

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 879 Session of 2015

INTRODUCED BY BAKER, BARTOLOTTA, McILHINNEY, TEPLITZ, GORDNER, PILEGGI, SMITH, FONTANA, STEFANO, VANCE, VULAKOVICH, FOLMER, GREENLEAF, RAFFERTY, AUMENT, HAYWOOD, WARD, BLAKE, SCARNATI, EICHELBERGER AND BROWNE, JUNE 8, 2015

SENATOR BROWNE, APPROPRIATIONS, RE-REPORTED AS AMENDED, SEPTEMBER 16, 2015

AN ACT

1 Providing for the establishment of a savings program by the
2 Treasury Department to encourage savings accounts for
3 individuals with disabilities; establishing the Pennsylvania
4 ABLE Savings Program and the ABLE Savings Program Fund; and
5 imposing duties on the Treasury Department.

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

8 CHAPTER 1

9 PRELIMINARY PROVISIONS

10 Section 101. Short title.

11 This act shall be known and may be cited as the Pennsylvania
12 ABLE Act.

13 Section 102. Definitions.

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

17 "ABLE." Achieving a Better Life Experience.

18 "ABLE account contract." A contract between a program

1 manager or the department and an account owner.

2 "ABLE savings account." An individual savings account
3 established in accordance with this act.

4 "Account." An ABLE savings account.

5 "Account owner." A person or legal entity authorized to be
6 an ABLE account owner under section 529A of the Internal Revenue
7 Code who enters into an ABLE account contract under this act.

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

9 "Designated beneficiary." An eligible individual whose
10 qualified disability expenses may be paid from the account.

11 "Eligible individual." An eligible individual as defined in
12 section 529A(e)(1) of the Internal Revenue Code.

13 "Fund." The ABLE Savings Program Fund established in section
14 302.

15 "Internal Revenue Code." The Internal Revenue Code of 1986
16 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

17 "Nonqualified withdrawal." A withdrawal from an account
18 which is not:

19 (1) A qualified withdrawal.

20 (2) A rollover distribution.

21 "Program." The Pennsylvania ABLE Savings Program established
22 under section 301.

23 "Qualified ABLE program." As defined in section 529A(b)(1)
24 of the Internal Revenue Code.

25 "Qualified disability expense." A qualified disability
26 expense included under section 529A of the Internal Revenue
27 Code.

28 "Qualified withdrawal." A withdrawal from an account to pay
29 the qualified disability expenses of the designated beneficiary
30 of the account.

1 "Rollover distribution." A rollover distribution as used in
2 section 529A of the Internal Revenue Code.

3 CHAPTER 3
4 PENNSYLVANIA ABLE SAVINGS PROGRAM

5 Section 301. Pennsylvania ABLE Savings Program.

6 (a) Establishment.--The department may establish and
7 maintain a savings program ~~through which~~ TO ALLOW ABLE savings <--
8 accounts ~~may~~ TO be opened for eligible individuals for payment <--
9 of qualified disability expenses. Notwithstanding any other
10 provision of law, an ABLE savings program established by the
11 department shall be maintained at all times in such a manner ~~as~~ <--
12 ~~to ensure~~ THAT ENSURES the program's status as a qualified ABLE <--
13 program.

14 ~~(b) Purpose. The purpose of the program is to empower an~~ <--
15 ~~individual with a disability and the individual's family to save~~
16 ~~private funds in a savings account to support the individual~~
17 ~~with a disability in maintaining health, independence and~~
18 ~~quality of life.~~

19 ~~(c)~~ (B) Administration.--The department may utilize the <--
20 administrative or investment structures of the Tuition Account
21 Investment Program established by the act of April 3, 1992
22 (P.L.28, No.11), known as the Tuition Account Programs and
23 College Savings Bond Act, without separately soliciting
24 proposals for assistance in the management of all or part of the
25 program.

26 ~~(d)~~ (C) Investment manager and trustee.--The department may <--
27 contract with one or more persons or ~~other~~ legal entities to <--
28 serve as investment managers, program managers and trustees ~~to~~ <--
29 ~~the department~~ on behalf of the program. If the department
30 contracts with investment managers, program managers or trustees

1 in order to fulfill the objectives of the program, the
2 investment managers, program managers and trustees shall work
3 with the department to ~~create~~ PROVIDE a program to develop <--
4 investment portfolios and to supervise investments and ~~the~~ <--
5 investment programs ~~selected~~. <--

6 ~~(e)~~ (D) Contracts with other states.--The department may <--
7 contract with another state for any of the following:

8 (1) For another state to provide all or part of the
9 program to beneficiaries residing in this Commonwealth.

10 (2) ~~For the department to~~ TO provide all or part of the <--
11 program to beneficiaries residing in another state.

12 (3) ~~For the department and another state to~~ TO engage in <--
13 joint efforts to establish and maintain ABLE savings
14 programs.

