

FIRST REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 152

101ST GENERAL ASSEMBLY

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ADRIANE D. CROUSE, Secretary

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## AN ACT

To repeal sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 166.440, and 166.456, RSMo, and to enact in lieu thereof eight new sections relating to the Missouri education program.

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*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Section A. Sections 166.400, 166.410, 166.415, 166.420, 2 166.425, 166.435, 166.440, and 166.456, RSMo, are repealed and 3 eight new sections enacted in lieu thereof, to be known as 4 sections 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 5 166.440, and 166.456, to read as follows:

166.400. Sections 166.400 to [166.455] **166.456** shall 2 be known and may be cited as the "Missouri Education 3 [Savings] Program".

166.410. [Definitions.] As used in sections 166.400 2 to [166.455] **166.456**, except where the context clearly 3 requires another interpretation, the following terms mean:

- 4 (1) "Beneficiary", any individual designated by a 5 participation agreement to benefit from payments for 6 qualified education expenses at an eligible educational 7 institution;
- 8 (2) "Benefits", the payment of qualified education 9 expenses on behalf of a beneficiary from a savings account 10 during the beneficiary's attendance at an eligible 11 educational institution;

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

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

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

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

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

24 (7) "Missouri education [savings] program" or  
25 "[savings] program", the program created pursuant to  
26 sections 166.400 to [166.455] **166.456**;

27 (8) "Participant", a person who has entered into a  
28 participation agreement pursuant to sections 166.400 to  
29 [166.455] **166.456** for the advance payment of qualified  
30 education expenses on behalf of a beneficiary;

31 (9) "Participation agreement", an agreement between a  
32 participant and the board pursuant to and conforming with  
33 the requirements of sections 166.400 to [166.455] **166.456**;  
34 and

35 (10) "Qualified higher education expenses" or  
36 "qualified education expenses", the qualified costs of  
37 tuition and fees and other expenses for attendance at an  
38 eligible educational institution, as defined in Section  
39 [529(e)(3)] **529** of the Internal Revenue Code, as amended.

166.415. 1. There is hereby created the "Missouri  
2 Education [Savings] Program". The program shall be  
3 administered by the Missouri education [savings] program  
4 board which shall consist of the Missouri state treasurer

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

29 (1) Develop and implement the Missouri education  
30 [savings] program and, notwithstanding any provision of  
31 sections 166.400 to [166.455] **166.456** to the contrary, the  
32 [savings] programs and services consistent with the purposes  
33 and objectives of sections 166.400 to [166.455] **166.456**;

34 (2) Promulgate reasonable rules and regulations and  
35 establish policies and procedures to implement sections  
36 166.400 to [166.455] **166.456**, to permit the [savings]

37 program to qualify as a "qualified state tuition program"  
38 pursuant to Section 529 of the Internal Revenue Code and to  
39 ensure the [savings] program's compliance with all  
40 applicable laws;

41 (3) Develop and implement educational programs and  
42 related informational materials for participants, either  
43 directly or through a contractual arrangement with a  
44 financial institution for investment services, and their  
45 families, including special programs and materials to inform  
46 families with young children regarding methods for financing  
47 education and training;

48 (4) Enter into agreements with any financial  
49 institution, the state or any federal or other agency or  
50 entity as required for the operation of the [savings]  
51 program pursuant to sections 166.400 to [166.455] **166.456**;

52 (5) Enter into participation agreements with  
53 participants;

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

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

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

65 (9) Make refunds to participants upon the termination  
66 of participation agreements pursuant to the provisions,  
67 limitations, and restrictions set forth in sections 166.400  
68 to [166.455] **166.456** and the rules adopted by the board;

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

71           (11) Effectuate and carry out all the powers granted  
72 by sections 166.400 to [166.455] **166.456**, and have all other  
73 powers necessary to carry out and effectuate the purposes,  
74 objectives and provisions of sections 166.400 to [166.455]  
75 **166.456** pertaining to the [savings] program; and

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

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

85           3. Four members of the board shall constitute a  
86 quorum. No vacancy in the membership of the board shall  
87 impair the right of a quorum to exercise all the rights and  
88 perform all the duties of the board. No action shall be  
89 taken by the board except upon the affirmative vote of a  
90 majority of the members present.

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

100           5. The funds shall be invested only in those  
101 investments which a prudent person acting in a like capacity  
102 and familiar with these matters would use in the conduct of  
103 an enterprise of a like character and with like aims, as  
104 provided in section 105.688. For new contracts entered into  
105 after August 28, 2012, board members shall study investment  
106 plans of other states and contract with or negotiate to  
107 provide benefit options the same as or similar to other  
108 states' qualified plans for the purpose of offering  
109 additional options for members of the plan. The board may  
110 delegate to duly appointed investment counselors authority  
111 to act in place of the board in the investment and  
112 reinvestment of all or part of the moneys and may also  
113 delegate to such counselors the authority to act in place of  
114 the board in the holding, purchasing, selling, assigning,  
115 transferring or disposing of any or all of the securities  
116 and investments in which such moneys shall have been  
117 invested, as well as the proceeds of such investments and  
118 such moneys. Such investment counselors shall be registered  
119 as investment advisors with the United States Securities and  
120 Exchange Commission. In exercising or delegating its  
121 investment powers and authority, members of the board shall  
122 exercise ordinary business care and prudence under the facts  
123 and circumstances prevailing at the time of the action or  
124 decision. No member of the board shall be liable for any  
125 action taken or omitted with respect to the exercise of, or  
126 delegation of, these powers and authority if such member  
127 shall have discharged the duties of his or her position in  
128 good faith and with that degree of diligence, care and skill  
129 which a prudent person acting in a like capacity and  
130 familiar with these matters would use in the conduct of an  
131 enterprise of a like character and with like aims.

