## SENATE SUBSTITUTE

FOR

## SENATE COMMITTEE SUBSTITUTE

FOR

## SENATE BILL NO. 152

## AN ACT

To repeal sections 162.720, 166.400, 166.410, 166.415, 166.420, 166.425, 166.435, 166.440, and 166.456, RSMo, and to enact in lieu thereof nine new sections relating to education.

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

Section A. Sections 162.720, 166.400, 166.410, 166.415,

- 2 166.420, 166.425, 166.435, 166.440, and 166.456, RSMo, are
- 3 repealed and nine new sections enacted in lieu thereof, to be
- 4 known as sections 162.720, 166.400, 166.410, 166.415, 166.420,
- 5 166.425, 166.435, 166.440, and 166.456, to read as follows:
  - 162.720. 1. (1) This subdivision shall apply to all
- 2 school years ending on or before June 30, 2023. Where a
- 3 sufficient number of children are determined to be gifted
- 4 and their development requires programs or services beyond
- 5 the level of those ordinarily provided in regular public
- 6 school programs, districts may establish special programs
- 7 for such gifted children.
- 8 (2) For all school years beginning on or after July 1,
- 9 2023, if three percent or more of students enrolled in a
- 10 school district are determined to be gifted and their
- 11 development requires programs or services beyond the level
- 12 of those ordinarily provided in regular public school
- 13 programs, the district shall establish a state-approved
- 14 gifted program for gifted children.
- 15 2. For all school years beginning on or after July 1,
- 16 2023, any teacher providing gifted services to students in

- 17 districts with an average daily attendance of more than
- 18 three hundred fifty students shall be certificated in gifted
- 19 education. In districts with an average daily attendance of
- 20 three hundred fifty students or fewer, any teacher providing
- 21 gifted services shall not be required to be certificated to
- 22 teach gifted education but such teacher shall annually
- 23 participate in at least six clock hours of professional
- 24 development focused on gifted services.
- 25 3. The state board of education shall determine
- 26 standards for such gifted programs and gifted services.
- 27 Approval of [such] gifted programs shall be made by the
- 28 state department of elementary and secondary education based
- 29 upon project applications submitted [by July fifteenth of
- 30 each year] at a time and in a form determined by the
- 31 department of elementary and secondary education.
- 32 [3.] 4. No district shall make a determination as to
- 33 whether a child is gifted based on the child's participation
- in an advanced placement course or international
- 35 baccalaureate course. Districts shall determine a child is
- 36 gifted only if the child meets the definition of gifted
- 37 children as provided in section 162.675.
- 38 [4.] 5. Any district with a gifted education program
- 39 approved under subsection [2] 3 of this section shall have a
- 40 policy, approved by the board of education of the district,
- 41 that establishes a process that outlines the procedures and
- 42 conditions under which parents or guardians may request a
- 43 review of the decision that determined that their child did
- 44 not qualify to receive services through the district's
- 45 gifted education program.
- 46 [5.] 6. School districts and school district employees
- 47 shall be immune from liability for any and all acts or
- 48 omissions relating to the decision that a child did not

- qualify to receive services through the district's giftededucation program.
- 7. The department of elementary and secondary
- 52 education may promulgate rules to implement the provisions
- of this section and may develop a process to certify
- 54 teachers in gifted education. Any rule or portion of a
- rule, as that term is defined in section 536.010, that is
- 56 created under the authority delegated in this section shall
- 57 become effective only if it complies with and is subject to
- 58 all of the provisions of chapter 536 and, if applicable,
- 59 section 536.028. This section and chapter 536 are
- 60 nonseverable and if any of the powers vested with the
- 61 general assembly pursuant to chapter 536 to review, to delay
- 62 the effective date, or to disapprove and annul a rule are
- 63 subsequently held unconstitutional, then the grant of
- 64 rulemaking authority and any rule proposed or adopted after
- 65 August 28, 2021, shall be invalid and void.
  - 166.400. Sections 166.400 to [166.455] 166.456 shall
- 2 be known and may be cited as the "Missouri Education
- 3 [Savings] Program".
  - 166.410. [Definitions.] As used in sections 166.400
- 2 to [166.455] 166.456, except where the context clearly
- 3 requires another interpretation, the following terms mean:
- 4 (1) "Beneficiary", any individual designated by a
- 5 participation agreement to benefit from payments for
- 6 qualified education expenses at an eligible educational
- 7 institution;
- 8 (2) "Benefits", the payment of qualified education
- 9 expenses on behalf of a beneficiary from a savings account
- 10 during the beneficiary's attendance at an eligible
- 11 educational institution;
- 12 (3) "Board", the Missouri education [savings] program
- 13 board established in section 166.415;

