

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 460

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUSE.

Read 1st time February 17, 1999, and 1,000 copies ordered printed.

Read 2nd time February 22, 1999, and referred to the Committee on Education.

Reported from the Committee March 1, 1999, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up March 9, 1999. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

S1588.04P

AN ACT

To repeal sections 33.103, 166.400, 166.410, 166.415, 166.420, 166.425, 166.430, 166.435 and 166.455, RSMo Supp. 1998, relating to Missouri higher education savings program, and to enact in lieu thereof nine new sections relating to the same subject.

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

Section A. Sections 33.103, 166.400, 166.410, 166.415, 166.420, 166.425, 166.430, 166.435 and 166.455, RSMo Supp. 1998, are repealed and nine new sections enacted in lieu thereof, to be known as sections 33.103, 166.400, 166.410, 166.415, 166.420, 166.425, 166.430, 166.435 and 166.455, to read as follows:

33.103. 1. Whenever the employees of any state department, division or agency establish any voluntary retirement plan, or participate in any group hospital service plan, group life insurance plan, medical service plan or other such plan, or if they are members of an employee collective bargaining organization, or if they participate in a group plan for uniform rental, the commissioner of administration may deduct from such employees' compensation warrants the amount necessary for each employee's participation in the plan or collective bargaining dues, provided that such dues deductions shall be made only from those individuals agreeing to such deductions. Before such deductions are made, the person in charge of the department, division

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

or agency shall file with the commissioner of administration an authorization showing the names of participating employees, the amount to be deducted from each such employee's compensation, and the agent authorized to receive the deducted amounts. The amount deducted shall be paid to the authorized agent in the amount of the total deductions by a warrant issued as provided by law.

2. The commissioner of administration may, in the same manner, deduct from any state employee's compensation warrant:

(1) Any amount authorized by the employee for the purchase of shares in a state employees' credit union in Missouri;

(2) Any amount authorized by the employee for contribution to a fund resulting from a united, joint community-wide solicitation or to a fund resulting from a nationwide solicitation by charities rendering services or otherwise fulfilling charitable purposes if the fund is administered in a manner requiring public accountability and public participation in policy decisions;

(3) Any amount authorized by the employee for the payment of dues in an employee association;

(4) Any amount determined to be owed by the employee to the state in accordance with guidelines established by the commissioner of administration which shall include notice to the employee and an appeal process; [and]

(5) Any amount voluntarily assigned by the employee for payment of child support obligations determined pursuant to chapter 452 or 454, RSMo; **and**

(6) Any amount authorized by the employee for contributions to any "qualified state tuition program" pursuant to section 529 of the Internal Revenue Code of 1986, as amended, sponsored by the state of Missouri.

3. The commissioner of administration may establish a cafeteria plan in accordance with Section 125 of Title 26 United States Code for state employees. The commissioner of administration must file a written plan document to be filed in accordance with chapter 536, RSMo. Employees must be furnished with a summary plan description one hundred twenty days prior to the effective date of the plan. In connection with such plans, the commissioner may:

(1) Include as an option in the plan any employee benefit, otherwise available to state employees, administered by a statutorily created retirement system;

(2) Provide and administer, or select companies on the basis of competitive bids or proposals to provide or administer, any group insurance, or other plan which may be included as part of a cafeteria plan, provided such plan is not duplicative of any other plan, otherwise available to state employees, administered by a statutorily created retirement system; and

(3) Reduce each participating employee's compensation warrant by the amount necessary for each employee's participation in the cafeteria plan, provided that such salary reduction shall be made only with respect to those individuals agreeing to such reduction. No such reduction in

salary for the purpose of participation in a cafeteria plan shall have the effect of reducing the compensation amount used in calculating the state employee's retirement benefit under a statutorily created retirement system or reducing the compensation amount used in calculating the state employee's compensation or wages for purposes of any workers' compensation claim governed by chapter 287, RSMo.

4. Employees may authorize deductions as provided in this section in writing or by electronic enrollment.

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

166.410. 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 [postsecondary education costs at an institution of postsecondary education] **qualified higher education expenses at an eligible educational institution;**

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

(3) "Board", the [MOSTARS] **Missouri** higher 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 bank, insurance company or registered investment company;

[(5) "Institution of postsecondary education", as defined in the Internal Revenue Code;]

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

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

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

[(8)] (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

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

166.415. 1. There is hereby created the "[MOSTARS] **Missouri** Higher Education Savings Program". The program shall be administered by the [MOSTARS] **Missouri** higher 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, the commissioner of the office of administration, the director of the department of economic development and [a person knowledgeable] **two persons having demonstrable experience and knowledge** in the areas of finance or the investment and management of public funds [who], **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 [to serve a term of four years]. **The two 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, RSMo. 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 [MOSTARS] **Missouri** higher 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 [in conformance with the Internal Revenue Code and other applicable law], **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 beyond high school;

(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. [Three] **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 [at least three of the members of the board] **a majority of the members present**.

3. The board shall meet within the state of Missouri at the time set at a previously scheduled meeting or by the request of any [three] **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.

4. 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, RSMo. 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 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.

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

6. 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 **[deposits] contributions;**

(2) A participation agreement shall specify the method for calculating the return on the **[deposit] 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 **[institution of postsecondary education] eligible educational institution**, be allowed to continue to attend an **[institution of postsecondary education] eligible educational institution** after having been admitted or will graduate from an **[institution of postsecondary education] 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 may be contributed annually by a participant with respect to a **[participation agreement shall be eight thousand dollars per year] 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 higher 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, RSMo. 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. [Deposits] **Contributions** and earnings thereon accumulated on behalf of participants in the savings program may be used, as provided in the participation agreement, for [eligible postsecondary education costs] **qualified higher education expenses.**

166.430. Any participant may cancel a participation agreement at will[, and any return of funds from the participant's account shall be subject to terms and conditions established by the board, provided that any penalties levied as a result of such cancellation shall comply with the Internal Revenue Code's provisions relating to savings plans. The board may provide, by rule, that no termination penalty shall apply in certain circumstances]. **The board shall impose a penalty equal to or greater than ten percent of the earnings of an account for any distribution that is not:**

(1) Used exclusively for qualified higher education expenses of the designated beneficiary;

(2) Made because of death or disability of the designated beneficiary;

(3) Made because of the receipt of scholarship by the designated beneficiary;

(4) A rollover distribution, as defined in section 529(c)(3)(C)(i) of the Internal Revenue Code; or

(5) Held in the fund for the minimum length of time established by the board.

166.435. 1. The assets of the savings program held by the board and the assets of any similar [plan] **savings program** qualified 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 fund by any participant or beneficiary shall not be subject to state income tax and shall be eligible for any benefits provided in accordance with [the savings plan provisions] **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 [plan] **savings program** established pursuant to sections 166.400 to 166.455, the provisions of this section and [the applicable provisions] **section 529** of the Internal Revenue Code, and no exemption shall apply to assets and income expended

for any other purposes. **Annual contributions up to and including eight thousand dollars made to the savings [plan shall not be counted towards the calculation of gross income for state income tax purposes] program shall be subtracted from Missouri adjusted gross income pursuant to section 143.121, RSMo.**

2. If any deductible contributions to or earnings from any savings account are distributed and not used to pay qualified higher education expenses or are not held for the minimum length of time established by the board, the amount so distributed shall be added to 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, 1999.

166.455. Money accruing to and deposited in individual **savings** accounts shall not be 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 revenues shall not be an expense of state government under section 20 of article X of the Constitution of the state of Missouri.

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