

House _____ Amendment NO. _____

Offered By _____

1 AMEND Senate Substitute for Senate Bill No. 882, Page 1, Section A, Line 5, by inserting
2 immediately after all of said section and line the following:

3
4 "166.400. Sections 166.400 to 166.455 shall be known and may be cited as the "Missouri
5 [~~Higher~~] Education Savings Program".

6 166.410. Definitions. As used in sections 166.400 to 166.455, except where the context
7 clearly requires another interpretation, the following terms mean:

8 (1) "Beneficiary", any individual designated by a participation agreement to benefit from
9 payments for qualified [~~higher~~] education expenses at an eligible educational institution;

10 (2) "Benefits", the payment of qualified [~~higher~~] education expenses on behalf of a
11 beneficiary from a savings account during the beneficiary's attendance at an eligible educational
12 institution;

13 (3) "Board", the Missouri [~~higher~~] education savings program board established in section
14 166.415;

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

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

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

21 (7) "Missouri [~~higher~~] education savings program" or "savings program", the program
22 created pursuant to sections 166.400 to 166.455;

23 (8) "Participant", a person who has entered into a participation agreement pursuant to
24 sections 166.400 to 166.455 for the advance payment of qualified [~~higher~~] education expenses on
25 behalf of a beneficiary;

26 (9) "Participation agreement", an agreement between a participant and the board pursuant to
27 and conforming with the requirements of sections 166.400 to 166.455; and

28 (10) "Qualified higher education expenses" or "qualified education expenses", the qualified
29 costs of tuition and fees and other expenses for attendance at an eligible educational institution, as
30 defined in Section 529(e)(3) of the Internal Revenue Code, as amended.

31 166.415. 1. There is hereby created the "Missouri [~~Higher~~] Education Savings Program".
32 The program shall be administered by the Missouri [~~higher~~] education savings program board which
33 shall consist of the Missouri state treasurer who shall serve as chairman, the commissioner of the
34 department of higher education, the commissioner of education, the commissioner of the office of
35 administration, the director of the department of economic development, two persons having
36 demonstrable experience and knowledge in the areas of finance or the investment and management

Action Taken _____ Date _____

of public funds, one of whom is selected by the president pro tem of the senate and one of whom is selected by the speaker of the house of representatives, and one person having demonstrable experience and knowledge in the area of banking or deposit rate determination and placement of depository certificates of deposit or other deposit investments. Such member shall be appointed by the governor with the advice and consent of the senate. The three appointed members shall be appointed to serve for terms of four years from the date of appointment, or until their successors shall have been appointed and shall have qualified. The members of the board shall be subject to the conflict of interest provisions of section 105.452. Any member who violates the conflict of interest provisions shall be removed from the board. In order to establish and administer the savings program, the board, in addition to its other powers and authority, shall have the power and authority to:

(1) Develop and implement the Missouri [~~higher~~] education savings program and, notwithstanding any provision of sections 166.400 to 166.455 to the contrary, the savings programs and services consistent with the purposes and objectives of sections 166.400 to 166.455;

(2) Promulgate reasonable rules and regulations and establish policies and procedures to implement sections 166.400 to 166.455, to permit the savings program to qualify as a "qualified state tuition program" pursuant to Section 529 of the Internal Revenue Code and to ensure the savings program's compliance with all applicable laws;

(3) Develop and implement educational programs and related informational materials for participants, either directly or through a contractual arrangement with a financial institution for investment services, and their families, including special programs and materials to inform families with young children regarding methods for financing education and training [~~beyond high school~~];

(4) Enter into agreements with any financial institution, the state or any federal or other agency or entity as required for the operation of the savings program pursuant to sections 166.400 to 166.455;

(5) Enter into participation agreements with participants;

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

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

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

(9) Make refunds to participants upon the termination of participation agreements pursuant to the provisions, limitations, and restrictions set forth in sections 166.400 to 166.455 and the rules adopted by the board;

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

(11) Effectuate and carry out all the powers granted by sections 166.400 to 166.455, and have all other powers necessary to carry out and effectuate the purposes, objectives and provisions of sections 166.400 to 166.455 pertaining to the savings program; and

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

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

3. Four members of the board shall constitute a quorum. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of

1 the board. No action shall be taken by the board except upon the affirmative vote of a majority of
2 the members present.

