

FIRST REGULAR SESSION

HOUSE BILL NO. 478

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHRISTOFANELLI.

0936H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 166.440, 166.456, 166.502, and 209.610, RSMo, and to enact in lieu thereof ten new sections relating to savings accounts for education expenses.

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

Section A. Sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 166.440, 166.456, 166.502, and 209.610, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 166.440, 166.456, 166.502, and 209.610, to read as follows:

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

166.410. ~~[Definitions.]~~ 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 qualified education expenses at an eligible educational institution;

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 13 (5) "Financial institution", a bank, insurance company or registered investment company;
- 14 (6) "Internal Revenue Code", the Internal Revenue Code of 1986, as amended;
- 15 (7) "Missouri education [savings] program" or "[savings] program", the program created
16 pursuant to sections 166.400 to 166.455;
- 17 (8) "Participant", a person who has entered into a participation agreement pursuant to
18 sections 166.400 to 166.455 for the advance payment of qualified education expenses on behalf
19 of a beneficiary;
- 20 (9) "Participation agreement", an agreement between a participant and the board pursuant
21 to and conforming with the requirements of sections 166.400 to 166.455; and
- 22 (10) "Qualified higher education expenses" or "qualified education expenses", the
23 qualified costs of tuition and fees and other expenses for attendance at an eligible educational
24 institution, as defined in Section ~~529(e)(3)~~ 529 of the Internal Revenue Code, as amended.

166.415. 1. There is hereby created the "Missouri Education [Savings] Program". The
2 program shall be administered by the Missouri education [savings] program board which shall
3 consist of the Missouri state treasurer who shall serve as chairman, the commissioner of the
4 department of higher education and workforce development, the commissioner of education, the
5 commissioner of the office of administration, the director of the department of economic
6 development, two persons having demonstrable experience and knowledge in the areas of
7 finance or the investment and management of public funds, one of whom is selected by the
8 president pro tem of the senate and one of whom is selected by the speaker of the house of
9 representatives, and one person having demonstrable experience and knowledge in the area of
10 banking or deposit rate determination and placement of depository certificates of deposit or other
11 deposit investments. Such member shall be appointed by the governor with the advice and
12 consent of the senate. The three appointed members shall be appointed to serve for terms of four
13 years from the date of appointment, or until their successors shall have been appointed and shall
14 have qualified. The members of the board shall be subject to the conflict of interest provisions
15 of section 105.452. Any member who violates the conflict of interest provisions shall be
16 removed from the board. In order to establish and administer the [savings] program, the board,
17 in addition to its other powers and authority, shall have the power and authority to:

- 18 (1) Develop and implement the Missouri education [savings] program and,
19 notwithstanding any provision of sections 166.400 to 166.455 to the contrary, the [savings]
20 programs and services consistent with the purposes and objectives of sections 166.400 to
21 166.455;
- 22 (2) Promulgate reasonable rules and regulations and establish policies and procedures
23 to implement sections 166.400 to 166.455, to permit the [savings] program to qualify as a

24 "qualified state tuition program" pursuant to Section 529 of the Internal Revenue Code and to
25 ensure the [savings] program's compliance with all applicable laws;

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

30 (4) Enter into agreements with any financial institution, the state or any federal or other
31 agency or entity as required for the operation of the [savings] program pursuant to sections
32 166.400 to 166.455;

33 (5) Enter into participation agreements with participants;

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

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

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

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

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

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

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

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

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

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

65 5. The funds shall be invested only in those investments which a prudent person acting
66 in a like capacity and familiar with these matters would use in the conduct of an enterprise of a
67 like character and with like aims, as provided in section 105.688. For new contracts entered into
68 after August 28, 2012, board members shall study investment plans of other states and contract
69 with or negotiate to provide benefit options the same as or similar to other states' qualified plans
70 for the purpose of offering additional options for members of the plan. The board may delegate
71 to duly appointed investment counselors authority to act in place of the board in the investment
72 and reinvestment of all or part of the moneys and may also delegate to such counselors the
73 authority to act in place of the board in the holding, purchasing, selling, assigning, transferring
74 or disposing of any or all of the securities and investments in which such moneys shall have been
75 invested, as well as the proceeds of such investments and such moneys. Such investment
76 counselors shall be registered as investment advisors with the United States Securities and
77 Exchange Commission. In exercising or delegating its investment powers and authority,
78 members of the board shall exercise ordinary business care and prudence under the facts and
79 circumstances prevailing at the time of the action or decision. No member of the board shall be
80 liable for any action taken or omitted with respect to the exercise of, or delegation of, these
81 powers and authority if such member shall have discharged the duties of ~~[his or her]~~ **the**
82 **member's** position in good faith and with that degree of diligence, care and skill which a prudent
83 person acting in a like capacity and familiar with these matters would use in the conduct of an
84 enterprise of a like character and with like aims.

