

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 174

98TH GENERAL ASSEMBLY

2015

0309H.07T

---

---

## AN ACT

To amend chapter 166, RSMo, by adding thereto ten new sections relating to the Missouri Achieving a Better Life Experience program.

---

---

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

Section A. Chapter 166, RSMo, are amended by adding thereto ten new sections, to be known as sections 166.600, 166.605, 166.610, 166.615, 166.620, 166.625, 166.630, 166.635, 166.640, and 166.645, to read as follows:

**166.600. 1. As used in sections 166.600 to 166.645, except where the context clearly requires another interpretation, the following terms mean:**

(1) "ABLE account", the same meaning as in Section 529A of the Internal Revenue Code;

(2) "Benefits", the payment of qualified disability expenses on behalf of a designated beneficiary from an ABLE account;

(3) "Board", the Missouri Achieving a Better Life Experience board established in section 166.605;

(4) "Designated beneficiary", the same meaning as in Section 529A of the Internal Revenue Code;

(5) "Eligible individual", the same meaning as in Section 529A of the Internal Revenue Code;

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

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

(8) "Missouri Achieving a Better Life Experience program" or "ABLE",

18 the program created pursuant to sections 166.600 to 166.645;

19 (9) "Participant", a person who has entered into a participation  
20 agreement pursuant to sections 166.600 to 166.645 for the advance payment  
21 of qualified disability expenses on behalf of a designated  
22 beneficiary. Unless otherwise permitted under Section 529A of the Internal  
23 Revenue Code the participant shall be the designated beneficiary of the  
24 ABLE Account, except that if the designated beneficiary of the account is  
25 a minor or has a custodian or other fiduciary appointed for the purpose of  
26 managing his or her financial affairs, the parent or custodian or other  
27 fiduciary of the designated beneficiary may serve as the participant if such  
28 form of ownership is permitted or not prohibited by Section 529A of the  
29 Internal Revenue Code;

30 (10) "Participation agreement", an agreement between a participant  
31 and the board pursuant to and conforming with the requirements of  
32 sections 166.600 to 166.645; and

33 (11) "Qualified disability expenses", the same meaning as in Section  
34 529A of the Internal Revenue Code.

166.605. 1. There is hereby created the "Missouri Achieving a Better  
2 Life Experience Program". The program shall be administered by the  
3 Missouri ABLE board which shall consist of the Missouri state treasurer  
4 who shall serve as chairman, the director of the department of health and  
5 senior services or his or her designee, the commissioner of the office of  
6 administration or his or her designee, the director of the department of  
7 economic development or his or her designee, two persons having  
8 demonstrable experience and knowledge in the areas of finance or the  
9 investment and management of public funds, one of whom is selected by the  
10 president pro tempore of the senate and one of whom is selected by the  
11 speaker of the house of representatives, and one person having  
12 demonstrable experience and knowledge in the area of banking or deposit  
13 rate determination and placement of depository certificates of deposit or  
14 other deposit investments. Such member shall be appointed by the  
15 governor with the advice and consent of the senate. The three appointed  
16 members shall be appointed to serve for terms of four years from the date  
17 of appointment, or until their successors shall have been appointed and  
18 qualified. The members of the board shall be subject to the provisions of  
19 section 105.452. Any member who violates the provisions of section 105.452  
20 shall be removed from the board.

21           **2. In order to establish and administer the ABLE program, the board,**  
22 **in addition to its other powers and authority, shall have the power and**  
23 **authority to:**

24           **(1) Develop and implement the Missouri Achieving a Better Life**  
25 **Experience program;**

26           **(2) Promulgate reasonable rules and regulations and establish**  
27 **policies and procedures to implement sections 166.600 to 166.645 to permit**  
28 **the ABLE program to qualify as a "qualified ABLE program" pursuant to**  
29 **Section 529A of the Internal Revenue Code and to ensure ABLE program's**  
30 **compliance with all applicable laws;**

31           **(3) Develop and implement educational programs and related**  
32 **informational materials for participants, either directly or through a**  
33 **contractual arrangement with a financial institution for investment**  
34 **services, and their families, including special programs and materials to**  
35 **inform individuals with disabilities regarding methods for financing the**  
36 **lives of individuals with disabilities so as to maintain health, independence,**  
37 **and quality of life;**

