

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 174**  
98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCHMITT.

Offered February 25, 2015.

Senate Substitute adopted, February 25, 2015.

Taken up for Perfection February 25, 2015. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

0309S.06P

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**AN ACT**

To amend chapter 166, RSMo, by adding thereto ten new sections relating to the Missouri Achieving a Better Life Experience program.

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*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. 1. 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 designated beneficiary from an ABLE 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;

16           (7) "Internal Revenue Code", the Internal Revenue Code of 1986,  
17 as amended;

18           (8) "Missouri Achieving a Better Life Experience program" or  
19 "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 ABLE 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 ABLE program to qualify as a "qualified ABLE program"  
30 pursuant to Section 529A of the Internal Revenue Code and to ensure  
31 ABLE 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 ABLE 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 ABLE 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 ABLE 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 designated  
3 beneficiaries pursuant to the provisions of sections 166.600 to 166.645,  
4 including the 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 designated**  
22 **beneficiary which shall in no event be less than the amount established**  
23 **as the contribution limit by the Missouri higher education savings**  
24 **program board for qualified tuition savings programs established under**  
25 **sections 166.400 to 166.450.**

26           **3. The board shall establish a total contribution limit for savings**  
27 **accounts established under the ABLE program with respect to a**  
28 **designated beneficiary which shall in no event be less than the amount**  
29 **established as the contribution limit by the Missouri higher education**  
30 **savings program board for qualified tuition savings programs**  
31 **established under sections 166.400 to 166.450. No contribution shall be**  
32 **made to an ABLE account for a designated beneficiary if it would cause**  
33 **the balance of the ABLE account of the designated beneficiary to**  
34 **exceed the total contribution limit established by the board. The board**  
35 **may establish other requirements that it deems appropriate to provide**  
36 **adequate safeguards to prevent contributions on behalf of a designated**  
37 **beneficiary from exceeding what is necessary to provide for the**  
38 **qualified disability expenses of the designated 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 an ABLE 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 participation agreement shall be deposited as received and shall be promptly invested by the board. Contributions and earnings thereon accumulated on behalf of participants in the ABLE program may be used, as provided in the participation agreement, for qualified disability expenses.

166.620. Any participant may cancel a participation agreement at will. The board shall impose a penalty equal to or greater than ten percent of the earnings of an ABLE account for any distribution that is not:

(1) Used exclusively for qualified disability expenses of the designated beneficiary;

(2) Made because of death of the designated beneficiary; or

(3) Held in the fund for the minimum length of time established by the board.

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

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