

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1319 Session of 2015

INTRODUCED BY MARSHALL, O'NEILL, STEPHENS, D. MILLER, MURT, BARRAR, COHEN, D. COSTA, CUTLER, DAVIS, DRISCOLL, GIBBONS, GODSHALL, GROVE, A. HARRIS, HEFFLEY, KINSEY, KORTZ, LONGIETTI, McNEILL, MULLERY, PETRARCA, ROSS, ROZZI, SABATINA, SAMUELSON, SCHLOSSBERG, SCHWEYER, THOMAS, WHEATLEY, YOUNGBLOOD, FREEMAN, DAVIDSON, BRADFORD, WATSON, WARD, MICCARELLI AND BARBIN, JUNE 10, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 23, 2015

AN ACT

1 Providing for the establishment of a savings program by the
2 Treasury Department to encourage eligible individuals with
3 disabilities to save private funds from which the expenses
4 related to their disabilities may be paid to assist them in
5 maintaining health, independence and quality of life.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Achieving a
10 Better Life Experience (ABLE) Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "ABLE account contract." An agreement between the program
16 manager or the department and the account owner.

1 "Account." An individual savings account held in trust for a
2 designated beneficiary established within the department in
3 accordance with this act.

4 "Account owner." A person or legal entity permitted to be an
5 ABLE account owner under IRC § 529A and who enters into an ABLE
6 account contract under this act.

7 "Contracting state." A state that has not set up an eligible
8 ABLE savings account program and contracts with this
9 Commonwealth to manage accounts for the state's residents.

10 "Department." The Treasury Department of the Commonwealth.

11 "Designated beneficiary." An eligible individual at the time
12 the account is established or the eligible individual who
13 replaces a designated beneficiary, who is the beneficiary of the
14 account and whose qualified expenses may be paid from the
15 account.

16 "Disability certification." A certification which:

17 (1) meets the satisfaction of the Secretary of the
18 Treasury of the United States by an eligible individual or
19 the eligible individual's parent or guardian that certifies
20 that the eligible individual:

21 (i) has a medically determinable physical or mental
22 impairment that results in marked and severe functional
23 limitations and that can be expected to result in death
24 or that has lasted or can be expected to last for a
25 continuous period of not less than 12 months or is blind;
26 and

27 (ii) that the blindness or disability occurred
28 before the date on which the eligible individual attained
29 age 26; and

30 (2) is accompanied by a copy of the diagnosis relating

1 to the eligible individual's relevant impairment that is
2 signed by a physician.

3 "Eligible individual." A person who:

4 (1) is entitled to Social Security benefits based on
5 blindness or disability under Title II of the Social Security
6 Act (49 Stat. 620, 42 U.S.C. § 401 et seq.) or Title XVI of
7 the Social Security Act (42 U.S.C. § 1381 et seq.) and whose
8 blindness or disability occurred before the date on which the
9 eligible individual attained age 26; or

10 (2) has filed a disability certification with the
11 Secretary of the Treasury of the United States for the
12 taxable year.

13 "Fund." The ABLE Savings Program Fund.

14 "IRC § 529A." Section 529A of the Internal Revenue Code of
15 1986 (Public Law 99-514, 26 U.S.C. § 529A) and any successor
16 legislation. The term includes any regulations or guidance
17 issued under section 529A of the Internal Revenue Code of 1986.

18 "Management contract." ~~The contract executed by the~~ <--
19 ~~department and a financial institution selected to act as a~~
20 ~~depository and manager of the qualified program.~~ THE CONTRACT <--
21 EXECUTED BY THE DEPARTMENT AND A PERSON OR LEGAL ENTITY TO SERVE
22 AS INVESTMENT MANAGERS, PROGRAM MANAGERS AND TRUSTEES TO THE
23 DEPARTMENT ON BEHALF OF THE PROGRAM.

24 "Nonqualified withdrawal." A withdrawal from an account
25 which is not:

26 (1) A qualified withdrawal.