- 14 (4) "Eligible educational institution", an
- 15 [institution of postsecondary education] eligible
- educational institution as defined in Section 529[(e)(5)] of
- 17 the Internal Revenue Code, [and institutions of elementary
- and secondary education as provided in Sections 529(c)(7)
- and 529(e)(3) of the Internal Revenue Code, ] as amended;
- (5) "Financial institution", a bank, insurance companyor registered investment company;
- 22 (6) "Internal Revenue Code", the Internal Revenue Code 23 of 1986, as amended;
- 24 (7) "Missouri education [savings] program" or
  25 "[savings] program", the program created pursuant to
- 26 sections 166.400 to [166.455] 166.456;
- 27 (8) "Participant", a person who has entered into a
- 28 participation agreement pursuant to sections 166.400 to
- [166.455] [166.456] for the advance payment of qualified
- 30 education expenses on behalf of a beneficiary;
- 31 (9) "Participation agreement", an agreement between a
- 32 participant and the board pursuant to and conforming with
- 33 the requirements of sections 166.400 to [166.455] 166.456;
- **34** and
- 35 (10) "Qualified higher education expenses" or
- 36 "qualified education expenses", the qualified costs of
- 37 tuition and fees and other expenses for attendance at an
- 38 eligible educational institution, as defined in Section
- 39 [529(e)(3)] 529 of the Internal Revenue Code, as amended.
  - 166.415. 1. There is hereby created the "Missouri
- 2 Education [Savings] Program". The program shall be
- 3 administered by the Missouri education [savings] program
- 4 board which shall consist of the Missouri state treasurer
- 5 who shall serve as chairman, the commissioner of the
- 6 department of higher education and workforce development,
- 7 the commissioner of education, the commissioner of the

- 8 office of administration, the director of the department of
- 9 economic development, two persons having demonstrable
- 10 experience and knowledge in the areas of finance or the
- 11 investment and management of public funds, one of whom is
- 12 selected by the president pro tem of the senate and one of
- 13 whom is selected by the speaker of the house of
- 14 representatives, and one person having demonstrable
- 15 experience and knowledge in the area of banking or deposit
- 16 rate determination and placement of depository certificates
- 17 of deposit or other deposit investments. Such member shall
- 18 be appointed by the governor with the advice and consent of
- 19 the senate. The three appointed members shall be appointed
- 20 to serve for terms of four years from the date of
- 21 appointment, or until their successors shall have been
- 22 appointed and shall have qualified. The members of the
- 23 board shall be subject to the conflict of interest
- 24 provisions of section 105.452. Any member who violates the
- 25 conflict of interest provisions shall be removed from the
- 26 board. In order to establish and administer the [savings]
- 27 program, the board, in addition to its other powers and
- 28 authority, shall have the power and authority to:
- 29 (1) Develop and implement the Missouri education
- 30 [savings] program and, notwithstanding any provision of
- 31 sections 166.400 to [166.455] 166.456 to the contrary, the
- 32 [savings] programs and services consistent with the purposes
- 33 and objectives of sections 166.400 to [166.455] 166.456;
- 34 (2) Promulgate reasonable rules and regulations and
- 35 establish policies and procedures to implement sections
- 36 166.400 to [166.455] 166.456, to permit the [savings]
- 37 program to qualify as a "qualified state tuition program"
- 38 pursuant to Section 529 of the Internal Revenue Code and to
- 39 ensure the [savings] program's compliance with all
- 40 applicable laws;

- 41 (3) Develop and implement educational programs and
  42 related informational materials for participants, either
  43 directly or through a contractual arrangement with a
  44 financial institution for investment services, and their
  45 families, including special programs and materials to inform
  46 families with young children regarding methods for financing
- 48 (4) Enter into agreements with any financial 49 institution, the state or any federal or other agency or 50 entity as required for the operation of the [savings] 51 program pursuant to sections 166.400 to [166.455] 166.456;
- 52 (5) Enter into participation agreements with53 participants;

education and training;

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- (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] 166.456 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] 166.456, and have all other powers necessary to carry out and effectuate the purposes,

