166.233, 166.237 and 166.242, RSMo 1994, and section 166.205, RSMo Supp. 1997, relating to higher education financing, and to enact in lieu thereof thirteen new sections relating to the same subject.

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

Section A. Sections 166.200, 166.201, 166.203, 166.207, 166.215, 166.218, 166.220, 166.225, 166.228, 166.231, 166.233, 166.237 and 166.242, RSMo 1994, and section 166.205, RSMo Supp. 1997, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 166.200, 166.201, 166.203, 166.205, 166.207, 166.215, 166.218, 166.220, 166.225, 166.228, 166.233, 166.237 and 166.242, to read as follows:

166.200. Sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo, shall be known as the "Missouri [Access to Higher] **Tomorrow** Education Act".

166.201. As used in sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo, the following terms mean:

(1) "Advance tuition payment contract", a contract entered into by the trust and a purchaser pursuant to the provisions of sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo, to provide for the higher education of a qualified beneficiary;

(2) "Board", the board of directors of the Missouri [access to higher] **tomorrow** education trust;

(3) "Fund", the Missouri [access to higher] **tomorrow** education trust fund created in section 166.207;

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

(4) "Pell grant", a federal grant for undergraduate students based on financial need and, for the purposes of sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo, determines financial need;

(5) "Purchaser", a person who makes or is obligated to make advance tuition payments pursuant to an advance tuition payment contract;

(6) "Qualified beneficiary", any resident of this state named as a beneficiary in an advance tuition payment contract;

(7) "State institution of higher education", any college, university, **state technical college** or community junior college supported in whole or in part out of state funds specifically appropriated for operations;

(8) "Trust", the Missouri [access to higher] **tomorrow** education trust created in section 166.203;

(9) "Tuition", any tuition or other fees charged by a state **or independent** institution of higher education for attendance at that institution as [a] **an undergraduate, graduate or professional student and all fees required as a condition of enrollment, as determined by the board** by a resident of this state. **Tuition shall not include fees charged to out of state residents by state institutions of higher education, laboratory fees, room and board, or other similar charges as determined by the board;**

(10) "Weighted average tuition cost of state institutions of higher education", the tuition cost arrived at by adding the products of the annual undergraduate tuition cost at each state institution of higher education and its total number of undergraduate fiscal year equated students, and then dividing the gross total of this cumulation by the total number of undergraduate fiscal year equated students attending state institutions of higher education.

166.203. 1. There is hereby created the "Missouri [Access to Higher] **Tomorrow** Education Trust", which shall be a body corporate and politic. The trust shall be located within the [state office of administration] **department of higher education**, but shall exercise its prescribed powers, duties, and functions independently. The trust shall be governed by a board of directors which shall consist of ten members with knowledge, skill, and experience in the academic, business, or financial field appointed by the governor, by and with the advice and consent of the senate. Not more than three members of the board shall be, during their term of office on the board, either officials, appointees, or employees of this state, except that at least one member shall be appointed from a minority group. Of the remaining seven members appointed by the governor, one shall be appointed from a nominee of the speaker of the house of representatives, one shall be appointed from a nominee of the president pro tem of the senate, one shall be a president of a public four-year college or university, one shall be a president or chancellor of a public community college, one shall represent the interests of Missouri independent degree-granting colleges and universities, and one shall be the commissioner of higher

education. Of these remaining seven members, at least one shall be a member of a minority group. Members **appointed prior to the effective date of this section** shall be appointed for a term of three years. **Members appointed on or after the effective date of this section shall be appointed for a term of six years;** except that, of the members [first] appointed to new terms on or after the effective date of this section and within three years of the effective date of this section, [three] two of the members appointed within each one year period following the effective date of this section [shall be appointed for a term of one year, three shall be appointed for a term of two years, and four] shall be appointed for a term of three years. A member shall serve until a successor is appointed and qualified, and a vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. **A member may be reappointed to the board to serve an additional term or terms.** The governor shall designate one member as chairperson. The governor shall also designate one member as the president and chief executive officer of the trust and one member as the vice president of the trust. Members of the board, other than the president and vice president if they are not otherwise employees of the state, shall receive no compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

2. The board may delegate to its president, vice president, or other member such functions and authority as the board considers necessary or appropriate. These functions may include, but are not limited to, the oversight and supervision of employees of the trust.

3. A majority of the members of the board serving shall constitute a quorum for the transaction of business at a meeting of the board, or the exercise of a power or function of the trust, notwithstanding the existence of one or more vacancies. Voting upon action taken by the board shall be conducted by majority vote of the members present at a meeting of the board, and, if authorized by the bylaws of the board and when a quorum is present in person at the meeting, by use of amplified telephonic equipment. The board shall meet at the call of the chair and as may be provided in the bylaws of the trust. Meetings of the board may be held anywhere within the state.

