

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Substitute No. 2 for Senate Bill No. 704, Section
2 144.757, Page 64, Line 106, by inserting after all of said section and line the following:

3
4 "166.400. Sections 166.400 to 166.455 shall be known and may be cited as the "Missouri
5 Education [Savings] Program".

6 166.410. [Definitions.] As used in sections 166.400 to 166.455, except where the context
7 clearly requires another interpretation, the following terms mean:

8 (1) "Beneficiary", any individual designated by a participation agreement to benefit from
9 payments for qualified education expenses at an eligible educational institution;

10 (2) "Benefits", the payment of qualified education expenses on behalf of a beneficiary from
11 a savings account during the beneficiary's attendance at an eligible educational institution;

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

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

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

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

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

21 (8) "Participant", a person who has entered into a participation agreement pursuant to
22 sections 166.400 to 166.455 for the advance payment of qualified education expenses on behalf of a
23 beneficiary;

24 (9) "Participation agreement", an agreement between a participant and the board pursuant to
25 and conforming with the requirements of sections 166.400 to 166.455; and

26 (10) "Qualified higher education expenses" or "qualified education expenses", the qualified
27 costs of tuition and fees and other expenses for attendance at an eligible educational institution, as
28 defined in Section [529(e)(3)] 529 of the Internal Revenue Code, as amended.

29 166.415. 1. There is hereby created the "Missouri Education [Savings] Program". The
30 program shall be administered by the Missouri education [savings] program board which shall
31 consist of the Missouri state treasurer who shall serve as chairman, the commissioner of the
32 department of higher education and workforce development, the commissioner of education, the
33 commissioner of the office of administration, the director of the department of economic
34 development, two persons having demonstrable experience and knowledge in the areas of finance or
35 the investment and management of public funds, one of whom is selected by the president pro tem
36 of the senate and one of whom is selected by the speaker of the house of representatives, and one

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1 person having demonstrable experience and knowledge in the area of banking or deposit rate
2 determination and placement of depository certificates of deposit or other deposit investments.
3 Such member shall be appointed by the governor with the advice and consent of the senate. The
4 three appointed members shall be appointed to serve for terms of four years from the date of
5 appointment, or until their successors shall have been appointed and shall have qualified. The
6 members of the board shall be subject to the conflict of interest provisions of section 105.452. Any
7 member who violates the conflict of interest provisions shall be removed from the board. In order to
8 establish and administer the [savings] program, the board, in addition to its other powers and
9 authority, shall have the power and authority to:

10 (1) Develop and implement the Missouri education [savings] program and, notwithstanding
11 any provision of sections 166.400 to 166.455 to the contrary, the [savings] programs and services
12 consistent with the purposes and objectives of sections 166.400 to 166.455;

13 (2) Promulgate reasonable rules and regulations and establish policies and procedures to
14 implement sections 166.400 to 166.455, to permit the [savings] program to qualify as a "qualified
15 state tuition program" pursuant to Section 529 of the Internal Revenue Code and to ensure the
16 [savings] program's compliance with all applicable laws;

17 (3) Develop and implement educational programs and related informational materials for
18 participants, either directly or through a contractual arrangement with a financial institution for
19 investment services, and their families, including special programs and materials to inform families
20 with young children regarding methods for financing education and training;

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

24 (5) Enter into participation agreements with participants;

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

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

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

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

35 (10) Make provision for the payment of costs of administration and operation of the
36 [savings] program;

37 (11) Effectuate and carry out all the powers granted by sections 166.400 to 166.455, and
38 have all other powers necessary to carry out and effectuate the purposes, objectives and provisions
39 of sections 166.400 to 166.455 pertaining to the [savings] program; and

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

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

45 3. Four members of the board shall constitute a quorum. No vacancy in the membership of
46 the board shall impair the right of a quorum to exercise all the rights and perform all the duties of
47 the board. No action shall be taken by the board except upon the affirmative vote of a majority of
48 the members present.

