

# HOUSE BILL NO. 2696

## 98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SWAN.

6767H.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

To amend chapter 166, RSMo, by adding thereto twelve new sections relating to a savings plan for educational expenses.

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

Section A. Chapter 166, RSMo, is amended by adding thereto twelve new sections, to be known as sections 166.485, 166.486, 166.487, 166.488, 166.489, 166.490, 166.491, 166.492, 166.493, 166.494, 166.495, and 166.496, to read as follows:

**166.485. As used in sections 166.485 to 166.496, except if the context requires another interpretation, the following terms mean:**

(1) "Beneficiary", any individual designated by a participation agreement to benefit from payments for qualified K-12 education expenses;

(2) "Benefits", the payment of qualified K-12 education expenses on behalf of a beneficiary from a savings account during the beneficiary's K-12 educational career;

(3) "Board", the Missouri K-12 education savings program board established under section 166.486;

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

(5) "K-12", kindergarten through twelfth grade;

(6) "Missouri K-12 education savings program" or "savings program", the program created under sections 166.485 to 166.496;

(7) "Participant", a person who has entered into a participation agreement under sections 166.485 to 166.496 for the advance payment of qualified K-12 education expenses on behalf of a beneficiary;

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.

- 17           **(8) "Participation agreement", an agreement between a participant and the board**  
18 **under and conforming with the requirements of sections 166.485 to 166.496;**
- 19           **(9) "Qualified K-12 education expenses", tuition, fees, or expenses for:**
- 20           **(a) Attendance at any school, private or public, that serves children in kindergarten**  
21 **or any grade not higher than twelfth grade;**
- 22           **(b) Home school curriculum for kindergarten or any grade not higher than twelfth**  
23 **grade;**
- 24           **(c) Tutoring for a student in kindergarten or any grade not higher than twelfth**  
25 **grade;**
- 26           **(d) Books, supplies, or other educational materials for a student in kindergarten**  
27 **or any grade not higher than twelfth grade;**
- 28           **(e) Enrollment in any online class with a curriculum intended for students in**  
29 **kindergarten or any grade not higher than twelfth grade;**
- 30           **(f) Internet access or computer technology or equipment to be used by a student in**  
31 **kindergarten or any grade not higher than twelfth grade for educational purposes; or**
- 32           **(g) Educational therapies or services for a student in kindergarten or any grade not**  
33 **higher than twelfth grade who requires special education.**

166.486. 1. There is hereby created the "Missouri K-12 Education Savings  
2 Program". The program shall be administered by the Missouri K-12 education savings  
3 program board which shall consist of the Missouri state treasurer who shall serve as  
4 chairman; the commissioner of education; the commissioner of the office of administration;  
5 the director of the department of economic development; two persons having demonstrable  
6 experience and knowledge in the areas of finance or the investment and management of  
7 public funds, one of whom is selected by the president pro tempore of the senate and one  
8 of whom is selected by the speaker of the house of representatives; and one person having  
9 demonstrable experience and knowledge in the area of banking or deposit rate  
10 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  
12 of the senate. The three appointed members shall be appointed to serve for terms of four  
13 years from the date of appointment, or until their successors shall have been appointed and  
14 shall have qualified. The members of the board shall be subject to the conflict of interest  
15 provisions of section 105.452. Any member who violates the conflict of interest provisions  
16 shall be removed from the board. In order to establish and administer the savings  
17 program, the board, in addition to its other powers and authority, shall have the power  
18 and authority to:

