

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2125

98TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, April 14, 2016, with recommendation that the Senate Committee Substitute do pass.

5663S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 209.600, 209.605, 209.610, and 209.630, RSMo, and to enact in lieu thereof eight new sections relating to savings programs.

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

Section A. Sections 209.600, 209.605, 209.610, and 209.630, RSMo, are
2 repealed and eight new sections enacted in lieu thereof, to be known as sections
3 209.600, 209.605, 209.610, 209.630, 408.800, 408.810, 408.820, and 408.830, to
4 read as follows:

209.600. [1.] As used in sections 209.600 to 209.645, except where the
2 context clearly requires another interpretation, the following terms mean:

3 (1) "ABLE account", the same meaning as in **26 U.S.C.** Section 529A of
4 the Internal Revenue Code;

5 (2) "Benefits", the payment of qualified disability expenses on behalf of a
6 designated beneficiary from an ABLE account;

7 (3) "Board", the Missouri Achieving a Better Life Experience board
8 established in section 209.605;

9 (4) "Designated beneficiary", the same meaning as in **26 U.S.C.** Section
10 529A of the Internal Revenue Code;

11 (5) "Eligible individual", the same meaning as in **26 U.S.C.** Section 529A
12 of the Internal Revenue Code;

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

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

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

17 (8) "Missouri Achieving a Better Life Experience program" or "ABLE", the
18 program created pursuant to sections 209.600 to 209.645;

19 (9) "Participant", a person who has entered into a participation agreement
20 pursuant to sections 209.600 to 209.645 for the advance payment of qualified
21 disability expenses on behalf of a designated beneficiary. Unless otherwise
22 permitted under **26 U.S.C.** Section 529A of the Internal Revenue Code the
23 participant shall be the designated beneficiary of the ABLE account, except that
24 if the designated beneficiary of the account is a minor or has a custodian or other
25 fiduciary appointed for the purpose of managing his or her financial affairs, the
26 parent or custodian or other fiduciary of the designated beneficiary may serve as
27 the participant if such form of ownership is permitted or not prohibited by **26**
28 **U.S.C.** Section 529A of the Internal Revenue Code;

29 (10) "Participation agreement", an agreement between a participant and
30 the board pursuant to and conforming with the requirements of sections 209.600
31 to 209.645; and

32 (11) "Qualified disability expenses", the same meaning as in **26 U.S.C.**
33 Section 529A of the Internal Revenue Code.

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

19 2. In order to establish and administer the ABLE program, the board, in

20 addition to its other powers and authority, shall have the power and authority to:

21 (1) Develop and implement the Missouri achieving a better life experience
22 program;

23 (2) Promulgate reasonable rules and regulations and establish policies
24 and procedures to implement sections 209.600 to 209.645 to permit the ABLE
25 program to qualify as a "qualified ABLE program" pursuant to **26 U.S.C.** Section
26 529A of the Internal Revenue Code and to ensure ABLE program's compliance
27 with all applicable laws;

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

34 (4) Enter into agreements with any financial institution, or any state or
35 federal agency or entity as required for the operation of the ABLE program
36 pursuant to sections 209.600 to 209.645;

37 (5) Enter into participation agreements with participants;

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

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

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

46 (9) Make refunds to participants upon the termination of participation
47 agreements pursuant to the provisions, limitations, and restrictions set forth in
48 sections 209.600 to 209.645 and the rules adopted by the board;

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

51 (11) Effectuate and carry out all the powers granted by sections 209.600
52 to 209.645, and have all other powers necessary to carry out and effectuate the
53 purposes, objectives, and provisions of sections 209.600 to 209.645 pertaining to
54 the ABLE program;

55 (12) Procure insurance, guarantees, or other protections against any loss

56 in connection with the assets or activities of the ABLE program; and

57 (13) Enter into agreements with other states to allow residents of that
58 state to participate in the Missouri achieving a better life experience program.

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

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

74 5. The funds of the ABLE program shall be invested only in those
75 investments which a prudent person acting in a like capacity and familiar with
76 these matters would use in the conduct of an enterprise of a like character and
77 with like aims, as provided in section 105.688. For new contracts entered into
78 after August 28, 2015, board members shall study investment plans of other
79 states and contract with or negotiate to provide benefit options the same as or
80 similar to other states' qualified plans for the purpose of offering additional
81 options for members of the plan. The board may delegate to duly appointed
82 investment counselors authority to act in place of the board in the investment and
83 reinvestment of all or part of the moneys and may also delegate to such
84 counselors the authority to act in place of the board in the holding, purchasing,
85 selling, assigning, transferring, or disposing of any or all of the securities and
86 investments in which such moneys shall have been invested, as well as the
87 proceeds of such investments and such moneys. Such investment counselors shall
88 be registered as investment advisors with the United States Securities and
89 Exchange Commission. In exercising or delegating its investment powers and
90 authority, members of the board shall exercise ordinary business care and
91 prudence under the facts and circumstances prevailing at the time of the action

92 or decision. No member of the board shall be liable for any action taken or
93 omitted with respect to the exercise of, or delegation of, these powers and
94 authority if such member shall have discharged the duties of his or her position
95 in good faith and with that degree of diligence, care, and skill which a prudent
96 person acting in a like capacity and familiar with these matters would use in the
97 conduct of an enterprise of a like character and with like aims.