38           **(4) Enter into agreements with any financial institution, or any**  
39 **state or federal agency or entity as required for the operation of the ABLE**  
40 **program pursuant to sections 166.600 to 166.645;**

41           **(5) Enter into participation agreements with participants;**

42           **(6) Accept any grants, gifts, legislative appropriations, and other**  
43 **moneys from the state, any unit of federal, state, or local government or**  
44 **any other person, firm, partnership, or corporation for deposit to the**  
45 **account of the ABLE program;**

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

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

51           **(9) Make refunds to participants upon the termination of**  
52 **participation agreements pursuant to the provisions, limitations, and**  
53 **restrictions set forth in sections 166.600 to 166.645 and the rules adopted by**  
54 **the board;**

55           **(10) Make provision for the payment of costs of administration and**  
56 **operation of the ABLE program;**

57           **(11) Effectuate and carry out all the powers granted by sections**

58 166.600 to 166.645, and have all other powers necessary to carry out and  
59 effectuate the purposes, objectives and provisions of sections 166.600 to  
60 166.645 pertaining to the ABLE program;

61 (12) Procure insurance, guarantees or other protections against any  
62 loss in connection with the assets or activities of the ABLE program; and

63 (13) Enter into agreements with other states to allow residents of  
64 that state to participate in the Missouri Achieving a Better Life Experience  
65 program.

66 3. Four members of the board shall constitute a quorum. No vacancy  
67 in the membership of the board shall impair the right of a quorum to  
68 exercise all the rights and perform all the duties of the board. No action  
69 shall be taken by the board except upon the affirmative vote of a majority  
70 of the members present. Any member of the board may designate a proxy  
71 for that member who will enjoy the full voting privileges of that member  
72 for the one meeting so specified by such member. No more than three  
73 proxies shall be considered members of the board for purposes of  
74 establishing a quorum.

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

82 5. The funds of the ABLE program shall be invested only in those  
83 investments which a prudent person acting in a like capacity and familiar  
84 with these matters would use in the conduct of an enterprise of a like  
85 character and with like aims, as provided in section 105.688. For new  
86 contracts entered into after August 28, 2015, board members shall study  
87 investment plans of other states and contract with or negotiate to provide  
88 benefit options the same as or similar to other states' qualified plans for the  
89 purpose of offering additional options for members of the plan. The board  
90 may delegate to duly appointed investment counselors authority to act in  
91 place of the board in the investment and reinvestment of all or part of the  
92 moneys and may also delegate to such counselors the authority to act in  
93 place of the board in the holding, purchasing, selling, assigning,  
94 transferring, or disposing of any or all of the securities and investments in

95 which such moneys shall have been invested, as well as the proceeds of  
96 such investments and such moneys. Such investment counselors shall be  
97 registered as investment advisors with the United States Securities and  
98 Exchange Commission. In exercising or delegating its investment powers  
99 and authority, members of the board shall exercise ordinary business care  
100 and prudence under the facts and circumstances prevailing at the time of  
101 the action or decision. No member of the board shall be liable for any  
102 action taken or omitted with respect to the exercise of, or delegation of,  
103 these powers and authority if such member shall have discharged the duties  
104 of his or her position in good faith and with that degree of diligence, care,  
105 and skill which a prudent person acting in a like capacity and familiar with  
106 these matters would use in the conduct of an enterprise of a like character  
107 and with like aims.

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

112         7. No member of the board or employee of the ABLE program shall  
113 receive any gain or profit from any funds or transaction of the ABLE  
114 program. Any member of the board, employee, or agent of the ABLE  
115 program accepting any gratuity or compensation for the purpose of  
116 influencing such member of the board's, employee's, or agent's action with  
117 respect to the investment or management of the funds of the ABLE  
118 program shall thereby forfeit the office and in addition thereto be subject  
119 to the penalties prescribed for bribery.

