

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill No. 320, Page 1, Section A, Line 2, by
2 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

Action Taken _____ Date _____

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]~~ the member's position in good faith and with that degree of
23 diligence, care and skill which a prudent person acting in a like capacity and familiar with these
24 matters would use in 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 8. The state treasurer may delegate any duties assigned to the state treasurer under sections
35 135.712 to 135.719 and 166.700 to 166.720 to the Missouri education program board established
36 under this section.

37 166.420. 1. The board may enter into ~~[savings]~~ program participation agreements with
38 participants on behalf of beneficiaries pursuant to the provisions of sections 166.400 to 166.455,
39 including the following terms and conditions:

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

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

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

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

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

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

6 2. The board shall establish the maximum amount [~~which~~] that may be contributed annually
7 [~~by a participant~~] with respect to a beneficiary.

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

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

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

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

48 2. If any deductible contributions to or earnings from any such program referred to in this
49 section are distributed and not used to pay qualified education expenses, not transferred as allowed

1 by 26 U.S.C. Section 529(c)(3)(C)(i), as amended, and any Internal Revenue Service regulations or
 2 guidance issued in relation thereto, or are not held for the minimum length of time established by
 3 the appropriate Missouri board, then the amount so distributed shall be included in the Missouri
 4 adjusted gross income of the participant, or, if the participant is not living, the beneficiary.

5 3. The provisions of this section shall apply to tax years beginning on or after January 1,
 6 2008, and the provisions of this section with regard to sections 166.500 to 166.529 shall apply to tax
 7 years beginning on or after January 1, 2004.

8 166.440. The assets of the [savings] program shall at all times be preserved, invested and
 9 expended only for the purposes set forth in this section and in accordance with the participation
 10 agreements, and no property rights therein shall exist in favor of the state.

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

15 166.502. As used in sections 166.500 to 166.529, except where the context clearly requires
 16 another interpretation, the following terms mean:

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

19 (2) "Benefits", the payment of qualified higher education expenses on behalf of a
 20 beneficiary from a deposit account during the beneficiary's attendance at an eligible educational
 21 institution;

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

23 (4) "Eligible educational institution", an institution of postsecondary education as defined in
 24 Section 529(e)(5) of the Internal Revenue Code;

25 (5) "Financial institution", a depository institution and any intermediary that brokers
 26 certificates of deposits;

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

28 (7) "Missouri higher education deposit program" or "deposit program", the program created
 29 pursuant to sections 166.500 to 166.529;

30 (8) "Participant", a person who has entered into a participation agreement pursuant to
 31 sections 166.500 to 166.529 for the advance payment of qualified higher education expenses on
 32 behalf of a beneficiary;

33 (9) "Participation agreement", an agreement between a participant and the board pursuant to
 34 and conforming with the requirements of sections 166.500 to 166.529;

35 (10) "Qualified higher education expenses", the qualified costs of tuition and fees and other
 36 expenses for attendance at an eligible educational institution, as defined in Section 529(e)(3) of the
 37 Internal Revenue Code of 1986, as amended."; and
 38

39 Further amend said bill, Page 7, Section 170.036, Line 59, by inserting after all of said section and
 40 line the following:

41
 42 "209.610. 1. The board may enter into ABLE program participation agreements with
 43 participants on behalf of designated beneficiaries pursuant to the provisions of sections 209.600 to
 44 209.645, including the following terms and conditions:

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

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

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

1 associated with depositing moneys with the board;

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

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

7 2. The board shall establish the maximum amount of contributions which may be made
8 annually to an ABLE account, which shall be the same as the amount allowed by 26 U.S.C. Section
9 529A of the Internal Revenue Code of 1986, as amended.

10 3. The board shall establish a total contribution limit for savings accounts established under
11 the ABLE program with respect to a designated beneficiary which shall in no event be less than the
12 amount established as the contribution limit by the Missouri education [savings] program board for
13 qualified tuition [savings] programs established under sections 166.400 to 166.450. No contribution
14 shall be made to an ABLE account for a designated beneficiary if it would cause the balance of the
15 ABLE account of the designated beneficiary to exceed the total contribution limit established by the
16 board. The board may establish other requirements that it deems appropriate to provide adequate
17 safeguards to prevent contributions on behalf of a designated beneficiary from exceeding what is
18 necessary to provide for the qualified disability expenses of the designated beneficiary.

19 4. The board shall establish the minimum length of time that contributions and earnings
20 must be held by the ABLE program to qualify as tax exempt pursuant to section 209.625. Any
21 contributions or earnings that are withdrawn or distributed from an ABLE account prior to the
22 expiration of the minimum length of time, as established by the board, shall be subject to a penalty
23 pursuant to section 209.620." ; and
24

25 Further amend said bill by amending the title, enacting clause, and intersectional references
26 accordingly.