49 4. The board shall meet within the state of Missouri at the time set at a previously scheduled

1 meeting or by the request of any four members of the board. Notice of the meeting shall be
2 delivered to all other trustees in person or by depositing notice in a United States post office in a
3 properly stamped and addressed envelope not less than six days prior to the date fixed for the
4 meeting. The board may meet at any time by unanimous mutual consent. There shall be at least one
5 meeting in each quarter.

6 5. The funds shall be invested only in those investments which a prudent person acting in a
7 like capacity and familiar with these matters would use in the conduct of an enterprise of a like
8 character and with like aims, as provided in section 105.688. For new contracts entered into after
9 August 28, 2012, board members shall study investment plans of other states and contract with or
10 negotiate to provide benefit options the same as or similar to other states' qualified plans for the
11 purpose of offering additional options for members of the plan. The board may delegate to duly
12 appointed investment counselors authority to act in place of the board in the investment and
13 reinvestment of all or part of the moneys and may also delegate to such counselors the authority to
14 act in place of the board in the holding, purchasing, selling, assigning, transferring or disposing of
15 any or all of the securities and investments in which such moneys shall have been invested, as well
16 as the proceeds of such investments and such moneys. Such investment counselors shall be
17 registered as investment advisors with the United States Securities and Exchange Commission. In
18 exercising or delegating its investment powers and authority, members of the board shall exercise
19 ordinary business care and prudence under the facts and circumstances prevailing at the time of the
20 action or decision. No member of the board shall be liable for any action taken or omitted with
21 respect to the exercise of, or delegation of, these powers and authority if such member shall have
22 discharged the duties of his or her position in good faith and with that degree of diligence, care and
23 skill which a prudent person acting in a like capacity and familiar with these matters would use in
24 the conduct of an enterprise of a like character and with like aims.

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

28 7. No trustee or employee of the [savings] program shall receive any gain or profit from any
29 funds or transaction of the [savings] program. Any trustee, employee or agent of the [savings]
30 program accepting any gratuity or compensation for the purpose of influencing such trustee's,
31 employee's or agent's action with respect to the investment or management of the funds of the
32 [savings] program shall thereby forfeit the office and in addition thereto be subject to the penalties
33 prescribed for bribery.

34 166.420. 1. The board may enter into [savings] program participation agreements with
35 participants on behalf of beneficiaries pursuant to the provisions of sections 166.400 to 166.455,
36 including the following terms and conditions:

37 (1) A participation agreement shall stipulate the terms and conditions of the [savings]
38 program in which the participant makes contributions;

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

41 (3) The execution of a participation agreement by the board shall not guarantee that the
42 beneficiary named in any participation agreement will be admitted to an eligible educational
43 institution, be allowed to continue to attend an eligible educational institution after having been
44 admitted or will graduate from an eligible educational institution;

45 (4) A participation agreement shall clearly and prominently disclose to participants the risk
46 associated with depositing moneys with the board;

47 (5) Participation agreements shall be organized and presented in a way and with language
48 that is easily understandable by the general public; and

49 (6) A participation agreement shall clearly and prominently disclose to participants the

1 existence of any load charge or similar charge assessed against the accounts of the participants for
2 administration or services.

3 2. The board shall establish the maximum amount which may be contributed annually ~~by a~~
4 ~~participant~~ with respect to a beneficiary.

5 3. The board shall establish a total contribution limit for savings accounts established under
6 the [savings] program with respect to a beneficiary to permit the [savings] program to qualify as a
7 "qualified state tuition program" pursuant to Section 529 of the Internal Revenue Code. No
8 contribution may be made to a savings account for a beneficiary if it would cause the balance of all
9 savings accounts of the beneficiary to exceed the total contribution limit established by the board.
10 The board may establish other requirements that it deems appropriate to provide adequate
11 safeguards to prevent contributions on behalf of a beneficiary from exceeding what is necessary to
12 provide for the qualified education expenses of the beneficiary.

