
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 54

Session of
2007

INTRODUCED BY ERICKSON, BOSCOLA, FONTANA, TARTAGLIONE, PIPPY,
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ARMSTRONG, VANCE, WAUGH, BRUBAKER, O'PAKE, WASHINGTON,
WOZNIAK, LOGAN, TOMLINSON, REGOLA AND BROWNE,
FEBRUARY 7, 2007

REFERRED TO FINANCE, FEBRUARY 7, 2007

AN ACT

1 Authorizing establishment and maintenance of disability savings
2 accounts; providing an exclusion from State income tax; and
3 imposing restrictions.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Disability
8 Savings Account Act.

9 Section 2. Definitions.

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

13 "Account administrator." Any of the following:

14 (1) A national or State-chartered bank or Federal or
15 State-chartered savings and loan association, savings bank or
16 credit union.

17 (2) A trust company authorized to act as a fiduciary.

1 (3) An insurance company authorized to do business in
2 this Commonwealth pursuant to the act of May 17, 1921
3 (P.L.682, No.284), known as The Insurance Company Law of
4 1921.

5 (4) A broker-dealer, commodity issuer, investment
6 advisor or agent registered pursuant to the act of December
7 5, 1972 (P.L.1280, No.284), known as the Pennsylvania
8 Securities Act of 1972.

9 (5) A third-party administrator with a current
10 certificate of authority issued pursuant to the laws of this
11 Commonwealth.

12 (6) A certified public accountant licensed to practice
13 in this Commonwealth pursuant to the act of May 26, 1947
14 (P.L.318, No.140), known as the CPA Law.

15 (7) An attorney licensed to practice in this
16 Commonwealth.

17 (8) An employer that participates in a disability
18 savings account program.

19 (9) Persons who are qualified to administer trusts
20 authorized under the provisions of section 1917 of the Social
21 Security Act (49 Stat. 620, 42 U.S.C. § 1396p) in this
22 Commonwealth.

23 "Account holder." An individual who has been determined to
24 have mental retardation, as defined in section 102 of the act of
25 October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the
26 Mental Health and Mental Retardation Act of 1966, and who
27 establishes or on whose behalf a disability savings account is
28 established, including an employee of an employer who
29 contributes to a disability savings account on the employee's
30 behalf.

1 "Disability savings account" or "account." A trust or
2 custodian account established in this Commonwealth pursuant to
3 the authority of this act exclusively to pay the qualified
4 disability expenses of an account holder but only if the written
5 governing instrument creating the account meets the following
6 requirements:

7 (1) Except in the case of a contribution representing a
8 transfer from an existing account, no contribution may be
9 accepted:

10 (i) unless it is in cash; and

11 (ii) only to the extent such contribution, when
12 added to previous contributions to the account for the
13 calendar year, does not exceed the maximum amount
14 permitted to be given under the provisions of section
15 2503 of the Internal Revenue Code of 1986 (Public Law 99-
16 514, 26 U.S.C. § 2503) without creating liability for
17 payment of gift tax by the donor or his estate.

18 (2) The trustee or custodian for the account is
19 qualified to act as an account administrator hereunder.

20 (3) No part of the assets of the account may be invested
21 in life insurance contracts.

22 (4) The assets of the account may not be comingled with
23 other property.

24 (5) The account holder's interest in the account is
25 nonforfeitable.

26 "Disability savings account program" or "program." A program
27 that includes all of the following:

28 (1) The contribution into a disability savings account
29 by an account holder or on behalf of the account holder by
30 the account holder's employer, parent or guardian, provided

1 that the total annual contribution does not exceed the
2 maximum amount permitted to be given under the provisions of
3 section 2503 of the Internal Revenue Code of 1986 (Public Law
4 99-514, 26 U.S.C. § 2503).

5 (2) An account administrator to administer the
6 disability savings account from which payment of claims is
7 made, provided that not more than 30 days after the account
8 administrator begins to administer the account, the account
9 administrator notifies in writing each account holder on
10 whose behalf the administrator administers the account of the
11 date of the last business day of the administrator's business
12 year.