- 19           **(1) Develop and implement the Missouri K-12 education savings program and,**  
20 **notwithstanding the provisions of sections 166.485 to 166.496 to the contrary, the savings**  
21 **programs and services consistent with the purposes and objectives of sections 166.485 to**  
22 **166.496;**
- 23           **(2) Promulgate reasonable rules and regulations and establish policies and**  
24 **procedures to implement sections 166.485 to 166.496 and to ensure the savings program’s**  
25 **compliance with all applicable laws;**
- 26           **(3) Develop and implement educational programs and related informational**  
27 **materials for participants, either directly or through a contractual arrangement with a**  
28 **financial institution for investment services, and their families, including special programs**  
29 **and materials to inform families with young children regarding methods for financing**  
30 **education and training;**
- 31           **(4) Enter into agreements with any financial institution, the state, or any other**  
32 **federal or other agency or entity as required for the operation of the savings program**  
33 **under sections 166.485 to 166.496;**
- 34           **(5) Enter into participation agreements with participants;**
- 35           **(6) Accept any grants, gifts, legislative appropriations, and other moneys from the**  
36 **state, any unit of federal, state, or local government, or any other person, firm,**  
37 **partnership, or corporation for deposit to the account of the savings program;**
- 38           **(7) Invest the funds received from participants in appropriate investment**  
39 **instruments to achieve long-term total return through a combination of capital**  
40 **appreciation and current income;**
- 41           **(8) Make appropriate payments and distributions on behalf of beneficiaries in**  
42 **accordance with participation agreements;**
- 43           **(9) Provide separate accounting of benefits and funds received from participants**  
44 **for each designated beneficiary;**
- 45           **(10) Make refunds to participants upon the termination of participation agreements**  
46 **under the provisions, limitations, and restrictions set forth under sections 166.485 to**  
47 **166.496 and the rules adopted by the board;**
- 48           **(11) Make provision for the payment of costs of administration and operation of**  
49 **the savings program;**
- 50           **(12) Effectuate and carry out all the powers granted by sections 166.485 to 166.496,**  
51 **and have all other powers necessary to carry out and effectuate the purposes, objectives,**  
52 **and provisions of sections 166.485 to 166.496 pertaining to the savings program; and**
- 53           **(13) Procure insurance, guarantees, or other protections against any loss in**  
54 **connection with the assets or activities of the savings program.**

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

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

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

69           **5. The funds shall be invested only in those investments that a prudent person**  
70 **acting in a like capacity and familiar with these matters would use in the conduct of an**  
71 **enterprise of a like character and with like aims, as provided in section 105.688. The board**  
72 **may delegate to duly appointed investment counselors authority to act in place of the board**  
73 **in the investment or reinvestment of all or part of the moneys and may also delegate to**  
74 **such counselors the authority to act in place of the board in the holding, purchasing,**  
75 **selling, assigning, transferring, or disposing of any or all of the securities and investments**  
76 **in which such moneys shall have been invested, as well as the proceeds of such investments**  
77 **and such moneys. Such investment counselors shall be registered as investment advisors**  
78 **with the United States Securities and Exchange Commission. In exercising or delegating**  
79 **the board's investment powers and authority, members of the board shall exercise**  
80 **ordinary business care and prudence under the facts and circumstances prevailing at the**  
81 **time of the action or decision. No member of the board shall be liable for any action taken**  
82 **or omitted with respect to the exercise of or delegation of these powers and authority if**  
83 **such member shall have discharged the duties of his or her position in good faith and with**  
84 **that degree of diligence, care, and skill that a prudent person acting in a like capacity and**  
85 **familiar with these matters would use in the conduct of an enterprise of a like character**  
86 **and with like aims.**

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

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

          166.487. 1. The board may enter into savings program participating agreements  
2 with participants on behalf of beneficiaries under the provisions of sections 166.485 to  
3 166.496, including the following terms and conditions:

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

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

8           (3) A participation agreement shall name the beneficiary;

9           (4) The execution of a participation agreement by the board shall not guarantee  
10 that the beneficiary named in any participation agreement will be admitted to any school,  
11 be allowed to continue to attend any school after having been admitted, or will graduate  
12 from any school;

13           (5) A participation agreement shall clearly and prominently disclose to participants  
14 the risk associated with depositing moneys with the board;

15           (6) A participation agreement shall be organized and presented in a way and with  
16 language that is easily understandable by the general public; and

17           (7) A participation agreement shall clearly and prominently disclose to participants  
18 the existence of any load charge or similar charge assessed against the accounts of the  
19 participants for administration or services.

20           2. The board shall determine the circumstances under which a participant may  
21 change the named beneficiary.

22           3. The board shall establish a total contribution limit for savings accounts  
23 established under the savings program with respect to a beneficiary. No contribution may  
24 be made to a savings account for a beneficiary if it would cause the balance of all savings  
25 accounts of the beneficiary to exceed the total contribution limit established by the board.  
26 The board may establish other requirements it deems appropriate to provide adequate  
27 safeguards to prevent contributions on behalf of a beneficiary from exceeding what is  
28 necessary to provide for the qualified K-12 education expenses of the beneficiary.

29           4. The board shall establish the minimum length of time that contributions and  
30 earnings shall be held by the savings program to qualify under section 166.491. Any

31 contributions or earnings that are withdrawn or distributed from a savings account prior  
32 to the expiration of the minimum length of time, as established by the board, shall be  
33 subject to a penalty under section 166.490.