13 4. The board shall establish the minimum length of time that contributions and earnings
14 must be held by the [savings] program to qualify pursuant to section 166.435. Any contributions or
15 earnings that are withdrawn or distributed from a savings account prior to the expiration of the
16 minimum length of time, as established by the board, shall be subject to a penalty pursuant to
17 section 166.430.

18 166.425. All money paid by a participant in connection with participation agreements shall
19 be deposited as received and shall be promptly invested by the board. Contributions and earnings
20 thereon accumulated on behalf of participants in the [savings] program may be used, as provided in
21 the participation agreement, for qualified education expenses. Such contributions and earnings shall
22 not be considered income for purposes of determining a participant's eligibility for financial
23 assistance under any state student aid program.

24 166.435. 1. Notwithstanding any law to the contrary, the assets of the [savings] program
25 held by the board, the assets of any deposit program authorized in section 166.500, and the assets of
26 any qualified tuition [savings] program established pursuant to Section 529 of the Internal Revenue
27 Code and any income therefrom shall be exempt from all taxation by the state or any of its political
28 subdivisions. Income earned or received from the [savings] program, deposit, or other qualified
29 tuition [savings] programs established under Section 529 of the Internal Revenue Code, or refunds
30 of qualified education expenses received by a beneficiary from an eligible educational institution in
31 connection with withdrawal from enrollment at such institution which are contributed within sixty
32 days of withdrawal to a qualified tuition [savings] program of which such individual is a beneficiary
33 shall not be subject to state income tax imposed pursuant to chapter 143 and shall be eligible for any
34 benefits provided in accordance with Section 529 of the Internal Revenue Code. The exemption
35 from taxation pursuant to this section shall apply only to assets and income maintained, accrued, or
36 expended pursuant to the requirements of the [savings] program established pursuant to sections
37 166.400 to 166.455, the deposit program established pursuant to sections 166.500 to 166.529, and
38 other qualified tuition [savings] programs established under Section 529 of the Internal Revenue
39 Code, and no exemption shall apply to assets and income expended for any other purposes. Annual
40 contributions made to the [savings] program held by the board, the deposit program, and any
41 qualified tuition [savings] program established under Section 529 of the Internal Revenue Code up
42 to and including eight thousand dollars per ~~participating~~ taxpayer, and up to sixteen thousand
43 dollars for married individuals filing a joint tax return, shall be subtracted in determining Missouri
44 adjusted gross income pursuant to section 143.121.

45 2. If any deductible contributions to or earnings from any such program referred to in this
46 section are distributed and not used to pay qualified education expenses, not transferred as allowed
47 by 26 U.S.C. Section 529(c)(3)(C)(i), as amended, and any Internal Revenue Service regulations or
48 guidance issued in relation thereto, or are not held for the minimum length of time established by
49 the appropriate Missouri board, then the amount so distributed shall be included in the Missouri

1 adjusted gross income of the participant, or, if the participant is not living, the beneficiary.

2 3. The provisions of this section shall apply to tax years beginning on or after January 1,
3 2008, and the provisions of this section with regard to sections 166.500 to 166.529 shall apply to tax
4 years beginning on or after January 1, 2004.

5 166.440. The assets of the [savings] program shall at all times be preserved, invested and
6 expended only for the purposes set forth in this section and in accordance with the participation
7 agreements, and no property rights therein shall exist in favor of the state.

8 166.456. All personally identifiable information concerning participants and beneficiaries of
9 accounts established within the Missouri education [savings] program pursuant to sections 166.400
10 to 166.456 shall be confidential, and any disclosure of such information shall be restricted to
11 purposes directly connected with the administration of the program."; and

12
13 Further amend said bill by amending the title, enacting clause, and intersectional references
14 accordingly.