

AN ACT concerning assistance to persons with disabilities.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The State Treasurer Act is amended by changing Section 16.6 as follows:

(15 ILCS 505/16.6)

Sec. 16.6. ABLE account program.

(a) As used in this Section:

"ABLE account" or "account" means an account established for the purpose of financing certain qualified expenses of eligible individuals as specifically provided for in this Section and authorized by Section 529A of the Internal Revenue Code.

"ABLE account plan" or "plan" means the savings account plan provided for in this Section.

"Account administrator" means the person or entity selected by the State Treasurer to administer the daily operations of the ABLE account plan and provide marketing, recordkeeping, investment management, and other services for the plan.

"Aggregate account balance" means the amount in an account on a particular date or the fair market value of an account on a particular date.

"Beneficiary" or "designated beneficiary" means the ABLE account owner.

"Contracting state" means a state without a qualified ABLE program which has entered into a contract with Illinois to provide residents of the contracting state access to a qualified ABLE program.

"Designated representative" means a person or entity who is authorized to act on behalf of a "designated beneficiary". A designated beneficiary is authorized to act on his or her own behalf unless the designated beneficiary is a minor or the designated beneficiary has been adjudicated to have a disability so that a guardian has been appointed. A designated representative acts in a fiduciary capacity to the designated beneficiary. A person or entity seeking to open an ABLE account on behalf of a designated beneficiary must provide certification, subject to penalties of perjury, of the basis for the person's or entity's authority to act as a designated representative and that there is no other person or entity with higher priority to establish the ABLE account under Section 529A of the Internal Revenue Code and federal regulations.

"Disability certification" has the meaning given to that term under Section 529A of the Internal Revenue Code.

"Eligible individual" has the meaning given to that term under Section 529A of the Internal Revenue Code.

"Internal Revenue Code" means the federal Internal Revenue

Code.

"Participation agreement" means an agreement to participate in the ABLE account plan between a designated beneficiary and the State, through its agencies and the State Treasurer.

"Qualified disability expenses" has the meaning given to that term under Section 529A of the Internal Revenue Code.

"Qualified withdrawal" or "qualified distribution" means a withdrawal from an ABLE account to pay the qualified disability expenses of the beneficiary of the account.

(b) Establishment of the ABLE Program. The "Achieving a Better Life Experience" or "ABLE" account program is hereby created and shall be administered by the State Treasurer. The purpose of the ABLE program is to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life, and to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, federal and State medical and disability insurance, the beneficiary's employment, and other sources. Under the plan, a person or entity may make contributions to an ABLE account to meet the qualified disability expenses of the designated beneficiary of the account. The plan must be operated as an accounts-type plan that permits saving persons

~~to save~~ for qualified disability expenses incurred by or on behalf of an eligible individual.

(c) Promotion of the ABLE Program. The State Treasurer shall promote awareness of the availability and advantages of the ABLE account plan as a way to assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities.

(d) Availability of the ABLE Program. An ABLE account may be established under this Section for a designated beneficiary who is a resident of Illinois, a resident of a contracting state, or a resident of any other state.

Annual contributions to an ABLE account on behalf of a beneficiary are subject to the requirements of subsection (b) of Section 529A of the Internal Revenue Code. No person or entity may make a contribution to an ABLE account if such a contribution would result in the aggregate account balance of an ABLE account exceeding the account balance limit authorized under Section 529A of the Internal Revenue Code. The Treasurer shall review the contribution limit at least annually. A separate account must be maintained for each beneficiary for whom contributions are made, and no more than one account shall be established per beneficiary. If an ABLE account is established for a designated beneficiary, no account subsequently established for such beneficiary shall be treated as an ABLE account. The preceding sentence shall not apply in the case of an ABLE account established for purposes of a

rollover as permitted under Sections 529 and 529A of the Internal Revenue Code.

(e) Administration of the ABLE Program. The State Treasurer shall administer the plan, including accepting and processing applications, maintaining account records, making payments, and undertaking any other necessary tasks to administer the plan, including the appointment of an account administrator. The State Treasurer may contract with one or more third parties to carry out some or all of these administrative duties, including, but not limited to, providing investment management services, incentives, and marketing the plan. The State Treasurer may enter into agreements with other states to either allow Illinois residents to participate in a plan operated by another state or to allow residents of other states to participate in the Illinois ABLE plan. The State Treasurer may require any certifications that he or she deems necessary to implement the program, including oaths or affirmations made under penalties of perjury.

(f) Fees. The State Treasurer may establish fees to be imposed on participants to cover the costs of administration, recordkeeping, and investment management. The State Treasurer must use his or her best efforts to keep these fees as low as possible, consistent with efficient administration.

(g) The Illinois ABLE Accounts Administrative Fund. The Illinois ABLE Accounts Administrative Fund is created as a

nonappropriated trust fund in the State treasury. The State Treasurer shall use moneys in the Administrative Fund to cover administrative expenses incurred under this Section. The Administrative Fund may receive any grants or other moneys designated for administrative purposes from the State, or any unit of federal, state, or local government, or any other person, firm, partnership, or corporation. Any interest earnings that are attributable to moneys in the Administrative Fund must be deposited into the Administrative Fund. Any fees established by the State Treasurer to cover the costs of administration, recordkeeping, and investment management shall be deposited into the Administrative Fund.

Subject to appropriation, the State Treasurer may pay administrative costs associated with the creation and management of the plan until sufficient assets are available in the Administrative Fund for that purpose.

(h) Privacy. Applications for accounts and other records obtained or compiled by the Treasurer or the Treasurer's agents reflecting ~~7~~ designated beneficiary information data, account information data, or designated representative information ~~and data on beneficiaries of accounts~~ are confidential and exempt from disclosure under the Freedom of Information Act.

