

FIRST REGULAR SESSION

SENATE BILL NO. 174

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHMITT.

Pre-filed December 30, 2014, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0309S.02I

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. 1. As used in sections 166.600 to 166.645, except where the context clearly requires another interpretation, the following terms mean:

(1) "Beneficiary", any individual who:

(a) Is receiving, deemed to be, or treated as receiving supplemental security income benefits or disability benefits under Title II of the Social Security Act;

(b) Has a medically determined physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months; or

(c) Is blind;

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

(5) "Missouri Achieving a Better Life Experience program" or

21 "ABLE", the program created pursuant to sections 166.600 to 166.645;

22 (6) "Participant", a person who has entered into a participation
23 agreement pursuant to sections 166.600 to 166.645 for the advance
24 payment of qualified disability expenses on behalf of a beneficiary;

25 (7) "Participation agreement", an agreement between a
26 participant and the board pursuant to and conforming with the
27 requirements of sections 166.600 to 166.645; and

28 (8) "Qualified disability expenses", expenses which are made for
29 the benefit of a designated beneficiary including:

30 (a) Educational expenses, such as tuition for preschool through
31 post-secondary education, which shall include higher education
32 expenses and expenses for books, supplies, and educational materials
33 related to preschool and secondary education, tutors, and special
34 education services;

35 (b) Housing expenses, such as rent for a primary residence,
36 purchase of a primary residence, interest in a primary residence,
37 mortgage payments, real property taxes, and utility charges;

38 (c) Transportation expenses, such as the use of mass transit, the
39 purchase or modification of vehicles, and moving expenses;

40 (d) Employment expenses related to obtaining and maintaining
41 employment, such as job-related training, assistive technology, and
42 personal assistance supports;

43 (e) Health, prevention, and wellness expenses, including
44 premiums for health insurance, mental health, medical, vision, and
45 dental expenses, durable medical equipment, therapy, respite care,
46 long-term services and supports, nutritional management,
47 communication services and devices, adaptive equipment, assistive
48 technology, and personal assistance;

49 (f) Miscellaneous expenses, including financial management and
50 administrative services, legal fees, expenses for oversight, monitoring,
51 home improvements and modifications, maintenance and repairs at
52 primary residence, and funeral or burial expenses; and

53 (g) Other expenses which are approved by the board by rule.

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

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

26 (2) Promulgate reasonable rules and regulations and establish
27 policies and procedures to implement sections 166.600 to 166.645;

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

35 (4) Enter into agreements with any financial institution, or any
36 state or federal agency or entity as required for the operation of the
37 ABLE program pursuant to sections 166.600 to 166.645;

38 (5) Enter into participation agreements with participants;

39 (6) Accept any grants, gifts, legislative appropriations, and other
40 moneys from the state, any unit of federal, state, or local government
41 or any other person, firm, partnership, or corporation for deposit to the

42 account of the ABLE program;

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

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

48 (9) Make refunds to participants upon the termination of
49 participation agreements pursuant to the provisions, limitations, and
50 restrictions set forth in sections 166.600 to 166.645 and the rules
51 adopted by the board;

52 (10) Make provision for the payment of costs of administration
53 and operation of the ABLE program;

54 (11) Effectuate and carry out all the powers granted by sections
55 166.600 to 166.645, and have all other powers necessary to carry out and
56 effectuate the purposes, objectives and provisions of sections 166.600
57 to 166.645 pertaining to the ABLE program; and

58 (12) Procure insurance, guarantees or other protections against
59 any loss in connection with the assets or activities of the ABLE
60 program.

61 2. Four members of the board shall constitute a quorum. No
62 vacancy in the membership of the board shall impair the right of a
63 quorum to exercise all the rights and perform all the duties of the
64 board. No action shall be taken by the board except upon the
65 affirmative vote of a majority of the members present.

66 3. The board shall meet within the state of Missouri at the time
67 set at a previously scheduled meeting or by the request of any four
68 members of the board. Notice of the meeting shall be delivered to all
69 members of the board in person or by depositing notice in a United
70 States post office in a properly stamped and addressed envelope not
71 less than six days prior to the date fixed for the meeting. The board
72 may meet at any time by unanimous mutual consent. There shall be at
73 least one meeting in each quarter.

74 4. The funds of the ABLE program shall be invested only in those
75 investments which a prudent person acting in a like capacity and
76 familiar with these matters would use in the conduct of an enterprise
77 of a like character and with like aims, as provided in section
78 105.688. For new contracts entered into after August 28, 2015, board

79 members shall study investment plans of other states and contract with
80 or negotiate to provide benefit options the same as or similar to other
81 states' qualified plans for the purpose of offering additional options for
82 members of the plan. The board may delegate to duly appointed
83 investment counselors authority to act in place of the board in the
84 investment and reinvestment of all or part of the moneys and may also
85 delegate to such counselors the authority to act in place of the board
86 in the holding, purchasing, selling, assigning, transferring, or disposing
87 of any or all of the securities and investments in which such moneys
88 shall have been invested, as well as the proceeds of such investments
89 and such moneys. Such investment counselors shall be registered as
90 investment advisors with the United States Securities and Exchange
91 Commission. In exercising or delegating its investment powers and
92 authority, members of the board shall exercise ordinary business care
93 and prudence under the facts and circumstances prevailing at the time
94 of the action or decision. No member of the board shall be liable for
95 any action taken or omitted with respect to the exercise of, or
96 delegation of, these powers and authority if such member shall have
97 discharged the duties of his or her position in good faith and with that
98 degree of diligence, care and skill which a prudent person acting in a
99 like capacity and familiar with these matters would use in the conduct
100 of an enterprise of a like character and with like aims.

101 5. No investment transaction authorized by the board shall be
102 handled by any company or firm in which a member of the board has
103 a substantial interest, nor shall any member of the board profit directly
104 or indirectly from any such investment.

105 6. No member of the board or employee of the ABLE program
106 shall receive any gain or profit from any funds or transaction of the
107 ABLE program. Any member of the board, employee or agent of the
108 ABLE program accepting any gratuity or compensation for the purpose
109 of influencing such member of the board's, employee's or agent's action
110 with respect to the investment or management of the funds of the ABLE
111 program shall thereby forfeit the office and in addition thereto be
112 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 3. The board shall establish a total contribution limit for savings
23 accounts established under the ABLE program with respect to a
24 beneficiary. No contribution shall be made to a savings account for a
25 beneficiary if it would cause the balance of all savings accounts of the
26 beneficiary to exceed the total contribution limit established by the
27 board. The board may establish other requirements that it deems
28 appropriate to provide adequate safeguards to prevent contributions
29 on behalf of a beneficiary from exceeding what is necessary to provide
30 for the qualified disability expenses of the beneficiary.

31 4. The board shall establish the minimum length of time that
32 contributions and earnings must be held by the ABLE program to
33 qualify as tax exempt pursuant to section 166.625. Any contributions
34 or earnings that are withdrawn or distributed from a savings account
35 prior to the expiration of the minimum length of time, as established
36 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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