
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 444 Session of
2015

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PICKETT, R. BROWN, MOUL AND GROVE, FEBRUARY 12, 2015

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 12, 2015

AN ACT

1 Providing for a savings account program to pay for future
2 disability expenses of beneficiaries.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the ABLE Account
7 Program Act.

8 Section 2. Definitions.

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

12 "ABLE Account Program Contract." An Achieving a Better Life
13 Experience (ABLE) Account Investment Program Contract entered
14 into by an account owner and the department to provide for
15 savings to meet the future qualified disability expenses of a
16 beneficiary.

17 "Account owner." A person, including a natural person,

1 corporation, association, partnership or other legal entity, who
2 enters into an ABLE Account Program Contract.

3 "Beneficiary." A person who meets the eligibility criteria
4 established by this act and by the department and on whose
5 behalf an account owner enters into an ABLE Account Program
6 Contract.

7 "Board." The ABLE Account Program Advisory Board.

8 "Bureau." The ABLE Account Program Bureau.

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

10 "Fund." The ABLE Account Investment Program Fund.

11 "Lawful investment." Any of those investments described in
12 either 24 Pa.C.S. § 8521 (relating to management of fund and
13 accounts) or 71 Pa.C.S. § 5931 (relating to management of fund
14 and accounts).

15 "Qualified disability expenses." Expenses, as defined by
16 section 529A of the Internal Revenue Code of 1986 (Public Law
17 99-514, 26 U.S.C. § 529A).

18 "Value of the account." For an ABLE Account Investment
19 Program Contract, an amount determined by subtracting expenses,
20 fees and taxes, if any, from the value of the fund and then
21 prorating the remaining net value by shares.

22 Section 3. ABLE Account Program Bureau.

23 (a) Establishment.--The State Treasurer is directed to
24 establish the ABLE Account Program Bureau within the Treasury
25 Department for the purpose of establishing and administering a
26 disability expense savings investment program.

27 (b) Investment program.--The investment program shall
28 provide for monetary contributions pursuant to an ABLE Account
29 Program Investment Contract for the future payment of qualified
30 disability expenses. The investment program shall have no

1 guarantee.

2 Section 4. ABLE Account Program Advisory Board.

3 (a) Establishment.--There is created an ABLE Account Program
4 Advisory Board.

5 (b) Composition.--The board shall be composed of the
6 following:

7 (1) The State Treasurer and the Secretary of the
8 Department of Human Services, both of whom shall be ex
9 officio members.

10 (2) Two members appointed by the President pro tempore
11 of the Senate, of which one shall be recommended by the
12 Majority Leader of the Senate and one must be recommended by
13 the Minority Leader of the Senate. Both appointees must have
14 knowledge, skill and expertise in financial affairs.

15 (3) Two shall be appointed by the Speaker of the House
16 of Representatives, of which one shall be recommended by the
17 Majority Leader of the House of Representatives and one must
18 be recommended by the Minority Leader of the House of
19 Representatives. Both appointees must have knowledge, skill
20 and expertise in financial affairs.

21 (4) Four members shall be appointed by the Governor, of
22 which at least two appointees must have knowledge, skill and
23 expertise in issues relating to individuals with
24 disabilities.

25 (c) Terms.--Board members shall be appointed for terms of
26 four years. A vacancy on the board shall be appointed in the
27 same manner as the member who vacated the board.

28 (d) Organizational meeting.--The Secretary of the Department
29 of Human Services shall call the organizational meeting of the
30 board, at which time a chairperson shall be selected from among

1 the members. If a vacancy in the office of chairperson occurs,
2 such vacancy shall be filled by a selection from among the
3 members. Meetings of the board shall be held at least quarterly
4 or at the call of the chairperson.

5 (e) Duties.--The board shall:

6 (1) Consider, study and review the work of the bureau.

7 (2) Advise the department as the department requests and
8 make recommendations on its own initiative for the
9 improvement of the ABLE account program.

10 (3) Report annually to the Governor and to the General
11 Assembly, and make such interim reports as are deemed
12 advisable.

13 (f) Employees.--The department shall provide the board with
14 experts, stenographers and assistants as necessary to carry out
15 the work of the board. The board may enlist voluntary assistance
16 from citizens, research organizations and other agencies.