27 (2) A rollover distribution.

28 "Qualified ABLE Program." An ABLE account program
29 established and maintained by the Commonwealth or an agency or
30 instrumentality of the Commonwealth.

1 "Qualified disability expense." An expense relating to an
2 eligible individual's blindness or disability that is made for
3 the benefit of the eligible individual as designated
4 beneficiary. The term shall include but is not limited to each
5 qualified expense enumerated in IRC § 529A.

6 "Qualified withdrawal." A withdrawal from an account to pay
7 the qualified disability expenses of the designated beneficiary
8 of the account.

9 "Rollover distribution." A rollover distribution as defined
10 in IRC § 529A.

11 Section 3. ABLE savings program.

12 (a) Establishment.--The department may establish and
13 maintain a qualified ABLE program. The department may enter into
14 account agreements to provide accounts for the benefit of
15 designated beneficiaries. The qualified ABLE account program
16 must provide that:

17 (1) Family members and other persons may make
18 contributions for a taxable year for the benefit of a
19 designated beneficiary to an account that is established to
20 help the designated beneficiary to supplement, not supplant,
21 the costs of qualified disability expenses without losing
22 other sources of income.

23 ~~(2) A designated beneficiary shall be limited to one~~ <--
24 ~~account.~~

25 ~~(3)~~ (2) An account shall be only for a designated <--
26 beneficiary who is a resident of this Commonwealth or a
27 resident of a contracting state.

28 (b) ~~Exemption. A qualified ABLE program shall be exempt~~ <--
29 ~~from taxation under IRC § 529A.~~ (RESERVED). <--

30 (c) Contributions.--Contributions to an account may be

1 accepted only in cash and if the contribution does not result in
2 aggregate contributions to an account from all contributors for
3 the taxable year exceeding ~~\$14,000 for the calendar year in~~ <--
4 ~~which the taxable year begins~~ ANY LIMIT SET FORTH IN IRC § 529A. <--

5 (d) Development and administration.--~~The~~ NOTWITHSTANDING ANY <--
6 OTHER PROVISION OF LAW, THE department shall develop and
7 administer the qualified ABLE program in accordance with ~~the~~ <--
8 ~~Stephen Beck, Jr., ABLE Act of 2014 (Pub. L. 113 295, div. B,~~
9 ~~§1(a), 128 Stat. 4056)~~ IRC § 529A and this act and in a manner <--
10 that allows account owners and designated beneficiaries to
11 obtain and maintain Federal income tax benefits or treatment
12 provided by the Internal Revenue Code and exemptions under
13 Federal securities laws.

14 (e) Consultants.--The department may engage the services of
15 consultants, including organizations with experience in services
16 for people with disabilities, on a contract basis for rendering
17 professional and technical assistance.

18 (f) Management contracts.--The department may enter into
19 management contracts with ~~one or more financial institutions.~~ <--
20 ~~The department and the financial institution must account for~~
21 ~~each contribution made to an account.~~ A LEGAL ENTITY. IF THE <--
22 DEPARTMENT CONTRACTS WITH INVESTMENT MANAGERS, PROGRAM MANAGERS
23 OR TRUSTEES IN ORDER TO FULFILL THE OBJECTIVES OF THIS ACT, THE
24 INVESTMENT MANAGERS, PROGRAM MANAGERS AND TRUSTEES MUST WORK
25 WITH THE DEPARTMENT TO CREATE A PROGRAM, TO DEVELOP INVESTMENT
26 PORTFOLIOS AND TO SUPERVISE INVESTMENTS AND THE INVESTMENT
27 PROGRAMS SELECTED.

28 (g) Fees.--The department may charge administrative and
29 other qualified ABLE program fees for services rendered under
30 this act.

1 (h) Other states.--The department may contract with other
2 states that do not have qualified ABLE account programs to
3 provide qualified ABLE account program services to residents of
4 the contracting states.