13 "Qualified disability expenses." Expenditures made from an
14 account for the benefit of the account holder and used for goods
15 and services which assist the account holder to attain or
16 maintain independence, educational opportunities, job training,
17 employment, housing or to otherwise ameliorate the impact of
18 disabilities on the account holder's independence and to support
19 the account holder in the activities of daily life. Such
20 expenses shall include, but not be limited to:

21 (1) All expenses permitted to be paid for by trusts
22 created under the authority of section 1917 of the Social
23 Security Act (49 Stat. 620, 42 U.S.C. § 1396p).

24 (2) Assistive technology.

25 (3) Employment training and other educational
26 activities.

27 (4) Fees and expenses directly related to the operation
28 of the account but only as established in a written agreement
29 between the account holder and the account administrator.

30 Section 3. Nature of program.

1 (a) General rule.--The provisions of this act shall apply to
2 taxpayers who meet the requirements to be an account holder
3 under the provisions of this act.

4 (b) Scope.--

5 (1) For taxable years beginning after December 31, 2006,
6 a resident of this Commonwealth shall be allowed to deposit
7 contributions into a disability savings account. The amount
8 of deposit for calendar year 2007 and subsequent years shall
9 not exceed the maximum amount permitted to be given under the
10 provisions of section 2503 of the Internal Revenue Code of
11 1986 (Public Law 99-514, 26 U.S.C. § 2503).

12 (2) For tax years beginning after December 31, 2006, an
13 employer may offer a disability savings account program to
14 the employer's employees.

15 (c) Duty to inform employees.--An employer that offers a
16 disability savings account program shall inform all employees in
17 writing of the availability of the disability savings account
18 program and the Federal and State tax status of contributions
19 made pursuant to this act before making contributions. An
20 employee eligible to become an account holder may designate
21 another person to receive such information on his behalf.

22 (d) State income tax exclusion.--

23 (1) Any increase in the value of a disability savings
24 account and any payment or distribution from a disability
25 savings account that is used exclusively to pay qualified
26 disability expenses shall be excluded from taxation under
27 Article III of the act of March 4, 1971 (P.L.6, No.2), known
28 as the Tax Reform Code of 1971.

29 (2) A payment or distribution from a disability savings
30 account that is used for any purpose other than to pay

1 qualified disability expenses shall be included in income
2 under Article III of the Tax Reform Code of 1971 to the
3 extent that the amounts paid or distributed were not
4 previously included in income. The cost recovery method shall
5 be used to determine the portion of the payment or
6 distribution to be included in income.

7 (e) Other exclusions.--Amounts deposited into accounts,
8 earnings on accounts and amounts withdrawn from accounts which
9 are used for qualified disability expenses of the account holder
10 shall not be considered available assets or income for the
11 purpose of assessing liability for care and maintenance of the
12 account holder and shall not be expended for care and
13 maintenance, as such terms are used in the act of October 20,
14 1966 (3rd Sp.Sess., P.L.96, No.6), known as the Mental Health
15 and Mental Retardation Act of 1966, and in the act of June 13,
16 1967 (P.L.31, No.21), known as the Public Welfare Code.

17 Section 4. Distribution of account funds.

18 (a) Authorized purposes.--The account administrator shall
19 utilize funds held in a disability savings account solely to pay
20 the qualified disability expenses of the account holder.

21 (b) Submission of documentation.--The account holder may
22 submit documentation of qualified disability expenses paid by
23 the account holder during the tax year to the account
24 administrator. The account administrator shall reimburse the
25 account holder from the account holder's account for qualified
26 disability expenses.

27 (c) Limitation.--Funds held in a disability savings account
28 may not be used to cover expenses of the account holder that are
29 otherwise covered by a health plan or a trust established under
30 section 1917 of the Social Security Act (49 Stat. 620, 42 U.S.C.

1 § 1396p).

2 (d) Advances permissible.--If an employer makes
3 contributions to a disability savings account program on a
4 periodic installment basis, the employer may advance to an
5 employee, interest free, an amount necessary to cover qualified
6 disability expenses incurred that exceed the amount in the
7 employee's disability savings account when the expense is
8 incurred if the employee agrees to repay the advance from future
9 installments or when the individual ceases to be an employee of
10 the employer.