17 Section 5. Powers of department.

18 In addition to the powers granted by other provisions of this
19 act, the department shall have the powers necessary to carry out
20 this act, including, but not limited to:

21 (1) Administering the ABLE account program and the fund.

22 (2) Entering into ABLE Account Program Contracts with
23 account owners.

24 (3) Paying directly to an account owner, a beneficiary
25 or a third party authorized by the account owner, upon the
26 receipt of appropriate documentation, the funds due pursuant
27 to an ABLE Account Program Contract.

28 (4) Contracting for goods and services, and engaging and
29 employing personnel, including, but not limited to, the
30 services of private consultants, actuaries, managers, legal

1 counsel and auditors for rendering professional, managerial
2 and technical assistance and advice.

3 (5) Charging and collecting administrative fees and
4 charges in connection with any transaction, including
5 continued participation in ABLE account programs.

6 (6) Terminating ABLE accounts and making refunds.

7 (7) Contracting for insurance, letters of credit and
8 collateral agreements.

9 (8) Restricting the number of participants in the ABLE
10 account program.

11 (9) Adjusting the terms of ABLE Account Program
12 Contracts.

13 (10) Soliciting answers from the appropriate Federal
14 agencies regarding the application of security or other
15 Federal laws to the program.

16 (11) Limiting the times and dates during which ABLE
17 Account Program Contracts may be entered into.

18 (12) Considering means whereby an account owner may have
19 contributions deducted from salary.

20 (13) Promulgating regulations.

21 (14) Notwithstanding any other provision of this act,
22 administering the ABLE account program in such manner as to
23 ensure and maintain its status as "qualified ABLE program" as
24 defined in section 529A of the Internal Revenue Code of 1986
25 (Public Law 99-514, 26 U.S.C. § 529A).

26 Section 6. ABLE account program fund.

27 (a) Establishment.--The ABLE Account Investment Program Fund
28 is established in the State Treasury. The money in the fund
29 shall be invested in accordance with this act.

30 (b) Appropriation.--All money in the fund is appropriated on

1 a continuing basis to the department to carry out the provisions
2 of this act.

3 (c) Administration.--The assets of the fund shall be
4 preserved, invested and expended pursuant to this act.

5 (d) Composition.--The fund shall consist of:

6 (1) All contributions made by account owners pursuant to
7 an ABLE Account Program Contract and all interest, earnings
8 and additions thereto.

9 (2) Any other money, public or private, appropriated or
10 made available to the department for the fund from any source
11 and all interest, earnings and additions thereto.

12 (e) Operating and administrative costs.--The department
13 shall prepare and, through the Governor, submit annually to the
14 General Assembly a budget covering the operating and
15 administrative expenses of the bureau and the board. Upon
16 approval by the General Assembly in an appropriation bill,
17 expenses as incurred by the bureau and the board shall be paid
18 from the fees, charges and investment earnings of the fund.

19 (f) Limitation.--Notwithstanding any other provision of law,
20 the department and the board shall not pledge the credit or
21 taxing powers of the Commonwealth. Any obligation or debt under
22 this act shall not be deemed an obligation or debt of the
23 Commonwealth, nor shall the Commonwealth be liable to pay
24 principal and interest on obligations or to offset any loss of
25 principal and interest earnings on investments made by the
26 department or recommended by the board under this act.

27 (g) Statement of limitation.--ABLE Account Program Contracts
28 issued by the department with an account owner shall contain a
29 plain language statement explaining the limitation contained in
30 this subsection.

1 Section 7. Investment policies and guidelines for the fund.

2 (a) General rule.--The investment policies shall provide for
3 an appropriate balance of risk, liquidity and return
4 commensurate with the management of a prudent investor.

5 (b) Authority to invest.--The department, its investment
6 managers, program managers and trustees shall have the authority
7 to invest and reinvest the fund in all lawful investments.

8 (c) Investment manager and trustee.--The department may
9 contract with one or more persons or other legal entities to
10 serve as investment managers, program managers and trustees to
11 the department on behalf of the ABLE account program. The
12 investment managers, program managers and trustees shall work
13 with the department to create an investment program or programs,
14 to develop investment portfolios and to supervise investments
15 and the investment programs selected.