15 Section 302. ABLE Savings Program Fund.

16 (a) Fund established.--The ABLE Savings Program Fund is
17 established in the State Treasury. The fund shall consist of all
18 the following:

19 (1) All contributions made to accounts of eligible
20 individuals pursuant to ABLE account contracts and all
21 interest, earnings and additions to the accounts.

22 (2) Any fees or charges levied on accounts to cover
23 ADMINISTRATIVE expenses ~~in administering~~ OF the program. <--

24 (3) Other money appropriated or made available to the
25 department for the program from any source and all interest,
26 earnings and additions to the money.

27 (b) Continuing appropriation.--All money in the fund,
28 including fees and charges levied on an account to cover the
29 expenses ~~in administering~~ TO ADMINISTER the program, <--
30 contributions and increase in value on the contributions, for

1 distribution to or on behalf of eligible individuals, is hereby
2 appropriated to the department on a continuing basis to carry
3 out the provisions of this act.

4 (c) Assets.--The assets of the fund shall be preserved,
5 invested and expended solely ~~to and~~ for the ~~purposes~~ PURPOSE of <--
6 carrying out this act.

7 (d) Investment.--The money in the fund shall be invested in
8 accordance with policies established by the department to
9 provide for an appropriate balance of risk, liquidity and return
10 commensurate with the management of a prudent investor. The
11 department, the investment managers, program managers and
12 trustees shall have the authority to invest and reinvest the
13 money in the fund in all lawful investments.

14 Section 303. Operating and administrative costs.

15 The department shall prepare and, through the Governor,
16 submit annually to the General Assembly a budget covering the
17 operating and administrative expenses of the program. Upon
18 approval by the General Assembly in an appropriation bill,
19 expenses ~~as~~ incurred by the program and the department shall be <--
20 paid from program fees and charges or from other available
21 funds.

22 Section 304. Interdepartmental cooperation.

23 The head of any department, board, commission, agency or
24 instrumentality of the Commonwealth, unless otherwise prohibited
25 by law, shall assist the department in providing information
26 about the program to potential eligible individuals and their
27 families.

28 Section 305. Department powers and duties.

29 ~~In addition to the powers granted by other provisions of this~~<--
30 ~~act, the~~ THE department shall have the powers necessary or <--

1 convenient to carry out this act, including, ~~but not limited to,~~ <--

2 the power to:

3 (1) Administer the program and the fund.

4 (2) Enter into contracts with individuals for the
5 establishment of ABLE savings accounts.

6 (3) Pay to an account owner or designated beneficiary,
7 or a third party authorized by an account owner, upon receipt
8 of appropriate documentation ~~if~~ required by the department, <--
9 funds from the account to pay for the eligible individual's
10 qualified disability expenses.

11 (4) Contract for goods and services and ~~engage and~~ <--
12 employ personnel, including, ~~but not limited to, the service~~ <--
13 ~~of~~ CONTRACTS WITH private consultants, actuaries, managers, <--
14 legal counsel and auditors AS NECESSARY for rendering <--
15 professional, managerial and technical assistance and advice.

16 (5) Solicit and accept gifts, grants, loans and other
17 aid from any person, corporation or other entity or from a
18 government entity and participate in any Federal, State or
19 local government program that results in additional funds
20 being available to pay for the qualified disability expenses
21 of eligible individuals with ABLE savings accounts.

22 (6) Charge and collect administrative fees and charges
23 in connection with any transaction, including continued
24 participation in the program.

25 (7) Close ABLE savings accounts and return any remaining
26 funds, minus any fees, to the account owner.

27 (8) Contract for insurance, letters of credit and
28 collateral agreements.

29 (9) Adjust the terms of contracts with account owners.

30 (10) Solicit answers from appropriate Federal agencies

1 regarding the application of security or other Federal laws
2 to the program.

3 (11) Consider means whereby contributions into an ABLE
4 savings account can be deducted from salary.

5 (12) Promulgate regulations to implement the provisions
6 of this act.

7 (13) Take any other action necessary to carry out the
8 purpose of this act and incidental to the duties imposed on
9 the department.

10 CHAPTER 5

11 ACCOUNTS

12 Section 501. ABLE savings accounts.

13 (a) ABLE account contract.--An ABLE savings account may be
14 opened through a contract entered into by an account owner and
15 the department. If the account owner is a fiduciary, the account
16 owner shall continue to have signatory authority over the
17 account until the account owner relinquishes the authority.

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

23 (1) A parent or guardian.

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

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

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

1 XVI of the Social Security Act (42 U.S.C. § 1381), the
2 representative payee for those benefits.

3 (5) Any other person or entity authorized under section
4 529A of the Internal Revenue Code with signature authority
5 over the account.