166.205. [1.] In addition to the powers granted by other provisions of sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo, the board shall have the powers necessary to carry out and effectuate the purposes, objectives, and provisions of sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo, the purposes and objectives of the trust, including, but not limited to the power to:

- (1) Pay money to state **and independent** institutions of higher education from the trust;
- (2) Impose reasonable limits on the number of participants in the trust;
- (3) Contract for goods and services and engage personnel as is necessary and engage the services of private consultants, actuaries, managers, legal counsel, and auditors for rendering professional, management, and technical assistance and advice;

(4) Solicit and accept gifts, grants, loans, and other aid from any person, firm or corporation or the federal, state, or local government or any agency of the federal, state, or a local government, or to participate in any other way in any federal, state, or local government program;

(5) Charge, impose, and collect administrative fees and charges in connection with any transaction and provide for reasonable penalties, including default, for delinquent payment of fees or charges or for fraud;

(6) Procure insurance against any loss in connection with the trust's property, assets, or activities;

(7) Sue and be sued, to have a seal and alter the same at pleasure, to have perpetual succession, and to make and amend bylaws;

(8) To make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of its powers;

(9) Enter into contracts on behalf of the state;

(10) Administer the funds of the trust;

(11) Indemnify or procure insurance indemnifying any member of the board from personal loss or accountability from liability resulting from a member's action or inaction as a member of the board, including but not limited to, liability asserted on any bonds or notes of the authority;

(12) Impose reasonable time limits on use of the tuition benefits provided by the trust, if the limits are made a part of the contract;

(13) Provide for receiving contributions in lump sums or periodic sums;

(14) Promulgate reasonable rules and regulations and establish policies, procedures, and eligibility criteria to implement sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo.

[2. No rule or portion of a rule promulgated under the authority of sections 166.200 to 166.242 and sections 173.053 and 173.262, RSMo, shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.]

166.207. There is hereby created in the state treasury a "Missouri [Access to Higher] **Tomorrow** Education Trust Fund" into which shall be deposited all funds accruing to the trust including payments received by the trust from purchasers on behalf of qualified beneficiaries and from which, upon appropriation, shall be paid all expenditures of the trust. The fund may be divided into separate accounts. Moneys accruing to and deposited in the trust fund shall not be a part of "total state revenues" as defined in sections 17 and 18 of article X of the Constitution of the state of Missouri and the expenditure of such revenue shall not be an expense of state government under section 20 of article X of the Constitution of the state of Missouri. The provisions of section 33.080, RSMo, to the contrary notwithstanding, any unexpended balance in the Missouri access to higher education trust fund at the end of any biennium shall not be transferred and placed to the credit of the state general revenue fund. All interest or other increase earned from the investment of money in the trust fund shall be credited to and deposited

to that fund. Unless otherwise provided by the board, money in the fund shall, upon appropriation, be expended in the following order of priority:

(1) To make payments to state **and independent** institutions of higher education on behalf of qualified beneficiaries;

(2) To make refunds upon termination of an advance tuition payment contract;

(3) To pay the costs of administration and organization of the trust and the fund.

166.215. 1. The trust on behalf of itself and the state, may contract with a purchaser for the advance payment of tuition by the purchaser for a qualified beneficiary to attend any of the state **or independent** institutions of higher education to which the qualified beneficiary is admitted, **with or** without further tuition cost to the qualified beneficiary. In addition, an advance tuition payment contract shall set forth all of the following:

(1) The amount of the payment or payments required from the purchaser on behalf of the qualified beneficiary;

(2) The terms and conditions for making the payment, including, but not limited to, the date or dates upon which the payment, or portions of the payment, shall be due;

(3) Provisions for late payment charges and for default;

(4) The name and age of the qualified beneficiary under the contract. The purchaser, with the approval of and on conditions determined by the trust, may subsequently substitute another person for the qualified beneficiary originally named;

(5) The number of credit hours or equivalent covered by the contract;

(6) The name of the person entitled to terminate the contract, which, as provided by the contract, may be the purchaser, the qualified beneficiary, or a person to act on behalf of the purchaser or qualified beneficiary, or any combination of these persons;

(7) The terms and conditions under which the contract may be terminated and the amount of the refund, if any, to which the person terminating the contract, or specifically the purchaser or designated qualified beneficiary if the contract so provides, shall be entitled upon termination;

(8) The assumption of a contractual obligation by the trust to the qualified beneficiary on its own behalf and on behalf of the state to provide for credit hours of higher education[, not to exceed the credit hours required for the granting of a baccalaureate degree or the number of credit hours] provided by the contract[, whichever is less,] at any state **or independent** institution of higher education to which the qualified beneficiary is admitted. The advance tuition payment contract shall provide for the credit hours of higher education that a qualified beneficiary may receive under the contract if the qualified beneficiary is not entitled to in-state tuition rates;

(9) The period of time from the beginning to the end of which the qualified beneficiary may receive the benefits under the contract;

(10) Other terms, conditions, and provisions as the trust considers in its sole discretion to be necessary or appropriate.