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

9 5. The funds shall be invested only in those investments which a prudent person acting in a
10 like capacity and familiar with these matters would use in the conduct of an enterprise of a like
11 character and with like aims, as provided in section 105.688. For new contracts entered into after
12 August 28, 2012, board members shall study investment plans of other states and contract with or
13 negotiate to provide benefit options the same as or similar to other states' qualified plans for the
14 purpose of offering additional options for members of the plan. The board may delegate to duly
15 appointed investment counselors authority to act in place of the board in the investment and
16 reinvestment of all or part of the moneys and may also delegate to such counselors the authority to
17 act in place of the board in the holding, purchasing, selling, assigning, transferring or disposing of
18 any or all of the securities and investments in which such moneys shall have been invested, as well
19 as the proceeds of such investments and such moneys. Such investment counselors shall be
20 registered as investment advisors with the United States Securities and Exchange Commission. In
21 exercising or delegating its investment powers and authority, members of the board shall exercise
22 ordinary business care and prudence under the facts and circumstances prevailing at the time of the
23 action or decision. No member of the board shall be liable for any action taken or omitted with
24 respect to the exercise of, or delegation of, these powers and authority if such member shall have
25 discharged the duties of his or her position in good faith and with that degree of diligence, care and
26 skill which a prudent person acting in a like capacity and familiar with these matters would use in
27 the conduct of an enterprise of a like character and with like aims.

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

31 7. No trustee or employee of the savings program shall receive any gain or profit from any
32 funds or transaction of the savings program. Any trustee, employee or agent of the savings program
33 accepting any gratuity or compensation for the purpose of influencing such trustee's, employee's or
34 agent's action with respect to the investment or management of the funds of the savings program
35 shall thereby forfeit the office and in addition thereto be subject to the penalties prescribed for
36 bribery.

37 166.420. 1. The board may enter into savings program participation agreements with
38 participants on behalf of beneficiaries pursuant to the provisions of sections 166.400 to 166.455,
39 including the following terms and conditions:

40 (1) A participation agreement shall stipulate the terms and conditions of the savings
41 program in which the participant makes contributions;

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

44 (3) The execution of a participation agreement by the board shall not guarantee that the
45 beneficiary named in any participation agreement will be admitted to an eligible educational
46 institution, be allowed to continue to attend an eligible educational institution after having been
47 admitted or will graduate from an eligible educational institution;

48 (4) A participation agreement shall clearly and prominently disclose to participants the risk

1 associated with depositing moneys with the board;

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

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

7 2. The board shall establish the maximum amount which may be contributed annually by a
8 participant with respect to a beneficiary.

9 3. The board shall establish a total contribution limit for savings accounts established under
10 the savings program with respect to a beneficiary to permit the savings program to qualify as a
11 "qualified state tuition program" pursuant to Section 529 of the Internal Revenue Code. No
12 contribution may be made to a savings account for a beneficiary if it would cause the balance of all
13 savings accounts of the beneficiary to exceed the total contribution limit established by the board.
14 The board may establish other requirements that it deems appropriate to provide adequate
15 safeguards to prevent contributions on behalf of a beneficiary from exceeding what is necessary to
16 provide for the qualified [higher] education expenses of the beneficiary.

17 4. The board shall establish the minimum length of time that contributions and earnings
18 must be held by the savings program to qualify pursuant to section 166.435. Any contributions or
19 earnings that are withdrawn or distributed from a savings account prior to the expiration of the
20 minimum length of time, as established by the board, shall be subject to a penalty pursuant to
21 section 166.430.