11 Section 5. Account withdrawals.

12 (a) General rule.--Notwithstanding subsections (c), (d), (e)
13 and (f), an account holder may withdraw money from the account
14 holder's disability savings account for any purpose other than a
15 purpose described in section 4(a). Money withdrawn pursuant to
16 this subsection is income for the purposes of the act of March
17 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

18 (b) Effect of withdrawal.--Subject to subsection (c), if an
19 account holder withdraws money for any purpose other than a
20 purpose described in section 4(a) at any other time, all of the
21 following apply:

22 (1) The amount of the withdrawal is income for the
23 purposes of the Tax Reform Code of 1971 in the tax year of
24 the withdrawal.

25 (2) Interest earned on the amount withdrawn from the
26 account during the tax year in which a withdrawal under this
27 subsection is made is income for purposes of the Tax Reform
28 Code of 1971.

29 (3) The amount of the withdrawal may not be excluded as
30 provided in section 3(e).

1 (c) Bankruptcy.--The amount of disbursement of any assets of
2 a disability savings account pursuant to a filing for protection
3 under Federal bankruptcy law by an account holder shall not be
4 construed as a withdrawal for purposes of this section. The
5 amount of such disbursement shall not be subject to taxation
6 under the Tax Reform Code of 1971, and subsection (b) shall not
7 apply.

8 (d) Marital dissolution.--An account holder's interest in a
9 disability savings account is not an asset which may be
10 transferred to an account holder's spouse or former spouse under
11 a divorce or separation instrument.

12 (e) Death of an account holder.--Upon the death of the
13 account holder, the account administrator shall distribute the
14 principal and accumulated interest of the disability savings
15 account to the estate of the deceased account holder.

16 (f) Transfers and postemployment account maintenance.--

17 (1) An account holder may elect to transfer an account
18 from an incumbent account administrator to a successor
19 account administrator, which may be an administrator of a
20 disability savings account program in which the employer of
21 the account holder participates.

22 (i) The account holder shall provide not less than
23 30 days' written notice to the incumbent account
24 administrator of the account holder's intention to effect
25 a transfer of the account, which notice shall include the
26 address of such successor account administrator.

27 (ii) Not more than 30 days after receipt of the
28 notice referred to in subparagraph (i), the incumbent
29 account administrator shall mail a check to the successor
30 account administrator specified by the account holder.

1 (2) If an employee is no longer employed by an employer
2 that participates in a disability savings account program and
3 the employee, not more than 60 days after the individual's
4 final day of employment, requests in writing to the former
5 employer's account administrator that the account remain with
6 that administrator and that account administrator agrees to
7 retain the account, the money in the disability savings
8 account may be utilized for the benefit of the employee and
9 subject to this act and remain exempt from taxation to the
10 extent provided in and pursuant to this act.

11 (i) Not more than 30 days after the expiration of
12 the 60-day period, if the account administrator does not
13 elect to retain the former employee's account or if the
14 account holder does not elect to transfer such account as
15 provided in subparagraph (iii) or (iv), the employer
16 shall mail a check to the former employee at the
17 employee's last known address equal to the amount in the
18 account on that day, and that amount is subject to
19 taxation.

20 (ii) If an account holder becomes employed with a
21 different employer that participates in a disability
22 savings account program, the account holder may transfer
23 a disability savings account to that new employer's
24 account administrator.

25 (iii) If an account holder does not transfer a
26 disability savings account to a new employer's account
27 administrator pursuant to subparagraph (ii), the account
28 holder may transfer the account to an account
29 administrator of the account holder's choice.

30 (iv) If the account holder notifies the prior

1 employer of the account holder's election to transfer the
2 account pursuant to the provisions of subparagraph (iii)
3 or (iv), the prior account administrator shall mail a
4 check to the successor account administrator at the
5 address of such successor account administrator.

6 Section 6. Other actions.

7 The Secretary of Public Welfare shall promulgate regulations,
8 apply for waivers or seek other approvals from one or more
9 Federal agencies as may be necessary to effectuate the
10 provisions of this act.

11 Section 7. Effective date.

12 This act shall take effect in 60 days.