5 (i) Rules.--The department shall prescribe qualified ABLE
6 program rules that the department determines are necessary or
7 appropriate to carry out the purposes of this act, including
8 rules to:

9 (1) Enforce the ~~single~~ account LIMITATION per eligible <--
10 individual limit AS REQUIRED IN IRC § 529A. <--

11 (2) Provide for the information required to be presented
12 to open an account.

13 (3) Prevent fraud and abuse with respect to amounts
14 claimed as qualified disability expenses.

15 (4) Allow for transfers from one account to another
16 account.

17 (j) Fiduciary.--To the extent that Federal law requires an
18 eligible individual to be the account owner, the following may
19 enter into an ABLE account contract as fiduciary for an eligible
20 individual who is a minor or who lacks capacity to enter into an
21 ABLE account contract:

22 (1) A parent or guardian.

23 (2) A person or legal entity designated in writing by
24 the parent or guardian.

25 (3) A trustee of a trust for which the eligible
26 individual is a beneficiary.

27 (4) For an eligible individual who is receiving benefits
28 based on blindness or disability under Title II of the Social
29 Security Act (49 Stat. 620, 42 U.S.C. § 401 et seq.) or Title
30 XVI of the Social Security Act (42 U.S.C. § 1381 et seq.),

1 the representative payee for the benefits.

2 (5) Any other person or entity authorized by IRC § 529A
3 to be the person with signature authority over the account.

4 Section 4. Interdepartmental cooperation.

5 The head of a department, a board, a commission, an agency or
6 an instrumentality of the Commonwealth, unless otherwise
7 prohibited by law, must assist the department in providing
8 information about the program to potential eligible individuals
9 and the eligible individual's families.

10 Section 5. ABLE Savings Program Fund.

11 The department may establish a special fund to be known as
12 the ABLE Savings Program Fund. The following shall apply:

13 (1) The fund shall consist of:

14 (i) All contributions made to accounts of eligible
15 individuals under an ABLE account contract and all
16 interest, earnings and additions to the accounts.

17 (ii) Any fees and charges levied on ABLE accounts to
18 cover expenses in administering the program.

19 (iii) Any other public or private money appropriated
20 or made available to the department for the fund from any
21 source and all interest, earning and additions to the
22 money.

23 (2) All money in the fund, including fees and charges
24 levied on an ABLE account to cover the expenses in
25 administering the program, contributions and increase in
26 value on the money for distribution to or on behalf of
27 eligible individuals, is appropriated to the department on a
28 continuing basis to carry out the provisions of this act.

29 (2.1) THE DEPARTMENT SHALL PREPARE, AND THROUGH THE
30 GOVERNOR, SUBMIT ANNUALLY TO THE GENERAL ASSEMBLY A BUDGET

<--

1 COVERING THE OPERATING AND ADMINISTRATIVE EXPENSES OF THE
2 PROGRAM. UPON APPROVAL BY THE GENERAL ASSEMBLY IN AN
3 APPROPRIATION BILL, EXPENSES INCURRED BY THE PROGRAM AND THE
4 DEPARTMENT SHALL BE PAID FROM THE FEES AND CHARGES OR FROM
5 OTHER FUNDS AVAILABLE.

6 (3) The assets of the fund shall be preserved, invested
7 and expended solely under and for the purposes of carrying
8 out this act.

9 (4) The money in the fund shall be invested under
10 policies established by the department to provide for an
11 appropriate balance of risk, liquidity and return
12 commensurate with the management of a prudent investor. The
13 department and the department's investment managers, program
14 managers and trustees may invest and reinvest the funds in
15 any lawful investments.

16 Section 6. ABLE accounts.

17 (a) ABLE account contract.--An ABLE account may be opened
18 through a contract entered into by an account owner and the
19 department. If the account owner is a fiduciary as enumerated
20 under section 3(j), the account owner shall continue to have
21 signatory authority over the account until the account owner
22 relinquishes the authority.

