

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2125
98TH GENERAL ASSEMBLY

5663S.02T

2016

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Section A. Sections 209.600, 209.605, 209.610, and 209.630, RSMo, are repealed and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

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

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

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

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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

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

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

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

19 (2) Promulgate reasonable rules and regulations and establish policies and procedures
20 to implement sections 209.600 to 209.645 to permit the ABLE program to qualify as a "qualified

21 ABLE program" pursuant to **26 U.S.C.** Section 529A of the Internal Revenue Code and to ensure
22 ABLE program's compliance with all applicable laws;

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

28 (4) Enter into agreements with any financial institution, or any state or federal agency
29 or entity as required for the operation of the ABLE program pursuant to sections 209.600 to
30 209.645;

31 (5) Enter into participation agreements with participants;

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

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

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

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

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

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

47 (12) Procure insurance, guarantees, or other protections against any loss in connection
48 with the assets or activities of the ABLE program; and

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

51 3. Four members of the board shall constitute a quorum. No vacancy in the membership
52 of the board shall impair the right of a quorum to exercise all the rights and perform all the duties
53 of the board. No action shall be taken by the board except upon the affirmative vote of a
54 majority of the members present. Any member of the board may designate a proxy for that
55 member who will enjoy the full voting privileges of that member for the one meeting so

56 specified by such member. No more than three proxies shall be considered members of the
57 board for purposes of establishing a quorum.

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

64 5. The funds of the ABLE program shall be invested only in those investments which
65 a prudent person acting in a like capacity and familiar with these matters would use in the
66 conduct of an enterprise of a like character and with like aims, as provided in section 105.688.
67 For new contracts entered into after August 28, 2015, board members shall study investment
68 plans of other states and contract with or negotiate to provide benefit options the same as or
69 similar to other states' qualified plans for the purpose of offering additional options for members
70 of the plan. The board may delegate to duly appointed investment counselors authority to act in
71 place of the board in the investment and reinvestment of all or part of the moneys and may also
72 delegate to such counselors the authority to act in place of the board in the holding, purchasing,
73 selling, assigning, transferring, or disposing of any or all of the securities and investments in
74 which such moneys shall have been invested, as well as the proceeds of such investments and
75 such moneys. Such investment counselors shall be registered as investment advisors with the
76 United States Securities and Exchange Commission. In exercising or delegating its investment
77 powers and authority, members of the board shall exercise ordinary business care and prudence
78 under the facts and circumstances prevailing at the time of the action or decision. No member
79 of the board shall be liable for any action taken or omitted with respect to the exercise of, or
80 delegation of, these powers and authority if such member shall have discharged the duties of his
81 or her position in good faith and with that degree of diligence, care, and skill which a prudent
82 person acting in a like capacity and familiar with these matters would use in the conduct of an
83 enterprise of a like character and with like aims.

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

87 7. No member of the board or employee of the ABLE program shall receive any gain or
88 profit from any funds or transaction of the ABLE program. Any member of the board, employee,
89 or agent of the ABLE program accepting any gratuity or compensation for the purpose of
90 influencing such member of the board's, employee's, or agent's action with respect to the

91 investment or management of the funds of the ABLE program shall thereby forfeit the office and
92 in addition thereto be subject to the penalties prescribed for bribery.

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

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

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

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

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

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

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

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

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

209.630. The assets of the ABLE program shall at all times be preserved, invested, [and]
2 expended, **and distributed** only for the purposes set forth in this section **and 26 U.S.C. Section**

3 **529A of the Internal Revenue Code of 1986, as amended, and in accordance with the**
4 **participation agreements [, and no property rights therein shall exist in favor of the state].**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **(1) The terms and conditions of the savings promotion program shall allow an**
4 **eligible account to obtain one or more entries to win a specified prize. Eligible accounts**

5 shall obtain entry for a savings promotion program by maintaining an eligible account
6 with a minimum specified amount of money in accordance with the terms and conditions
7 of the savings promotion program;

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

12 (3) Participants shall not be deemed to have provided consideration merely
13 because:

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

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

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

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

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

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

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