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

88 7. No trustee or employee of the ~~[savings]~~ program shall receive any gain or profit from
89 any funds or transaction of the ~~[savings]~~ program. Any trustee, employee or agent of the
90 ~~[savings]~~ program accepting any gratuity or compensation for the purpose of influencing such
91 trustee's, employee's or agent's action with respect to the investment or management of the funds
92 of the ~~[savings]~~ program shall thereby forfeit the office and in addition thereto be subject to the
93 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 contributions;

(2) A participation agreement shall specify the method for calculating the return on the 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 eligible educational institution, be allowed to continue to attend an eligible educational institution after having been admitted or will graduate from an 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]~~ **that** may be contributed annually ~~[by a participant]~~ with respect to a 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 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. 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. Contributions and earnings thereon accumulated on behalf of participants in the [savings] program may be used,

4 as provided in the participation agreement, for qualified education expenses. Such contributions
5 and earnings shall not be considered income for purposes of determining a participant's eligibility
6 for financial assistance under any state student aid program.

166.435. 1. Notwithstanding any law to the contrary, the assets of the [savings] program
2 held by the board, the assets of any deposit program authorized in section 166.500, and the assets
3 of any qualified tuition [savings] program established pursuant to Section 529 of the Internal
4 Revenue Code and any income therefrom shall be exempt from all taxation by the state or any
5 of its political subdivisions. Income earned or received from the [savings] program, deposit, or
6 other qualified tuition [savings] programs established under Section 529 of the Internal Revenue
7 Code, or refunds of qualified education expenses received by a beneficiary from an eligible
8 educational institution in connection with withdrawal from enrollment at such institution which
9 are contributed within sixty days of withdrawal to a qualified tuition [savings] program of which
10 such individual is a beneficiary shall not be subject to state income tax imposed pursuant to
11 chapter 143 and shall be eligible for any benefits provided in accordance with Section 529 of the
12 Internal Revenue Code. The exemption from taxation pursuant to this section shall apply only
13 to assets and income maintained, accrued, or expended pursuant to the requirements of the
14 [savings] program established pursuant to sections 166.400 to 166.455, the deposit program
15 established pursuant to sections 166.500 to 166.529, and other qualified tuition [savings]
16 programs established under Section 529 of the Internal Revenue Code, and no exemption shall
17 apply to assets and income expended for any other purposes. Annual contributions made to the
18 [savings] program held by the board, the deposit program, and any qualified tuition [savings]
19 program established under Section 529 of the Internal Revenue Code up to and including eight
20 thousand dollars per [participating] taxpayer, and up to sixteen thousand dollars for married
21 individuals filing a joint tax return, shall be subtracted in determining Missouri adjusted gross
22 income pursuant to section 143.121.

23 2. If any deductible contributions to or earnings from any such program referred to in this
24 section are distributed and not used to pay qualified education expenses, not transferred as
25 allowed by 26 U.S.C. Section 529(c)(3)(C)(i), as amended, and any Internal Revenue Service
26 regulations or guidance issued in relation thereto, or are not held for the minimum length of time
27 established by the appropriate Missouri board, then the amount so distributed shall be included
28 in the Missouri adjusted gross income of the participant, or, if the participant is not living, the
29 beneficiary.

30 3. The provisions of this section shall apply to tax years beginning on or after January
31 1, 2008, and the provisions of this section with regard to sections 166.500 to 166.529 shall apply
32 to tax years beginning on or after January 1, 2004.

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

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

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

- 3 (1) "Beneficiary", any individual designated by a participation agreement to benefit from
4 payments for qualified higher education expenses at an eligible educational institution;
- 5 (2) "Benefits", the payment of qualified higher education expenses on behalf of a
6 beneficiary from a deposit account during the beneficiary's attendance at an eligible educational
7 institution;
- 8 (3) "Board", the Missouri education [savings] program board established in section
9 166.415;
- 10 (4) "Eligible educational institution", an institution of postsecondary education as
11 defined in Section 529(e)(5) of the Internal Revenue Code;
- 12 (5) "Financial institution", a depository institution and any intermediary that brokers
13 certificates of deposits;
- 14 (6) "Internal Revenue Code", the Internal Revenue Code of 1986, as amended;
- 15 (7) "Missouri higher education deposit program" or "deposit program", the program
16 created pursuant to sections 166.500 to 166.529;
- 17 (8) "Participant", a person who has entered into a participation agreement pursuant to
18 sections 166.500 to 166.529 for the advance payment of qualified higher education expenses on
19 behalf of a beneficiary;
- 20 (9) "Participation agreement", an agreement between a participant and the board pursuant
21 to and conforming with the requirements of sections 166.500 to 166.529;
- 22 (10) "Qualified higher education expenses", the qualified costs of tuition and fees and
23 other expenses for attendance at an eligible educational institution, as defined in Section
24 529(e)(3) of the Internal Revenue Code of 1986, as amended.

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

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

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

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

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

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

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

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

28 4. The board shall establish the minimum length of time that contributions and earnings
29 must be held by the ABLE program to qualify as tax exempt pursuant to section 209.625. Any
30 contributions or earnings that are withdrawn or distributed from an ABLE account prior to the
31 expiration of the minimum length of time, as established by the board, shall be subject to a
32 penalty pursuant to section 209.620.

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