23 (b) Change of designated beneficiary.--An account owner may
24 change the designated beneficiary named in the ABLE account
25 contract to another eligible individual if permitted under IRC §
26 529A.

27 (c) Reports.--

28 (1) The department or the department's investment
29 managers, program managers and trustees must make monthly
30 reports to designated beneficiaries with respect to

1 contributions, distributions, the return of excess
2 contributions and any other matters involving the state of a
3 designated beneficiary's account.

4 (2) On or before September 1, 2017, and each September 1
5 thereafter, the department shall issue a report annually to
6 the Governor, the chairman and minority chairman of the
7 Finance Committee of the Senate, the chairman and minority
8 chairman of the Finance Committee of the House of
9 Representatives, account owners and designated beneficiaries.
10 The report must include the following:

11 (i) The qualified ABLE account program's fiscal
12 transactions during the preceding fiscal year.

13 (ii) The market value of the program as of June 30
14 of the preceding fiscal year.

15 (iii) The asset allocations of the qualified ABLE
16 program expressed in percentages of stocks, fixed income
17 securities, cash or other financial assets.

18 (iv) The rate of return on the investment of the
19 qualified ABLE program assets during the preceding fiscal
20 year.

21 ~~(3) For research purposes, the department shall make~~ <--
22 ~~available reports containing aggregate information by~~
23 ~~diagnosis and other relevant characteristics and on~~
24 ~~contributions and distributions from the qualified ABLE~~
25 ~~program. Information may not be made available to the public~~
26 ~~if the information can be associated with, or otherwise~~
27 ~~identify, directly or indirectly a specific qualified~~
28 ~~individual.~~

29 SECTION 7. POWERS OF THE DEPARTMENT. <--

30 IN ADDITION TO ANY OTHER POWERS GRANTED UNDER THIS ACT, THE

1 DEPARTMENT SHALL HAVE THE POWER TO CARRY OUT THIS ACT,
2 INCLUDING, BUT NOT LIMITED TO, THE POWER TO DO ANY OF THE
3 FOLLOWING:

4 (1) ADMINISTER THE PROGRAM AND THE ABLE SAVINGS PROGRAM
5 FUND.

6 (2) ENTER INTO CONTRACTS WITH INDIVIDUALS FOR THE
7 CREATION OF AN ABLE SAVINGS ACCOUNT.

8 (3) PAY TO AN ACCOUNT OWNER, ELIGIBLE INDIVIDUAL OR A
9 THIRD PARTY AUTHORIZED BY THE ACCOUNT OWNER, UPON RECEIPT OF
10 APPROPRIATE DOCUMENTATION IF REQUIRED BY THE DEPARTMENT,
11 FUNDS FROM THE ACCOUNT TO PAY FOR THE ELIGIBLE INDIVIDUAL'S
12 QUALIFIED DISABILITY EXPENSES.

13 (4) CONTRACT FOR GOODS AND SERVICES AND ENGAGE AND
14 EMPLOY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, THE SERVICE
15 OF PRIVATE CONSULTANTS, ACTUARIES, MANAGERS, LEGAL COUNSEL
16 AND AUDITORS FOR RENDERING PROFESSIONAL, MANAGERIAL AND
17 TECHNICAL ASSISTANCE AND ADVICE.

18 (5) SOLICIT AND ACCEPT GIFTS, GRANTS, LOANS AND OTHER
19 AID FROM ANY PERSON, CORPORATION OR OTHER ENTITY OR FROM
20 FEDERAL, STATE OR LOCAL GOVERNMENT AND PARTICIPATE IN ANY
21 FEDERAL, STATE OR LOCAL GOVERNMENT PROGRAM THAT RESULTS IN
22 ADDITIONAL FUNDS BEING AVAILABLE TO PAY FOR THE QUALIFIED
23 DISABILITY EXPENSE OF ELIGIBLE INDIVIDUALS WITH ABLE SAVINGS
24 ACCOUNTS.