22 166.425. All money paid by a participant in connection with participation agreements shall
23 be deposited as received and shall be promptly invested by the board. Contributions and earnings
24 thereon accumulated on behalf of participants in the savings program may be used, as provided in
25 the participation agreement, for qualified [higher] education expenses. Such contributions and
26 earnings shall not be considered income for purposes of determining a participant's eligibility for
27 financial assistance under any state student aid program.

28 166.430. Any participant may cancel a participation agreement at will. The board shall
29 impose a penalty equal to or greater than ten percent of the earnings of an account for any
30 distribution that is not:

31 (1) Used exclusively for qualified [higher] education expenses of the designated
32 beneficiary;

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

34 (3) Made because of the receipt of scholarship by the designated beneficiary;

35 (4) A rollover distribution, as defined in Section 529(c)(3)(C)(i) of the Internal Revenue
36 Code; or

37 (5) Held in the fund for the minimum length of time established by the board."; and
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39 Further amend said bill, Page 1, Section 166.435, Line 8, by deleting the word "higher" and
40 inserting in lieu thereof the word "[higher]"; and
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42 Further amend said bill and section, Page 2, Line 28, by deleting the word "higher" and inserting in
43 lieu thereof the word "[higher]"; and
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45 Further amend said bill, Page 3, Section 166.435, Line 38, by inserting immediately after all of said
46 section and line the following:
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48 "166.456. All personally identifiable information concerning participants and beneficiaries

1 of accounts established within the Missouri [higher] education savings program pursuant to sections
 2 166.400 to 166.456 shall be confidential, and any disclosure of such information shall be restricted
 3 to purposes directly connected with the administration of the program.

4 166.501. Notwithstanding the provisions of sections 166.400 to 166.456 to the contrary, the
 5 higher education deposit program is established as a nonexclusive alternative to the Missouri
 6 [higher] education savings program, and any participant may elect to participate in both programs
 7 subject to aggregate Missouri program limitations.

8 166.502. As used in sections 166.500 to 166.529, except where the context clearly requires
 9 another interpretation, the following terms mean:

10 (1) "Beneficiary", any individual designated by a participation agreement to benefit from
 11 payments for qualified higher education expenses at an eligible educational institution;

12 (2) "Benefits", the payment of qualified higher education expenses on behalf of a
 13 beneficiary from a deposit account during the beneficiary's attendance at an eligible educational
 14 institution;

15 (3) "Board", the Missouri [higher] education savings program board established in section
 16 166.415;

17 (4) "Eligible educational institution", an institution of postsecondary education as defined in
 18 Section 529(e)(5) of the Internal Revenue Code;

19 (5) "Financial institution", a depository institution and any intermediary that brokers
 20 certificates of deposits;

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

22 (7) "Missouri higher education deposit program" or "deposit program", the program created
 23 pursuant to sections 166.500 to 166.529;

24 (8) "Participant", a person who has entered into a participation agreement pursuant to
 25 sections 166.500 to 166.529 for the advance payment of qualified higher education expenses on
 26 behalf of a beneficiary;

27 (9) "Participation agreement", an agreement between a participant and the board pursuant to
 28 and conforming with the requirements of sections 166.500 to 166.529;

29 (10) "Qualified higher education expenses", the qualified costs of tuition and fees and other
 30 expenses for attendance at an eligible educational institution, as defined in Section 529(e)(3) of the
 31 Internal Revenue Code of 1986, as amended.

32 166.505. 1. There is hereby created the "Missouri Higher Education Deposit Program".
 33 The program shall be administered by the Missouri [higher] education savings program board.