2. The form of any advance tuition payment contract to be entered into by the trust shall first be approved by the attorney general.

166.218. The trust shall make any arrangements that are necessary or appropriate with state **or independent** institutions of higher education in order to fulfill its obligations under advance tuition payment contracts[, which arrangements may include, but need not be limited to, the payment by the trust of the then actual in-state tuition cost on behalf of a qualified beneficiary to the state institution of higher education].

166.220. An advance tuition payment contract shall provide that the trust provide for the qualified beneficiary to attend a community junior college in this state before entering another state **or independent** institution of higher education for the purpose of completing a baccalaureate, **graduate or professional** degree if the beneficiary so chooses and that the contract may be terminated pursuant to the provisions of sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo, after completing the requirements for a degree or certificate at the community junior college in this state or before entering the other state **or independent** institution of higher education.

166.225. 1. The trust may offer contracts which provide for the refund of investment income attributable to the fund upon cancellation by the purchaser of the contract.

2. Contracts offered under this section may require that payment or payments from a purchaser, on behalf of a qualified beneficiary who may attend a state **or independent** institution of higher education in less than four years after the date the contract is entered into by the purchaser, be based upon attendance at a certain state **or independent** institution of higher education or at that state **or independent** institution of higher education with the highest prevailing tuition cost for the number of credit hours covered by the contract.

166.228. 1. An advance tuition payment contract shall not authorize termination of the contract except when one of the following occurs:

(1) The qualified beneficiary dies;

(2) The qualified beneficiary is not admitted to a state **or independent** institution of higher education after making proper application;

(3) The qualified beneficiary certifies to the trust, after attaining the age of eighteen, that he or she has decided not to attend a state **or independent** institution of higher education and requests, in writing that the advance tuition payment contract be terminated;

(4) Other circumstances, determined by the trust and set forth in the advance tuition payment contract, occur.

2. An advance tuition payment contract may provide for a refund pursuant to this section to a person to whom the refund is payable under the contract upon termination of the contract. The refund may include all or a portion of the payment or payments made by the purchaser under the contract and all or a portion of the accrued investment income attributable

to the payment or payments. [However, except as provided in subsection 4 of this section, the amount of a refund shall not exceed the prevailing tuition cost on the date of termination for the credit hours covered by the state institution of higher education which charges the lowest rate of tuition. The amount of a refund shall be reduced by the amount transferred to a community junior college on behalf of a qualified beneficiary when the contract is terminated and by the amount transferred to a state institution of higher education on behalf of a qualified beneficiary.] Termination of a contract and the right to receive a refund shall not be authorized under the contract if the qualified beneficiary has completed more than one-half of the credit hours required by the state **or independent** institution of higher education for the awarding of a baccalaureate degree. However, this provision shall not affect the termination and refund rights of a graduate of a community junior college.

[3. An advance tuition payment contract may authorize a person who is entitled under the advance tuition payment contract to terminate the contract, to direct payment of the refund to an independent degree-granting college or university in this state. If directed to make payments pursuant to this subsection, the trust shall transfer to the designated institution an amount equal to the tuition due for the qualified beneficiary, but the trust shall not transfer a cumulative amount greater than the refund to which the person is entitled. If the refund exceeds the total amount of transfers directed to the designated institution, the excess shall be returned to the person to whom the refund is otherwise payable.

4. The amount of a refund paid upon termination of the advance tuition payment contract by a person who directs the trust pursuant to subsection 3 of this section to transfer the refund to an independent degree-granting college or university located in this state shall not be greater than the weighted average tuition cost of state institutions of higher education for the number of credit hours covered by the contract on the date of termination.]

[166.231. An advance tuition payment contract shall not be entered by the trust until the trust has solicited answers from the United States Internal Revenue Service and the United States Securities and Exchange Commission rulings regarding the status of the trust. The trust shall inform purchasers of the rulings in question by these federal agencies prior to entering any such contract.]

166.233. State **or independent** institutions of higher education, purchasers, qualified beneficiaries, holders of notes or bonds of the trust and others may enforce the provisions of sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo, and any contract, note or bond entered into pursuant to the provisions of sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo, by appropriate action brought in the circuit court of Cole County.

166.237. Nothing in sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo, or in any advance tuition payment contract entered into pursuant to sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo, shall be construed as a promise or guarantee by the trust or

the state of Missouri that a person will be admitted to a state **or independent** institution of higher education or to a particular state **or independent** institution of higher education, will be allowed to continue to attend a state **or independent** institution of higher education after having been admitted, or will be graduated from a state **or independent** institution of higher education.

166.242. The state or any state agency, county, municipality, or other political subdivision, **or person or other organization** may, by contract or collective bargaining agreement, agree with any employee to remit payments toward advance payment contracts through payroll deductions made by the appropriate officer or officers of the state. Such payments shall be held and administered in accordance with the provisions of sections 166.200 to 166.242, sections 173.053 and 173.262, RSMo.

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Bill

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