6 (c) Change of designated beneficiary.--An account owner may
7 change the designated beneficiary named in the ABLE account
8 contract to another eligible individual if permitted under
9 section 529A of the Internal Revenue Code.
10 Section 502. Nonqualified withdrawals.

11 (a) Value received.--Upon a full or partial withdrawal of
12 funds from an account, which are not used for qualified
13 disability expenses, the account owner or the account owner's
14 designee shall receive the market value of the account for the
15 amount requested.

16 (b) Fees.--The department may ~~impose fees and~~ COLLECT <--
17 ADMINISTRATIVE FEES OR charges for ~~administrative~~ costs upon a <--
18 nonqualified withdrawal or termination and deduct the fee from
19 the amount otherwise payable.

20 (c) Involuntary termination.--The department may close an
21 account and return any remaining funds in the account as a
22 nonqualified withdrawal ~~if necessary for compliance~~ IN ORDER TO <--
23 COMPLY with Federal law or if the department, in its sole
24 discretion, ~~finds~~ DETERMINES that termination is in the best <--
25 interest of the program or the designated beneficiary.

26 (d) Taxation.--In the event of a nonqualified withdrawal, to
27 the extent the amount withdrawn includes earnings on the
28 contributions to the account or contributions to the account
29 that are eligible to be deducted from Pennsylvania income tax
30 for the tax year in which the contributions were made, the

1 amount of earnings and deductible contributions shall be subject
2 to taxation as income under the laws of this Commonwealth.

3 Section 503. Treatment of accounts.

4 (a) ~~Levy, execution and security for loans~~ LIMITATION.--An <--
5 account shall not be subject to attachment, levy or execution by
6 any creditor of a contributor, account owner or designated
7 beneficiary and shall not be used as security for a loan.

8 (b) Disability or health benefits.--~~Any amounts~~ AMOUNTS <--
9 contributed to an account, ~~any increase~~ INCREASES in the value <--
10 of the account and ~~any qualified withdrawal~~ WITHDRAWALS from the <--
11 account shall not be used in calculating personal assets of a
12 designated beneficiary or an account owner in order to determine
13 eligibility for disability, medical assistance or other health
14 benefits conferred by the Commonwealth.

15 (c) Student aid.--~~Any amounts~~ AMOUNTS contributed to an <--
16 account and ~~any increase~~ INCREASES in the value of the account <--
17 shall not be used in calculating personal asset contributions
18 for determining eligibility ~~and need~~ OR NEED TO QUALIFY for <--
19 student loan programs, student grant programs or other student
20 aid programs administered by ~~an agency of the Commonwealth~~ A <--
21 COMMONWEALTH AGENCY, except as otherwise may be provided by
22 Federal law.

23 (D) DEATH OF BENEFICIARY.--UNLESS PROHIBITED BY FEDERAL LAW, <--
24 UPON THE DEATH OF A DESIGNATED BENEFICIARY, PROCEEDS FROM AN
25 ACCOUNT MAY BE TRANSFERRED TO THE ESTATE OF A DESIGNATED
26 BENEFICIARY, OR TO AN ACCOUNT FOR ANOTHER ELIGIBLE INDIVIDUAL
27 SPECIFIED BY THE DESIGNATED BENEFICIARY OR THE ESTATE OF THE
28 DESIGNATED BENEFICIARY. AN AGENCY OR INSTRUMENTALITY OF THE
29 COMMONWEALTH MAY NOT SEEK PAYMENT UNDER SECTION 529A(F) OF THE
30 INTERNAL REVENUE CODE FROM THE ACCOUNT OR ITS PROCEEDS FOR

1 BENEFITS PROVIDED TO A DESIGNATED BENEFICIARY.

2 CHAPTER 7

3 EXEMPTIONS

4 Section 701. Exemption from security laws.

5 The program and accounts are exempt from any statute
6 regulating securities, including the act of December 5, 1972
7 (P.L.1280, No.284), known as the Pennsylvania Securities Act of
8 1972.

9 Section 702. State tax exemption.

10 (a) Property of funds.--The property of the program and the
11 earnings from the program shall be exempt from all taxation by
12 the Commonwealth and its political subdivisions.

13 (b) Contributions.--Contributions made to an account, any
14 increase in the value of those contributions, the retention or
15 transfer during life or as a result of death of any legal
16 interest in an account and payment of qualified disability
17 expenses of eligible individuals from an account shall be exempt
18 from all taxation by the Commonwealth and its political
19 subdivisions.

20 CHAPTER 21

21 MISCELLEANOUS PROVISIONS

22 Section 2101. Limitation.

23 Any obligation or debt under this act shall not be deemed an
24 obligation or debt of the Commonwealth, nor shall the
25 Commonwealth be liable to pay principal and interest on
26 obligations or to offset any loss of principal and interest
27 earnings on investments made by the department under this act.

28 Section 2102. Effective date.

29 This act shall take effect immediately.