- 74 objectives and provisions of sections 166.400 to [166.455]
- 75 166.456 pertaining to the [savings] program; and
- 76 (12) Procure insurance, guarantees or other
- 77 protections against any loss in connection with the assets
- 78 or activities of the [savings] program.
- 79 2. Any member of the board may designate a proxy for
- 80 that member who will enjoy the full voting privileges of
- 81 that member for the one meeting so specified by that
- 82 member. No more than three proxies shall be considered
- 83 members of the board for the purpose of establishing a
- 84 quorum.
- 85 3. Four members of the board shall constitute a
- 86 quorum. No vacancy in the membership of the board shall
- 87 impair the right of a quorum to exercise all the rights and
- 88 perform all the duties of the board. No action shall be
- 89 taken by the board except upon the affirmative vote of a
- 90 majority of the members present.
- 91 4. The board shall meet within the state of Missouri
- 92 at the time set at a previously scheduled meeting or by the
- 93 request of any four members of the board. Notice of the
- 94 meeting shall be delivered to all other trustees in person
- 95 or by depositing notice in a United States post office in a
- 96 properly stamped and addressed envelope not less than six
- 97 days prior to the date fixed for the meeting. The board may
- 98 meet at any time by unanimous mutual consent. There shall
- 99 be at least one meeting in each quarter.
- 100 5. The funds shall be invested only in those
- 101 investments which a prudent person acting in a like capacity
- 102 and familiar with these matters would use in the conduct of
- 103 an enterprise of a like character and with like aims, as
- 104 provided in section 105.688. For new contracts entered into
- 105 after August 28, 2012, board members shall study investment
- 106 plans of other states and contract with or negotiate to

- 107 provide benefit options the same as or similar to other 108 states' qualified plans for the purpose of offering 109 additional options for members of the plan. The board may delegate to duly appointed investment counselors authority 110 to act in place of the board in the investment and 111 112 reinvestment of all or part of the moneys and may also 113 delegate to such counselors the authority to act in place of 114 the board in the holding, purchasing, selling, assigning, transferring or disposing of any or all of the securities 115 116 and investments in which such moneys shall have been invested, as well as the proceeds of such investments and 117 such moneys. Such investment counselors shall be registered 118 as investment advisors with the United States Securities and 119 120 Exchange Commission. In exercising or delegating its 121 investment powers and authority, members of the board shall 122 exercise ordinary business care and prudence under the facts 123 and circumstances prevailing at the time of the action or decision. No member of the board shall be liable for any 124 125 action taken or omitted with respect to the exercise of, or delegation of, these powers and authority if such member 126 shall have discharged the duties of his or her position in 127 good faith and with that degree of diligence, care and skill 128 129 which a prudent person acting in a like capacity and 130 familiar with these matters would use in the conduct of an 131 enterprise of a like character and with like aims.
- 6. No investment transaction authorized by the board shall be handled by any company or firm in which a member of the board has a substantial interest, nor shall any member of the board profit directly or indirectly from any such investment.
- 7. No trustee or employee of the [savings] program
  shall receive any gain or profit from any funds or
  transaction of the [savings] program. Any trustee, employee

- or agent of the [savings] program accepting any gratuity or compensation for the purpose of influencing such trustee's, employee's or agent's action with respect to the investment or management of the funds of the [savings] program shall thereby forfeit the office and in addition thereto be subject to the penalties prescribed for bribery.
  - 166.420. 1. The board may enter into [savings]

    program participation agreements with participants on behalf

    of beneficiaries pursuant to the provisions of sections

    166.400 to [166.455] 166.456, including the following terms

    and conditions:
  - (1) A participation agreement shall stipulate the
    terms and conditions of the [savings] program in which the
    participant makes contributions;
- 9 (2) A participation agreement shall specify the method 10 for calculating the return on the contribution made by the 11 participant;
- 12 (3) The execution of a participation agreement by the 13 board shall not guarantee that the beneficiary named in any 14 participation agreement will be admitted to an eligible 15 educational institution, be allowed to continue to attend an 16 eligible educational institution after having been admitted 17 or will graduate from an eligible educational institution;
  - (4) A participation agreement shall clearly and prominently disclose to participants the risk associated with depositing moneys with the board;

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- (5) Participation agreements shall be organized and presented in a way and with language that is easily understandable by the general public; and
- (6) A participation agreement shall clearly and prominently disclose to participants the existence of any load charge or similar charge assessed against the accounts of the participants for administration or services.