(i) Investment Policy. The Treasurer shall prepare and adopt a written statement of investment policy that includes a risk management and oversight program which shall be reviewed

annually and posted on the Treasurer's website prior to implementation. The risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the ABLE plan, to ensure that the risks taken are prudent and properly managed, to provide an integrated process for overall risk management, and to assess investment returns as well as risk to determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards. To enhance the safety and liquidity of ABLE accounts, to ensure the diversification of the investment portfolio of accounts, and in an effort to keep investment dollars in the State, the State Treasurer may make a percentage of each account available for investment in participating financial institutions doing business in the State, except that the accounts may be invested without limit in investment options from open-ended investment companies registered under Section 80a of the federal Investment Company Act of 1940. The State Treasurer may contract with one or more third parties for investment management, recordkeeping, or other services in connection with investing the accounts.

(j) Investment restrictions. The State Treasurer shall ensure that the plan meets the requirements for an ABLE account under Section 529A of the Internal Revenue Code. The State Treasurer may request a private letter ruling or rulings from the Internal Revenue Service and must take any necessary

steps to ensure that the plan qualifies under relevant provisions of federal law. Notwithstanding the foregoing, any determination by the Secretary of the Treasury of the United States that an account was utilized to make non-qualified distributions shall not result in an ABLE account being disregarded as a resource.

(k) Contributions. A person or entity may make contributions to an ABLE account on behalf of a beneficiary. Contributions to an account made by persons or entities other than the designated beneficiary become the property of the designated beneficiary. Contributions to an account shall be considered as a transfer of assets for fair market value. A person or entity does not acquire an interest in an ABLE account by making contributions to an account. A contribution to any account for a beneficiary must be rejected if the contribution would cause either the aggregate or annual account balance of the account to exceed the limits imposed by Section 529A of the Internal Revenue Code.

Any change in designated beneficiary must be done in a manner consistent with Section 529A of the Internal Revenue Code.

(l) Notice. Notice of any proposed amendments to the rules and regulations shall be provided to all designated beneficiaries or their designated representatives prior to adoption. Amendments to rules and regulations shall apply only to contributions made after the adoption of the amendment.

Amendments to this Section automatically amend the participation agreement. Any amendments to the operating procedures and policies of the plan shall automatically amend the participation agreement after adoption by the State Treasurer.

(m) Plan assets. All assets of the plan, including any contributions to accounts, are held in trust for the exclusive benefit of the designated beneficiary and shall be considered spendthrift accounts exempt from all of the designated beneficiary's creditors. The plan shall provide separate accounting for each designated beneficiary sufficient to satisfy the requirements of paragraph (3) of subsection (b) of Section 529A of the Internal Revenue Code. Assets must be held in either a state trust fund outside the State treasury, to be known as the Illinois ABLE plan trust fund, or in accounts with a third-party provider selected pursuant to this Section. Amounts contributed to ABLE accounts shall not be commingled with State funds and the State shall have no claim to or against, or interest in, such funds.

Plan assets are not subject to claims by creditors of the State and are not subject to appropriation by the State. Payments from the Illinois ABLE account plan shall be made under this Section.

The assets of ABLE accounts and their income may not be used as security for a loan.

(n) Taxation. The assets of ABLE accounts and their income

and operation shall be exempt from all taxation by the State of Illinois and any of its subdivisions to the extent exempt from federal income taxation. The accrued earnings on investments in an ABLE account once disbursed on behalf of a designated beneficiary shall be similarly exempt from all taxation by the State of Illinois and its subdivisions to the extent exempt from federal income taxation, so long as they are used for qualified expenses.

Notwithstanding any other provision of law that requires consideration of one or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, any amount, including earnings thereon, in the ABLE account of such individual, any contributions to the ABLE account of the individual, and any distribution for qualified disability expenses shall be disregarded for such purpose with respect to any period during which such individual maintains, makes contributions to, or receives distributions from such ABLE account.

(o) Distributions. The designated beneficiary or the designated representative of the designated beneficiary may make a qualified distribution for the benefit of the designated beneficiary. Qualified distributions shall be made for qualified disability expenses allowed pursuant to Section 529A of the Internal Revenue Code. Qualified distributions

must be withdrawn proportionally from contributions and earnings in a designated beneficiary's account on the date of distribution as provided in Section 529A of the Internal Revenue Code. Unless prohibited by federal law, upon the death of a designated beneficiary, proceeds from an account may be transferred to the estate of a designated beneficiary, or to an account for another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary, or transferred pursuant to a payable on death account agreement. A payable on death account agreement may be executed by the designated beneficiary or a designated representative who has been granted such power. Upon the death of a designated beneficiary, prior to distribution of the balance to the estate, account for another eligible individual, or transfer pursuant to a payable on death account agreement, the State Treasurer may require verification that the funeral and burial expenses of the designated beneficiary have been paid. An agency or instrumentality of the State may not seek payment under subsection (f) of Section 529A of the federal Internal Revenue Code from the account or its proceeds for benefits provided to a designated beneficiary.

(p) Rules. The State Treasurer may adopt rules to carry out the purposes of this Section. The State Treasurer shall further have the power to issue peremptory rules necessary to ensure that ABLE accounts meet all of the requirements for a qualified state ABLE program under Section 529A of the

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Internal Revenue Code and any regulations issued by the Internal Revenue Service.

(q) Name. The ABLE Account Program may also be referred to as the Senator Scott Bennett ABLE Program.

(Source: P.A. 101-329, eff. 8-9-19; 102-392, eff. 8-16-21; 102-1024, eff. 5-27-22.)

Section 99. Effective date. This Act takes effect upon becoming law.