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

102 7. No member of the board or employee of the ABLE program shall receive
103 any gain or profit from any funds or transaction of the ABLE program. Any
104 member of the board, employee, or agent of the ABLE program accepting any
105 gratuity or compensation for the purpose of influencing such member of the
106 board's, employee's, or agent's action with respect to the investment or
107 management of the funds of the ABLE program shall thereby forfeit the office and
108 in addition thereto be subject to the penalties prescribed for bribery.

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

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

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

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

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

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

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

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

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

 209.630. The assets of the ABLE program shall at all times be preserved,
2 invested, [and] expended, **and distributed** only for the purposes set forth in this
3 section **and 26 U.S.C. Section 529A of the Internal Revenue Code of 1986,**
4 **as amended**, and in accordance with the participation agreements[, and no
5 property rights therein shall exist in favor of the state].

408.800. As used in sections 408.800 to 408.830, the following
2 **terms shall mean:**

3 **(1) "American Savings Promotion Act", Public Law 113-251,**
4 **enacted by the 113th United States Congress;**

5 **(2) "Eligible account", an insured deposit account offered by an**
6 **eligible financial institution that provides an incentive savings**
7 **program authorized under sections 408.800 to 408.830. This shall**
8 **include any account in which an individual has either a joint or**
9 **individual interest, any trust account, or similar account held for a**
10 **beneficiary. For individual accounts, one individual account holder**
11 **shall be eighteen years of age or older to be eligible. The eligibility of**
12 **the account shall not be affected by the designation of a transfer on**
13 **death beneficiary;**

14 **(3) "Eligible financial institution", a federally insured depository**
15 **institution that is state or federally chartered and is authorized to**
16 **accept deposits that are insured by the Federal Deposit Insurance**
17 **Corporation or the National Credit Union Administration;**

18 **(4) "Eligible financial program":**

19 **(a) Any savings program or product that an eligible financial**
20 **institution offers to participants for the purpose of:**

21 **a. Encouraging savings by participants; or**

22 **b. Providing participants the opportunity to use and control**
23 **their own money in order to improve his or her economic and social**
24 **condition;**

25 **(b) Programs or products that encourage or require participants**
26 **to:**

27 **a. Open one or more eligible accounts; or**

28 **b. Increase deposits or contributions to one or more eligible**
29 **accounts; or**

30 **(c) Programs or products that encourage or require participants**
31 **to deposit or transfer money into one or more eligible accounts on a**
32 **recurring or automatic basis;**

33 **(5) "Participant", any owner of an eligible account;**

34 **(6) "Savings promotion program", a promotion in which a chance**
35 **of winning designated prizes is obtained by the deposit of a specified**
36 **amount of money in a savings account or other savings program offered**
37 **by an eligible financial institution to participants in which each entry**
38 **has an equal chance of being drawn where the participants own the**
39 **savings account or other savings program.**

408.810. Eligible financial institutions may offer and conduct a
2 **savings promotion program under the following conditions:**

3 **(1) The terms and conditions of the savings promotion program**
4 **shall allow an eligible account to obtain one or more entries to win a**
5 **specified prize. Eligible accounts shall obtain entry for a savings**
6 **promotion program by maintaining an eligible account with a minimum**
7 **specified amount of money in accordance with the terms and conditions**
8 **of the savings promotion program;**

9 **(2) Beyond meeting the requirement in subdivision (1) of this**
10 **section, participants in the savings promotion program shall not be**
11 **required to provide any consideration to obtain chances to win prizes.**

12 By meeting the requirement in subdivision (1) of this section,
13 participants shall not be deemed to have given consideration;

14 (3) Participants shall not be deemed to have provided
15 consideration merely because:

16 (a) The participant makes deposits into savings accounts or
17 other savings programs that remain under the ownership of the
18 participant;

19 (b) The interest rate, if any, of the participant's account is lower
20 than the interest rate associated with comparable accounts; or

21 (c) The participant pays any fee or amount to administer or
22 maintain the participant's account that the financial institution
23 ordinarily and customarily charges an individual who does not
24 participate in the savings promotion program; and

25 (4) Each entry into the savings promotion program shall have an
26 equal chance of being drawn.

408.820. Eligible financial institutions that choose to offer
2 savings promotion programs shall comply with the requirements of the
3 American Savings Promotion Act and the regulations promulgated by
4 the federal prudential regulators of the eligible financial institutions
5 applicable to the savings promotion program.

408.830. Savings promotion programs under sections 408.800 to
2 408.830 shall not constitute gambling, gaming, a lottery, raffle, or
3 sweepstakes as defined by any other statute.

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