- 2. The board shall establish the maximum amount which may be contributed annually [by a participant] with respect to a beneficiary.
- 3. The board shall establish a total contribution 31 limit for savings accounts established under the [savings] 32 program with respect to a beneficiary to permit the 33 [savings] program to qualify as a "qualified state tuition 34 35 program" pursuant to Section 529 of the Internal Revenue 36 Code. No contribution may be made to a savings account for 37 a beneficiary if it would cause the balance of all savings accounts of the beneficiary to exceed the total contribution 38 limit established by the board. The board may establish 39 40 other requirements that it deems appropriate to provide adequate safeguards to prevent contributions on behalf of a 41 42 beneficiary from exceeding what is necessary to provide for 43 the qualified education expenses of the beneficiary.
- 4. The board shall establish the minimum length of
  time that contributions and earnings must be held by the
  [savings] program to qualify pursuant to section 166.435.
  Any contributions or earnings that are withdrawn or
  distributed from a savings account prior to the expiration
  of the minimum length of time, as established by the board,
  shall be subject to a penalty pursuant to section 166.430.

166.425. All money paid by a participant in connection with participation agreements shall be deposited as received and shall be promptly invested by the board. Contributions and earnings thereon accumulated on behalf of participants in the [savings] program may be used, as provided in the participation agreement, for qualified education expenses.

- 7 Such contributions and earnings shall not be considered
- 8 income for purposes of determining a participant's
- 9 eligibility for financial assistance under any state student
- 10 aid program.

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166.435.
                   1. Notwithstanding any law to the contrary,
    the assets of the [savings] program held by the board, the
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    assets of any deposit program authorized in section 166.500,
    and the assets of any qualified tuition [savings] program
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    established pursuant to Section 529 of the Internal Revenue
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    Code and any income therefrom shall be exempt from all
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    taxation by the state or any of its political subdivisions.
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    Income earned or received from the [savings] program,
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    deposit, or other qualified tuition [savings] programs
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    established under Section 529 of the Internal Revenue Code,
    or refunds of qualified education expenses received by a
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    beneficiary from an eligible educational institution in
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    connection with withdrawal from enrollment at such
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    institution which are contributed within sixty days of
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    withdrawal to a qualified tuition [savings] program of which
    such individual is a beneficiary shall not be subject to
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    state income tax imposed pursuant to chapter 143 and shall
    be eligible for any benefits provided in accordance with
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    Section 529 of the Internal Revenue Code. The exemption
    from taxation pursuant to this section shall apply only to
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    assets and income maintained, accrued, or expended pursuant
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    to the requirements of the [savings] program established
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    pursuant to sections 166.400 to [166.455] 166.456, the
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    deposit program established pursuant to sections 166.500 to
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    166.529, and other qualified tuition [savings] programs
    established under Section 529 of the Internal Revenue Code,
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    and no exemption shall apply to assets and income expended
    for any other purposes. Annual contributions made to the
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     [savings] program held by the board, the deposit program,
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    and any qualified tuition [savings] program established
    under Section 529 of the Internal Revenue Code up to and
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    including eight thousand dollars per [participating]
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    taxpayer, and up to sixteen thousand dollars for married
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- 34 individuals filing a joint tax return, shall be subtracted
- 35 in determining Missouri adjusted gross income pursuant to
- **36** section 143.121.
- 37 2. If any deductible contributions to or earnings from
- 38 any such program referred to in this section are distributed
- 39 and not used to pay qualified education expenses, not
- 40 transferred as allowed by 26 U.S.C. Section 529(c)(3)(C)(i),
- 41 as amended, and any Internal Revenue Service regulations or
- 42 guidance issued in relation thereto, or are not held for the
- 43 minimum length of time established by the appropriate
- 44 Missouri board, then the amount so distributed shall be
- 45 included in the Missouri adjusted gross income of the
- 46 participant, or, if the participant is not living, the
- 47 beneficiary.
- 48 3. The provisions of this section shall apply to tax
- 49 years beginning on or after January 1, 2008, and the
- 50 provisions of this section with regard to sections 166.500
- 51 to 166.529 shall apply to tax years beginning on or after
- 52 January 1, 2004.
  - 166.440. The assets of the [savings] program shall at
- 2 all times be preserved, invested and expended only for the
- 3 purposes set forth in this section and in accordance with
- 4 the participation agreements, and no property rights therein
- 5 shall exist in favor of the state.
  - 166.456. All personally identifiable information
- 2 concerning participants and beneficiaries of accounts
- 3 established within the Missouri education [savings] program
- 4 pursuant to sections 166.400 to 166.456 shall be
- 5 confidential, and any disclosure of such information shall
- 6 be restricted to purposes directly connected with the
- 7 administration of the program.