166.488. 1. A participant may elect to contribute all or part of a refund of personal  
2 income tax to an account that has been established under sections 166.485 to 166.496 by  
3 direct deposit to the financial institution managing the account. The amount elected to be  
4 contributed by the participant shall be at least twenty-five dollars and shall be as a  
5 contribution only for the tax year in which the refund is issued. The election to contribute  
6 shall not be changed or revoked.

7 2. The election shall be made on a form prescribed by the department of revenue  
8 and filed with the taxpayer's tax return for the tax year or at such other time and in such  
9 other manner as the department may prescribe. The department of revenue shall  
10 prescribe the maximum number of accounts to which a taxpayer may elect to contribute  
11 a portion of the refund. Notwithstanding the limit prescribed by the department, a parent  
12 or legal guardian shall be permitted to contribute a portion of his or her refund to accounts  
13 held by each of his or her children.

14 3. The election to contribute all or a portion of a refund shall be void, and no  
15 portion of the refund shall be contributed to an account if the taxpayer's refund is offset  
16 to pay amounts owed by the taxpayer.

166.489. All money paid by a participant in connection with participating  
2 agreements shall be deposited as received and shall be promptly invested by the board.  
3 Contributions and earnings thereon accumulated on behalf of participants in the savings  
4 program may be used, as provided in the participation agreement, for qualified K-12  
5 education expenses. Such contributions and earnings shall not be considered income for  
6 purposes of determining a participant's eligibility for financial assistance under any state  
7 student aid program.

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

4 (1) Used exclusively for qualified K-12 education expenses of the designated  
5 beneficiary;

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

7 (3) Made because of the receipt of a scholarship by the designated beneficiary; or

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

166.491. 1. Notwithstanding any law to the contrary, the assets of the savings  
2 program held by the board and any income therefrom shall be exempt from all taxation

3 by the state or any of its political subdivisions. Income earned or received from the savings  
4 program shall not be subject to state income tax imposed under chapter 143. The  
5 exemption from taxation under this section shall apply only to assets and income  
6 maintained, accrued, or expended in accordance with the requirements of the savings  
7 program established under sections 166.485 to 166.496, and no exemption shall apply to  
8 assets and income expended for any other purposes. Annual contributions made to the  
9 savings program held by the board shall be subtracted in determining Missouri adjusted  
10 gross income under section 143.121.

11 2. If any deductible contributions to or earnings from any such program referred  
12 to in this section are distributed and not used to pay qualified K-12 education expenses or  
13 are not held for the minimum length of time established by the board, the amount so  
14 distributed shall be added to the Missouri adjusted gross income of the participant or, if  
15 the participant is not living, the beneficiary.

16 3. The provisions of this section shall apply to tax years beginning on or after  
17 January 1, 2017.

166.492. The assets of the savings program shall at all times be preserved, invested,  
2 and expended only for the purposes set forth under sections 166.485 to 166.496 and in  
3 accordance with the participation agreements, and no property rights therein shall exist  
4 in favor of the state.

166.493. Any rule or portion of a rule, as that term is defined in section 536.010,  
2 that is created under the authority delegated in sections 166.485 to 166.496 shall become  
3 effective only if it complies with and is subject to all of the provisions of chapter 536 and,  
4 if applicable, section 536.028. Sections 166.485 to 166.496 and chapter 536 are  
5 nonseverable, and if any of the powers vested with the general assembly pursuant to  
6 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are  
7 subsequently held unconstitutional, then the grant of rulemaking authority and any rule  
8 proposed or adopted after August 28, 2016, shall be invalid and void.

166.494. The director of investment of the state treasurer's office shall, on a  
2 semiannual basis, review the financial status and investment policy of the savings program  
3 as well as the participation rate in the program. The director of investment shall also  
4 review the continued viability of the program and the administration of the program by  
5 the board. The director of investment shall report the findings annually to the board,  
6 which shall subsequently disclose such findings at a public meeting.

166.495. Moneys accruing to and deposited in individual savings accounts shall not  
2 be part of "total state revenues" as defined in article X, sections 17 and 18 of the

3 **Constitution of Missouri, and the expenditure of such revenues shall not be an expense of**  
4 **state government under article X, section 20 of the Constitution of Missouri.**

2 **166.496. All personally identifiable information concerning participants and**  
3 **beneficiaries of accounts established within the Missouri K-12 education savings program**  
4 **under sections 166.485 to 166.496 shall be confidential, and any disclosure of such**  
5 **information shall be restricted to purposes directly connected with the administration of**  
6 **the program.**

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