34 2. In order to establish and administer the deposit program, the board, in addition to its
 35 other powers and authority, shall have the power and authority to:

36 (1) Develop and implement the Missouri higher education deposit program and,
 37 notwithstanding any provision of sections 166.500 to 166.529 to the contrary, the deposit programs
 38 and services consistent with the purposes and objectives of sections 166.500 to 166.529;

39 (2) Promulgate reasonable rules and regulations and establish policies and procedures to
 40 implement sections 166.500 to 166.529, to permit the deposit program to qualify as a qualified state
 41 tuition program pursuant to Section 529 of the Internal Revenue Code and to ensure the deposit
 42 program's compliance with all applicable laws;

43 (3) Develop and implement educational programs and related informational materials for
 44 participants, either directly or through a contractual arrangement with a financial institution or other
 45 entities for deposit educational services, and their families, including special programs and materials
 46 to inform families with children of various ages regarding methods for financing education and
 47 training beyond high school;

48 (4) Enter into an agreement with any financial institution, entity, or business clearinghouse

1 for the operation of the deposit program pursuant to sections 166.500 to 166.529; providing
2 however, that such institution, entity, or clearinghouse shall be a private for-profit or not-for-profit
3 entity and not a government agency. No more than one board member may have a direct interest in
4 such institution, entity, or clearinghouse. Such institution, entity, or clearinghouse shall implement
5 the board's policies and administer the program for the board and with electing depository
6 institutions and others;

7 (5) Enter into participation agreements with participants;

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

11 (7) Invest the funds received from participants in appropriate investment instruments to be
12 held by depository institutions or directly deposit such funds in depository institutions as provided
13 by the board and elected by the participants;

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

16 (9) Make refunds to participants upon the termination of participation agreements pursuant
17 to the provisions, limitations, and restrictions set forth in sections 166.500 to 166.529 and the rules
18 adopted by the board;

19 (10) Make provision for the payment of costs of administration and operation of the deposit
20 program;

21 (11) Effectuate and carry out all the powers granted by sections 166.500 to 166.529, and
22 have all other powers necessary to carry out and effectuate the purposes, objectives, and provisions
23 of sections 166.500 to 166.529 pertaining to the deposit program;

24 (12) Procure insurance, guarantees, or other protections against any loss in connection with
25 the assets or activities of the deposit program, as the members in their best judgment deem
26 necessary;

27 (13) To both adopt and implement various methods of transferring money by electronic
28 means to efficiently transfer funds to depository institutions for deposit, and in addition or in the
29 alternative, to allow funds to be transferred by agent agreements, assignment, or otherwise, provided
30 such transfer occurs within two business days;

31 (14) To both adopt and implement methods and policies designed to obtain the maximum
32 insurance of such funds for each participant permitted and provided for by the Federal Deposit
33 Insurance Corporation, or any other federal agency insuring deposits, and taking into consideration
34 the law and regulation promulgated by such federal agencies for deposit insurance.

35 3. The funds shall be invested only in those investments which a prudent person acting in a
36 like capacity and familiar with such matters would use in the conduct of an enterprise of a like
37 character and with like aims, as provided in section 105.688, as a means to hold funds until they are
38 placed in a Missouri depository institution as a deposit. The board may delegate to duly appointed
39 representatives of financial institutions authority to act in place of the board in the investment and
40 reinvestment of all or part of the moneys and may also delegate to such representatives the authority
41 to act in place of the board in the holding, purchasing, selling, assigning, transferring, or disposing
42 of any or all of the investments in which such moneys shall have been invested, as well as the
43 proceeds of such investments and such moneys, however, such investments shall be limited to
44 certificates of deposit and other deposits in federally insured depository institutions. Such
45 representatives shall be registered as "qualified student deposit advisors on Section 529 plans" with
46 the board and such board shall, by rule, develop and administer qualification tests from time to time
47 to provide representatives the opportunity to qualify for this program. In exercising or delegating
48 its investment powers and authority, members of the board shall exercise ordinary business care and

1 prudence under the facts and circumstances prevailing at the time of the action or decision. No
2 member of the board shall be liable for any action taken or omitted with respect to the exercise of,
3 or delegation of, these powers and authority if such member shall have discharged the duties of his
4 or her position in good faith and with that degree of diligence, care, and skill which a prudent
5 person acting in a like capacity and familiar with these matters would use in the conduct of an
6 enterprise of a like character and with like aims.