25 (6) CHARGE AND COLLECT ADMINISTRATIVE FEES AND CHARGES
26 IN CONNECTION WITH ANY TRANSACTION, INCLUDING CONTINUED
27 PARTICIPATION IN THE ABLE PROGRAM.

28 (7) CLOSE ABLE SAVINGS ACCOUNTS AND RETURN ANY REMAINING
29 FUNDS, MINUS ANY FEES, TO THE ACCOUNT OWNER.

30 (8) CONTRACT FOR INSURANCE, LETTERS OF CREDIT AND

1 COLLATERAL AGREEMENTS.

2 (9) ADJUST THE TERMS OF CONTRACTS WITH ACCOUNT OWNERS.

3 (10) SOLICIT ANSWERS FROM THE APPROPRIATE FEDERAL
4 AGENCIES REGARDING THE APPLICATION OF SECURITY OR OTHER
5 FEDERAL LAWS TO THE PROGRAM.

6 (11) CONSIDER MEANS BY WHICH CONTRIBUTIONS INTO AN ABLE
7 SAVINGS ACCOUNT CAN BE DEDUCTED FROM SALARY.

8 (12) PROMULGATE REGULATIONS.

9 (13) TAKE ANY OTHER ACTION NECESSARY TO CARRY OUT THE
10 PURPOSE OF THIS ACT AND INCIDENTAL TO THE DUTIES IMPOSED ON
11 THE SECRETARY OF THE TREASURY.

12 Section 7 8. Qualified disability expenses. <--

13 Qualified disability expenses shall include but are not
14 limited to the following:

15 (1) Education.

16 (2) Housing.

17 (3) Transportation.

18 (4) Employment training and support.

19 (5) Assistive technology and personal support services.

20 (6) Health, prevention and wellness.

21 (7) Financial management and administrative services.

22 (8) Legal fees.

23 (9) Expenses for oversight and monitoring.

24 (10) Funeral and burial expenses.

25 (11) Other expenses approved by the Secretary of the
26 Treasury of the United States.

27 Section 8 9. Nonqualified withdrawals. <--

28 (a) Value received.--Upon a full or partial withdrawal of
29 funds from an ABLE account which are not used for qualified
30 disability expenses, the account owner or the account owner's

1 designee must receive the market value of the account for the
2 amount requested.

3 (b) Fees.--The department may impose fees and charges for
4 administrative costs on a nonqualified withdrawal or termination
5 and deduct the fee from the amount otherwise payable.

6 (c) Involuntary termination.--The department may close an
7 account and return remaining funds in the account as a
8 nonqualified withdrawal if necessary for compliance with Federal
9 law, or if the department, in the department's sole discretion,
10 finds that termination is in the best interest of the program or
11 the designated beneficiary.

12 (d) Taxation of nonqualified withdrawals.--In the event of a
13 nonqualified withdrawal, to the extent the amount withdrawn
14 includes earnings on the contributions, or contributions that
15 were eligible to be deducted from Pennsylvania income tax for
16 the tax year in which the contributions were made, the amount of
17 earnings and deductible contributions shall be subject to
18 taxation as income under the laws of this Commonwealth.

19 Section ~~9~~ 10. Electronic distribution statements. <--

20 The department must submit electronically ~~on a monthly basis~~ <--
21 to the Commissioner of Social Security, in the manner specified
22 by the Commissioner of Social Security, statements on relevant
23 distributions and account balances from each account.

24 Section ~~10~~ 11. Exemption from securities law. <--

25 The program and accounts shall be exempt from any statute
26 regulating securities.

27 Section ~~11~~ 12. Treatment of ABLE accounts. <--

28 (a) Levy, execution and security for loans.--An ABLE account
29 shall not be subject to attachment, levy or execution by any
30 creditor of a contributor, account owner, or designated

1 beneficiary and shall not be used as security for a loan.

2 (b) Disability or health benefits.--Any amount contributed
3 to an account and any increase in the value of the account may
4 not be used in calculating personal assets of a designated
5 beneficiary or an account owner in order to determine
6 eligibility for disability, medical assistance or other health
7 benefits conferred by the Commonwealth.