132           6. No investment transaction authorized by the board  
133 shall be handled by any company or firm in which a member of  
134 the board has a substantial interest, nor shall any member  
135 of the board profit directly or indirectly from any such  
136 investment.

137           7. No trustee or employee of the [savings] program  
138 shall receive any gain or profit from any funds or  
139 transaction of the [savings] program. Any trustee, employee  
140 or agent of the [savings] program accepting any gratuity or  
141 compensation for the purpose of influencing such trustee's,  
142 employee's or agent's action with respect to the investment  
143 or management of the funds of the [savings] program shall  
144 thereby forfeit the office and in addition thereto be  
145 subject to the penalties prescribed for bribery.

          166.420. 1. The board may enter into [savings]  
2 program participation agreements with participants on behalf  
3 of beneficiaries pursuant to the provisions of sections  
4 166.400 to [166.455] **166.456**, including the following terms  
5 and conditions:

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

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

12           (3) The execution of a participation agreement by the  
13 board shall not guarantee that the beneficiary named in any  
14 participation agreement will be admitted to an eligible  
15 educational institution, be allowed to continue to attend an  
16 eligible educational institution after having been admitted  
17 or will graduate from an eligible educational institution;

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

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

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

28           2. The board shall establish the maximum amount which  
29 may be contributed annually [by a participant] with respect  
30 to a beneficiary.

31           3. The board shall establish a total contribution  
32 limit for savings accounts established under the [savings]  
33 program with respect to a beneficiary to permit the  
34 [savings] program to qualify as a "qualified state tuition  
35 program" pursuant to Section 529 of the Internal Revenue  
36 Code. No contribution may be made to a savings account for  
37 a beneficiary if it would cause the balance of all savings  
38 accounts of the beneficiary to exceed the total contribution  
39 limit established by the board. The board may establish  
40 other requirements that it deems appropriate to provide  
41 adequate safeguards to prevent contributions on behalf of a  
42 beneficiary from exceeding what is necessary to provide for  
43 the qualified education expenses of the beneficiary.

44           4. The board shall establish the minimum length of  
45 time that contributions and earnings must be held by the  
46 [savings] program to qualify pursuant to section 166.435.  
47 Any contributions or earnings that are withdrawn or  
48 distributed from a savings account prior to the expiration

49 of the minimum length of time, as established by the board,  
50 shall be subject to a penalty pursuant to section 166.430.

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

166.435. 1. Notwithstanding any law to the contrary,  
2 the assets of the [savings] program held by the board, the  
3 assets of any deposit program authorized in section 166.500,  
4 and the assets of any qualified tuition [savings] program  
5 established pursuant to Section 529 of the Internal Revenue  
6 Code and any income therefrom shall be exempt from all  
7 taxation by the state or any of its political subdivisions.  
8 Income earned or received from the [savings] program,  
9 deposit, or other qualified tuition [savings] programs  
10 established under Section 529 of the Internal Revenue Code,  
11 or refunds of qualified education expenses received by a  
12 beneficiary from an eligible educational institution in  
13 connection with withdrawal from enrollment at such  
14 institution which are contributed within sixty days of  
15 withdrawal to a qualified tuition [savings] program of which  
16 such individual is a beneficiary shall not be subject to  
17 state income tax imposed pursuant to chapter 143 and shall  
18 be eligible for any benefits provided in accordance with  
19 Section 529 of the Internal Revenue Code. The exemption  
20 from taxation pursuant to this section shall apply only to

21 assets and income maintained, accrued, or expended pursuant  
22 to the requirements of the [savings] program established  
23 pursuant to sections 166.400 to [166.455] **166.456**, the  
24 deposit program established pursuant to sections 166.500 to  
25 166.529, and other qualified tuition [savings] programs  
26 established under Section 529 of the Internal Revenue Code,  
27 and no exemption shall apply to assets and income expended  
28 for any other purposes. Annual contributions made to the  
29 [savings] program held by the board, the deposit program,  
30 and any qualified tuition [savings] program established  
31 under Section 529 of the Internal Revenue Code up to and  
32 including eight thousand dollars per [participating]  
33 taxpayer, and up to sixteen thousand dollars for married  
34 individuals filing a joint tax return, shall be subtracted  
35 in determining Missouri adjusted gross income pursuant to  
36 section 143.121.

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

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

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

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

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