16 (d) Liability.--The department, through contract, may impose
17 liability on investment managers, program managers and trustees
18 for losses incurred by the fund or the account owners as a
19 result of the investment managers', program managers' and
20 trustees' negligent, fraudulent or imprudent selection or
21 supervision of investments.

22 Section 8. ABLE Account Investment Program.

23 (a) Establishment.--The department shall establish an
24 investment plan that defines the ABLE Account Investment Program
25 structure and sets forth investment policies and guidelines. The
26 department may obtain the services of investment managers,
27 program managers and trustees as described in section 7(c) to
28 assist in establishing and administering the plan.

29 (b) Rules and procedures.--The department, pursuant to an
30 ABLE Account Investment Program Contract, shall specify the

1 following:

2 (1) The minimum and maximum amounts of contributions.

3 (2) The terms and conditions for transferring the ABLE
4 Account Investment Program Contract to another account owner
5 or substituting a beneficiary for the originally named
6 beneficiary.

7 (3) The terms and conditions for withdrawing
8 contributions or terminating the ABLE Account Investment
9 Program Contract.

10 (4) The method and procedures for making payments
11 pursuant to the ABLE Account Investment Program Contracts for
12 the payment of beneficiaries' qualified disability expenses.

13 (5) All other rights and obligations of the account
14 owner and the department.

15 Section 9. General provisions governing the ABLE account
16 program.

17 (a) Levy, execution and security for loans.--An ABLE account
18 or any legal interest therein shall not be subject to
19 attachment, levy or execution by any creditor of an account
20 owner or beneficiary and shall not be used as security for a
21 loan.

22 (b) Period of participation.--Notwithstanding any of the
23 provisions of this act, the following shall apply:

24 (1) Except as provided in paragraph (2), a minimum
25 period of one year must elapse between the time a
26 contribution is made pursuant to an ABLE Account Program
27 Contract and the time that contribution and any increase in
28 its value may be used for payment of qualified disability
29 expenses under section 8.

30 (2) The board may prescribe an alternative minimum

1 period of time which must elapse between a contribution and
2 its use for payment of qualified disability expenses.

3 (c) Program eligibility.--Any amounts contributed pursuant
4 to an ABLE Account Program Contract and any increase in the
5 value thereof shall not be used in calculating personal asset
6 contributions for determining eligibility and need for any
7 program administered by any agency of the Commonwealth, except
8 as otherwise may be provided by Federal law.

9 (d) Excess contributions.--The department shall institute
10 adequate safeguards to prevent contributions to an account that
11 are in excess of those necessary to provide for the qualified
12 disability expenses of the beneficiary of that account, as
13 specified in section 529A of the Internal Revenue Code of 1986
14 (Public Law 99-514, 26 U.S.C. § 529A).

15 (e) Cash contributions.--A contribution made pursuant to an
16 ABLE Account Program Contract may only be made in cash, which
17 may, at the department's discretion, include checks, money
18 orders, credit cards or other similar methods of payment.

19 (f) Limitation.--A beneficiary is limited to one ABLE
20 account.

21 Section 10. ABLE Account Program Contracts.

22 Account owners making contributions for the use of
23 beneficiaries shall enter into ABLE Account Program Contracts
24 with the department. These contracts shall be in such form as is
25 determined by the department.

26 Section 11. Eligible beneficiaries.

27 Notwithstanding any other eligibility criteria established by
28 the board, the following shall apply:

29 (1) In order to be eligible as a beneficiary, a person
30 must be one of the following:

1 (i) A resident of this Commonwealth at the time the
2 ABLE Account Program Contract is entered into on the
3 person's behalf.

4 (ii) A nonresident if the ABLE Account Program
5 Contract entered into on the person's behalf is entered
6 into by a resident of this Commonwealth, including any
7 legal entity with its principal place of business located
8 within this Commonwealth.

9 (iii) A nonresident if the state of residence has
10 contracted with the Commonwealth for the purposes of
11 qualified ABLE accounts.

12 (2) The account owner must designate a beneficiary at
13 the time the account owner enters into an ABLE Account
14 Program Contract.

15 (3) The account owner may substitute for the current
16 beneficiary only a member of the family of that beneficiary
17 upon approval by the department. "Member of the family" is
18 defined by section 529A of the Internal Revenue Code of 1986
19 (Public Law 99-514, 26 U.S.C. § 529A).