166.610. 1. The board may enter into ABLE program participation  
2 agreements with participants on behalf of designated beneficiaries  
3 pursuant to the provisions of sections 166.600 to 166.645, including the  
4 following terms and conditions:

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

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

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

12         (4) Participation agreements shall be organized and presented in a

13 way and with language that is easily understandable by the general public;  
14 and

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

18 2. The board shall establish the maximum amount of contributions  
19 which may be made annually to an ABLE account, which shall be the same  
20 as the amount allowed by Section 529A of the Internal Revenue Code of  
21 1986, as amended.

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

35 4. The board shall establish the minimum length of time that  
36 contributions and earnings must be held by the ABLE program to qualify  
37 as tax exempt pursuant to section 166.625. Any contributions or earnings  
38 that are withdrawn or distributed from an ABLE account prior to the  
39 expiration of the minimum length of time, as established by the board, shall  
40 be subject to a penalty pursuant to section 166.620.

166.615. All money paid by a participant in connection with a  
2 participation agreement shall be deposited as received and shall be  
3 promptly invested by the board. Contributions and earnings thereon  
4 accumulated on behalf of participants in the ABLE program may be used,  
5 as provided in the participation agreement, for qualified disability expenses.

166.620. Any participant may cancel a participation agreement at  
2 will. The board shall impose a penalty equal to or greater than ten percent  
3 of the earnings of an ABLE account for any distribution that is not:

4 (1) Used exclusively for qualified disability expenses of the

5 designated beneficiary;

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

7 (3) Held in the fund for the minimum length of time established by  
8 the board.

166.625. 1. Notwithstanding any law to the contrary, the assets of  
2 the ABLE program held by the board and the assets of any ABLE account  
3 and any income therefrom shall be exempt from all taxation by the state  
4 or any of its political subdivisions. Income earned or received from an  
5 ABLE account or deposit shall not be subject to state income tax imposed  
6 pursuant to chapter 143. The exemption from taxation pursuant to this  
7 section shall apply only to assets and income maintained, accrued, or  
8 expended pursuant to the requirements of the ABLE program established  
9 pursuant to sections 166.600 to 166.645, and no exemption shall apply to  
10 assets and income expended for any other purposes. Annual contributions  
11 made to the ABLE program held by the board up to and including eight  
12 thousand dollars per participating taxpayer, and up to sixteen thousand  
13 dollars for married individuals filing a joint tax return, shall be subtracted  
14 in determining Missouri adjusted gross income pursuant to section 143.121.

15 2. If any deductible contributions to or earnings from any such  
16 program referred to in this section are distributed and not used to pay  
17 qualified disability expenses or are not held for the minimum length of time  
18 established by the appropriate Missouri board, the amount so distributed  
19 shall be added to the Missouri adjusted gross income of the participant, or,  
20 if the participant is not living, the designated beneficiary.

21 3. The provisions of this section shall apply to tax years beginning  
22 on or after January 1, 2015.

166.630. The assets of the ABLE program shall at all times be  
2 preserved, invested, and expended only for the purposes set forth in this  
3 section and in accordance with the participation agreements, and no  
4 property rights therein shall exist in favor of the state.

166.635. Any rule or portion of a rule, as that term is defined in  
2 section 536.010 that is created under the authority delegated in this section  
3 shall become effective only if it complies with and is subject to all of the  
4 provisions of chapter 536, and, if applicable, section 536.028. This section  
5 and chapter 536 are nonseverable and if any of the powers vested with the  
6 general assembly pursuant to chapter 536, to review, to delay the effective  
7 date, or to disapprove and annul a rule are subsequently held

8 unconstitutional, then the grant of rulemaking authority and any rule  
9 proposed or adopted after August 28, 2015, shall be invalid and void.

166.640. The director of investment of the state treasurer's office  
2 shall, on a semiannual basis, review the financial status and investment  
3 policy of the program as well as the participation rate in the program. The  
4 director of investment shall also review the continued viability of the  
5 program and the administration of the program by the board. The director  
6 of investment shall report the findings annually to the board, which shall  
7 subsequently disclose such findings at a public meeting.

166.645. Money accruing to and deposited in individual ABLE  
2 accounts shall not be part of "total state revenues" as defined in sections  
3 17 and 18 of article X of the Constitution of the State of Missouri and the  
4 expenditure of such revenues shall not be an expense of state government  
5 under section 20 of article X of the Constitution of the State of Missouri.

✓