

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 174
98TH GENERAL ASSEMBLY

Reported from the Committee on Seniors, Families and Children, February 12, 2015, with recommendation that the Senate Committee Substitute do pass.

0309S.04C

ADRIANE D. CROUSE, Secretary.

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, is 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. 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 beneficiary from a savings 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", the program created pursuant to sections 166.600 to 166.645;

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

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

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

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

21 from the board.

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

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

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

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

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

42 (5) Enter into participation agreements with participants;

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

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

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

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

56 (10) Make provision for the payment of costs of administration
57 and operation of the ABLÉ program;

58 **(11) Effectuate and carry out all the powers granted by sections**
59 **166.600 to 166.645, and have all other powers necessary to carry out and**
60 **effectuate the purposes, objectives and provisions of sections 166.600**
61 **to 166.645 pertaining to the ABLE program; and**

62 **(12) Procure insurance, guarantees or other protections against**
63 **any loss in connection with the assets or activities of the ABLE**
64 **program.**

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

74 **4. The board shall meet within the state of Missouri at the time**
75 **set at a previously scheduled meeting or by the request of any four**
76 **members of the board. Notice of the meeting shall be delivered to all**
77 **members of the board in person or by depositing notice in a United**
78 **States post office in a properly stamped and addressed envelope not**
79 **less than six days prior to the date fixed for the meeting. The board**
80 **may meet at any time by unanimous mutual consent. There shall be at**
81 **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**
84 **familiar with these matters would use in the conduct of an enterprise**
85 **of a like character and with like aims, as provided in section**
86 **105.688. For new contracts entered into after August 28, 2015, board**
87 **members shall study investment plans of other states and contract with**
88 **or negotiate to provide benefit options the same as or similar to other**
89 **states' qualified plans for the purpose of offering additional options for**
90 **members of the plan. The board may delegate to duly appointed**
91 **investment counselors authority to act in place of the board in the**
92 **investment and reinvestment of all or part of the moneys and may also**
93 **delegate to such counselors the authority to act in place of the board**
94 **in the holding, purchasing, selling, assigning, transferring, or disposing**

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

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

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

166.610. 1. The board may enter into ABLE program
2 participation agreements with participants on behalf of 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
11 disclose to participants the risk associated with depositing moneys

12 with the board;

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

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

20 2. The board shall establish the maximum amount which may be
21 contributed annually by a participant with respect to a beneficiary
22 which shall in no event be less than the amount established as the
23 contribution limit by the Missouri higher education savings program
24 board for qualified tuition savings programs established under sections
25 166.400 to 166.445.

26 3. The board shall establish a total contribution limit for savings
27 accounts established under the ABLE program with respect to a
28 beneficiary which shall in no event be less than the amount established
29 as the contribution limit by the Missouri higher education savings
30 program board for qualified tuition savings programs established under
31 sections 166.400 to 166.445. No contribution shall be made to a savings
32 account for a beneficiary if it would cause the balance of all savings
33 accounts of the beneficiary to exceed the total contribution limit
34 established by the board. The board may establish other requirements
35 that it deems appropriate to provide adequate safeguards to prevent
36 contributions on behalf of a beneficiary from exceeding what is
37 necessary to provide for the qualified disability expenses of the
38 beneficiary.

39 4. The board shall establish the minimum length of time that
40 contributions and earnings must be held by the ABLE program to
41 qualify as tax exempt pursuant to section 166.625. Any contributions
42 or earnings that are withdrawn or distributed from a savings account
43 prior to the expiration of the minimum length of time, as established
44 by the board, shall 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

5 used, as provided in the participation agreement, for qualified
6 disability expenses.

166.620. Any participant may cancel a participation agreement
2 at will. The board shall impose a penalty equal to or greater than ten
3 percent of the earnings of an 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
8 by the board.

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

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

23 3. The provisions of this section shall apply to tax years
24 beginning 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
3 this section and in accordance with the participation agreements, and

4 no 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
3 section shall become effective only if it complies with and is subject to
4 all of the provisions of chapter 536, and, if applicable, section
5 536.028. This section and chapter 536 are nonseverable and if any of
6 the powers vested with the general assembly pursuant to chapter 536,
7 to review, to delay the effective date, or to disapprove and annul a rule
8 are subsequently held unconstitutional, then the grant of rulemaking
9 authority and any rule proposed or adopted after August 28, 2015, shall
10 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
4 program. The director of investment shall also review the continued
5 viability of the program and the administration of the program by the
6 board. The director of investment shall report the findings annually to
7 the board, which shall subsequently disclose such findings at a public
8 meeting.

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

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