20 Section 12. Termination and refund.

21 (a) Death.--Upon termination of an ABLE Account Program
22 Contract, the account owner or the account owner's designee
23 shall receive the value of the account if the account is
24 terminated upon the death of the beneficiary.

25 (b) Refunds for reasons other than death.--

26 (1) Except as provided in paragraph (2), refunds for an
27 ABLE Account Investment Program Contract for reasons other
28 than that set forth in subsection (a) shall be:

29 (i) in the event the value of the account is less
30 than or equal to the sum of the contributions made

1 pursuant to the ABLE Account Investment Program Contract,
2 the value of the account; and

3 (ii) in the event the value of the account is more
4 than the sum of the contributions made pursuant to the
5 ABLE Account Investment Program Contract, the sum of the
6 contributions plus 90% of the difference between the sum
7 of the contributions and the value of the account.

8 (2) The board may alter the refund provisions set forth
9 in paragraph (1) so long as such alterations are consistent
10 with the requirements for "qualified ABLE programs" provided
11 in section 529A of the Internal Revenue Code of 1986 (Public
12 Law 99-514, 26 U.S.C. § 529A).

13 (c) Fees.--The department may impose a fee for
14 administrative costs upon termination of the account and deduct
15 the fee from the amount otherwise payable.

16 (d) Taxation of refunds.--In the event of a refund upon the
17 termination of an ABLE Account Program Contract, to the extent
18 the refund amount an account owner receives exceeds the sum of
19 the contributions, it shall be subject to taxation as income
20 under the laws of this Commonwealth.

21 (e) Change of beneficiary or type of ABLE account program.--
22 The substitution of the beneficiary of an account under section
23 11(3) shall not be deemed a termination of the account for
24 purposes of this section.

25 Section 13. Safeguards and protections.

26 (a) Disclosure.--ABLE Account Program Contracts shall
27 disclose the following information in writing to each account
28 owner or prospective owner of an ABLE account:

29 (1) The terms and conditions for purchasing an ABLE
30 account.

1 (2) Any restrictions on the substitution of
2 beneficiaries.

3 (3) The time period during which and the purposes for
4 which a designated beneficiary may receive benefits under the
5 program established in section 8.

6 (4) The terms and conditions under which money may be
7 withdrawn from an account, the reasonable charges that may
8 apply and the penalty for a nonqualified withdrawal.

9 (5) The probable tax consequences associated with
10 contributions to and withdrawals from an ABLE account.

11 (6) All other rights and obligations pertaining to
12 participation in the program.

13 (b) Construction.--Nothing in this act can be construed to:

14 (1) Give any designated beneficiary any rights or legal
15 interest in an account unless the designated beneficiary is
16 also the account owner.

17 (2) Establish State residency for an individual solely
18 because that individual is a designated beneficiary of an
19 account established under this act.

20 Section 14. Exemption from security laws.

21 ABLE Account Program Contracts are exempt from any statute
22 regulating securities, including the act of December 5, 1972
23 (P.L.1280, No.284), known as the Pennsylvania Securities Act of
24 1972.

25 Section 15. State tax exemption.

26 (a) Property of fund.--The property of the fund and its
27 income and operation shall be exempt from all taxation by the
28 Commonwealth and its political subdivisions.

29 (b) Contributions.--The following shall be exempt from all
30 taxation by the Commonwealth and its political subdivisions:

1 (1) Contributions made pursuant to an ABLE Account
2 Program Contract.

3 (2) An increase in the value of those contributions.

4 (3) The retention or transfer during life or as a result
5 of death of any legal interest in an ABLE Account Program
6 Contract.

7 (4) Payment of qualified disability expenses of
8 beneficiaries made pursuant to ABLE Account Program
9 Contracts.

10 Section 16. Federal taxation.

11 The department may take appropriate action in order to obtain
12 a determination from the Internal Revenue Service or the Federal
13 courts as to whether contributions made, pursuant to an ABLE
14 Account Program Contract, the increase in value of such
15 contributions and payment of qualified disability expenses
16 pursuant to an ABLE Account Program Contract, shall be a
17 transaction which will subject account owners or the income of
18 the fund to Federal taxation and may respond to such
19 determination in any manner permitted under this act.

20 Section 17. Effective date.

21 This act shall take effect in 60 days.