7 4. No board member or employee of the deposit program shall personally receive any gain
8 or profit from any funds or transaction of the deposit program as a result of his or her membership
9 on the board. Any board member, employee, or agent of the deposit program accepting any gratuity
10 or compensation for the purpose of influencing such board member's, employee's, or agent's action
11 with respect to choice of intermediary, including any financial institution, entity, or clearinghouse,
12 for the funds of the deposit program shall thereby forfeit the office and in addition thereto be subject
13 to the penalties prescribed for bribery. However, a board member who is regularly employed
14 directly or indirectly by a financial institution may state that institution's interest and absent himself
15 or herself from voting.

16 5. Depository institutions originating the deposit program shall be the agent of the board
17 and offer terms for certificates of deposit and other deposits in such program as permitted by the
18 board, subject to a uniform interest rate disclosure as defined in federal regulations of the Board of
19 Governors of the Federal Reserve System, specifically Federal Reserve Regulation DD, as amended
20 from time to time. The board shall establish various deposit opportunities based on amounts
21 deposited and length of time held that are uniformly available to all depository institutions that elect
22 to participate in the program, and the various categories of fixed or variable rates shall be the only
23 interest rates available under this program. A depository institution that originates the deposit as
24 agent for the board and participates in the program shall receive back and continue to hold the
25 certificate of deposit or other deposit, provided such depository institution continues to comply with
26 requirements and regulations prescribed by the board. Such deposit and certificate of deposit shall
27 be titled in the name of the clearing entity for the benefit of the participant, and shall be insured as
28 permitted by any agency of the federal government that insures deposits in depository institutions.
29 Any depository institution or intermediary that fails to comply with these provisions shall forfeit its
30 right to participate in this program; provided however, the board shall be the sole and exclusive
31 judge of compliance except as otherwise provided by provisions in Section 529 of the Internal
32 Revenue Code and the Internal Revenue Service enforcement of such section.

33 209.610. 1. The board may enter into ABLE program participation agreements with
34 participants on behalf of designated beneficiaries pursuant to the provisions of sections 209.600 to
35 209.645, including the following terms and conditions:

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

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

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

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

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

47 2. The board shall establish the maximum amount of contributions which may be made
48 annually to an ABLE account, which shall be the same as the amount allowed by 26 U.S.C. Section

1 529A of the Internal Revenue Code of 1986, as amended.

2 3. The board shall establish a total contribution limit for savings accounts established under
3 the ABLE program with respect to a designated beneficiary which shall in no event be less than the
4 amount established as the contribution limit by the Missouri ~~higher~~ education savings program
5 board for qualified tuition savings programs established under sections 166.400 to 166.450. No
6 contribution shall be made to an ABLE account for a designated beneficiary if it would cause the
7 balance of the ABLE account of the designated beneficiary to exceed the total contribution limit
8 established by the board. The board may establish other requirements that it deems appropriate to
9 provide adequate safeguards to prevent contributions on behalf of a designated beneficiary from
10 exceeding what is necessary to provide for the qualified disability expenses of the designated
11 beneficiary.

12 4. The board shall establish the minimum length of time that contributions and earnings
13 must be held by the ABLE program to qualify as tax exempt pursuant to section 209.625. Any
14 contributions or earnings that are withdrawn or distributed from an ABLE account prior to the
15 expiration of the minimum length of time, as established by the board, shall be subject to a penalty
16 pursuant to section 209.620."; and

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18 Further amend said bill by amending the title, enacting clause, and intersectional references
19 accordingly.
20