8 (c) Student aid.--Any amount contributed under an ABLE
9 account contract and any increase in the value of the account
10 may not be used in calculating personal asset contributions for
11 determining eligibility and need for student loan programs,
12 student grant programs or other student aid programs
13 administered by an agency of the Commonwealth, except as
14 otherwise may be provided by Federal law.

15 ~~(d) Federal means tested programs.~~ <--

16 ~~(1) Notwithstanding any other provision of Federal law~~
17 ~~that requires consideration of one or more financial~~
18 ~~circumstances of an individual when determining eligibility~~
19 ~~to receive benefits or determining the amount of assistance,~~
20 ~~the provisions of Federal law shall not apply to a designated~~
21 ~~beneficiary except that, for the supplemental security income~~
22 ~~program under Title XVI of the Social Security Act (49 Stat.~~
23 ~~620, 42 U.S.C. § 301 et seq.):~~

24 ~~(i) a distribution for housing expenses may not be~~
25 ~~disregarded; and~~

26 ~~(ii) in the case of the program, any amount in an~~
27 ~~account, including earnings on investment of the account,~~
28 ~~shall be considered a resource of the designated~~
29 ~~beneficiary to the extent that the amount exceeds~~
30 ~~\$100,000.~~

1 ~~(2) The benefits of a designated beneficiary under the~~
2 ~~supplemental security income program under Title XVI of the~~
3 ~~Social Security Act may not be terminated and shall be~~
4 ~~suspended by the reason of excess resources of the individual~~
5 ~~attributable to an amount in the account, within the meaning~~
6 ~~of IRC § 529A, of the individual not disregarded under~~
7 ~~paragraph (1).~~

8 ~~(3) A person who would be receiving payment of~~
9 ~~supplemental security income benefits except for the~~
10 ~~application of paragraph (1)(i) shall be treated for purposes~~
11 ~~of Title XIX of the Social Security Act (49 Stat. 620, 42-~~
12 ~~U.S.C. § 1396 et seq.) as if the person continued to be~~
13 ~~receiving payment of the benefits.~~

14 Section ~~12~~ 13. Commonwealth as creditor of accounts. <--

15 Subject to any outstanding payments due for qualified
16 disability expense and on the death of the designated
17 beneficiary, each amount remaining in a designated beneficiary's
18 account not in excess of the amount equal to the total medical
19 assistance paid for the designated beneficiary after the
20 establishment of the account, net of any premiums paid from the
21 account or paid by or on behalf of the designated beneficiary to
22 a Medicaid buy-in program under the State Medicaid plan
23 established under Title XIX of the Social Security Act, shall be
24 distributed to the Commonwealth upon the filing of a claim for
25 payment by the Commonwealth. For the purpose of this section,
26 the Commonwealth shall be a creditor of an account and not a
27 beneficiary.

28 Section ~~13~~ 14. Tax exemptions. <--

29 (a) Property of the program.--The property of the ABLE
30 savings program and the earnings from the program shall be

1 exempt from all taxation by the Commonwealth and the political
2 subdivisions of the Commonwealth.

3 (b) Contributions.--Contributions made to an account, any
4 increase in the value of the contribution, the retention, or
5 transfer during life or as a result of death of any legal
6 interest in an account and payment of qualified disability
7 expenses of eligible individuals from an account shall be exempt
8 from all taxation by the Commonwealth and political subdivisions
9 of the Commonwealth.

10 Section ~~14~~ 15. Limitation. <--

11 An obligation or debt under this act shall not be deemed an
12 obligation or debt of the Commonwealth and the Commonwealth
13 shall not be liable to pay principal and interest on an
14 obligation or to offset a loss of principal and interest
15 earnings on investments made by the department under this act.

16 Section ~~15~~ 16. Effective date. <--

17 This act shall take effect immediately.