
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, BROWNE, BROOKS AND LEACH, JUNE 8, 2015

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 16, 2016

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.

1 "ABLE account contract." A contract between a program
2 manager or the department and an account owner.

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

5 "Account." An ABLE savings account.

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

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

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

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

14 "Fund." The ABLE Savings Program Fund established in section
15 302.

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

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

20 (1) A qualified withdrawal.

21 (2) A rollover distribution.

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

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

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

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

1 of the account.

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

4 CHAPTER 3

5 PENNSYLVANIA ABLE SAVINGS PROGRAM

6 Section 301. Pennsylvania ABLE Savings Program.

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

14 (b) Administration.--The department may utilize the
15 administrative or investment structures of the Tuition Account
16 Investment Program established by the act of April 3, 1992
17 (P.L.28, No.11), known as the Tuition Account Programs and
18 College Savings Bond Act, without separately soliciting
19 proposals for assistance in the management of all or part of the
20 program.

21 (c) Investment manager and trustee.--The department may
22 contract with one or more persons or legal entities to serve as
23 investment managers, program managers and trustees on behalf of
24 the program. If the department contracts with investment
25 managers, program managers or trustees in order to fulfill the
26 objectives of the program, the investment managers, program
27 managers and trustees shall work with the department to provide
28 a program to develop investment portfolios and to supervise
29 investments and investment programs.

30 (d) Contracts with other states.--The department may

1 contract with another state for any of the following:

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

4 (2) To provide all or part of the program to
5 beneficiaries residing in another state.

6 (3) To engage in joint efforts to establish and maintain
7 ABLE savings programs.

8 Section 302. ABLE Savings Program Fund.

9 (a) Fund established.--The ABLE Savings Program Fund is
10 established in the State Treasury. The fund shall consist of all
11 the following:

12 (1) All contributions made to accounts of eligible
13 individuals pursuant to ABLE account contracts and all
14 interest, earnings and additions to the accounts.

15 (2) Any fees or charges levied on accounts to cover
16 administrative expenses of the program.

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

20 (b) Continuing appropriation.--All money in the fund,
21 including fees and charges levied on an account to cover the
22 expenses to administer the program, contributions and increase
23 in value on the contributions, for distribution to or on behalf
24 of eligible individuals, is hereby appropriated to the
25 department on a continuing basis to carry out the provisions of
26 this act.

27 (c) Assets.--The assets of the fund shall be preserved,
28 invested and expended solely for the purpose of carrying out
29 this act.

30 (d) Investment.--The money in the fund shall be invested in

1 accordance with policies established by the department to
2 provide for an appropriate balance of risk, liquidity and return
3 commensurate with the management of a prudent investor. The
4 department, the investment managers, program managers and
5 trustees shall have the authority to invest and reinvest the
6 money in the fund in all lawful investments.

7 Section 303. Operating and administrative costs.

8 The department shall prepare and, through the Governor,
9 submit annually to the General Assembly a budget covering the
10 operating and administrative expenses of the program. Upon
11 approval by the General Assembly in an appropriation bill,
12 expenses incurred by the program and the department shall be
13 paid from program fees and charges or from other available
14 funds.

15 Section 304. Interdepartmental cooperation.

16 The head of any department, board, commission, agency or
17 instrumentality of the Commonwealth, unless otherwise prohibited
18 by law, shall assist the department in providing information
19 about the program to potential eligible individuals and their
20 families.

21 Section 305. Department powers and duties.

22 The department shall have the powers necessary or convenient
23 to carry out this act, including the power to:

24 (1) Administer the program and the fund.

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

27 (3) Pay to an account owner or designated beneficiary,
28 or a third party authorized by an account owner, upon receipt
29 of appropriate documentation required by the department,
30 funds from the account to pay for the eligible individual's

1 qualified disability expenses.

2 (4) Contract for goods and services and employ
3 personnel, including contracts with private consultants,
4 actuaries, managers, legal counsel and auditors as necessary
5 for rendering professional, managerial and technical
6 assistance and advice.

7 (5) Solicit and accept gifts, grants, loans and other
8 aid from any person, corporation or other entity or from a
9 government entity and participate in any Federal, State or
10 local government program that results in additional funds
11 being available to pay for the qualified disability expenses
12 of eligible individuals with ABLE savings accounts.

13 (6) Charge and collect administrative fees and charges
14 in connection with any transaction, including continued
15 participation in the program.

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

18 (8) Contract for insurance, letters of credit and
19 collateral agreements.

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

21 (10) Solicit answers from appropriate Federal agencies
22 regarding the application of security or other Federal laws
23 to the program.

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

26 (12) Promulgate regulations to implement the provisions
27 of this act.

28 (13) Take any other action necessary to carry out the
29 purpose of this act and incidental to the duties imposed on
30 the department.

1 CHAPTER 5

2 ACCOUNTS

3 Section 501. ABLE savings accounts.

4 (a) ABLE account contract.--An ABLE savings account may be
5 opened through a contract entered into by an account owner and
6 the department. If the account owner is a fiduciary, the account
7 owner shall continue to have signatory authority over the
8 account until the account owner relinquishes the authority.

9 (b) Fiduciaries.--To the extent that Federal law requires an
10 eligible individual to be the account owner, the following may
11 enter into an ABLE account contract as fiduciary for an eligible
12 individual who is a minor or who lacks capacity to enter into an
13 ABLE account contract:

14 (1) A parent or guardian.

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

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

19 (4) For an eligible individual receiving benefits based
20 on blindness or a disability under Title II of the Social
21 Security Act (49 Stat. 620, 42 U.S.C. § 401 et seq.) or Title
22 XVI of the Social Security Act (42 U.S.C. § 1381), the
23 representative payee for those benefits.

24 (5) Any other person or entity authorized under section
25 529A of the Internal Revenue Code with signature authority
26 over the account.

27 (c) Change of designated beneficiary.--An account owner may
28 change the designated beneficiary named in the ABLE account
29 contract to another eligible individual if permitted under
30 section 529A of the Internal Revenue Code.

1 Section 502. Nonqualified withdrawals.

2 (a) Value received.--Upon a full or partial withdrawal of
3 funds from an account, which are not used for qualified
4 disability expenses, the account owner or the account owner's
5 designee shall receive the market value of the account for the
6 amount requested.

7 (b) Fees.--The department may collect administrative fees or
8 charges for costs upon a nonqualified withdrawal or termination
9 and deduct the fee from the amount otherwise payable.

10 (c) Involuntary termination.--The department may close an
11 account and return any remaining funds in the account as a
12 nonqualified withdrawal in order to comply with Federal law or
13 if the department, in its sole discretion, determines that
14 termination is in the best interest of the program or the
15 designated beneficiary. ANY PERSON AGGRIEVED BY A DETERMINATION <--
16 TO TERMINATE AN ACCOUNT MAY FILE AN ADMINISTRATIVE APPEAL WITH
17 THE DEPARTMENT WITHIN 30 DAYS OF THE MAILING DATE OF THE
18 TERMINATION NOTICE. A FINAL RESOLUTION OF THE ADMINISTRATIVE
19 APPEAL SHALL BE DEEMED A FINAL DECISION OF THE STATE TREASURER
20 AND MAY BE APPEALED BY THE AGGRIEVED PERSON TO COMMONWEALTH
21 COURT. THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING
22 DATE OF THE FINAL DECISION OF THE STATE TREASURER. THE CASE
23 SHALL BE HEARD IN COMMONWEALTH COURT'S APPELLATE JURISDICTION.

24 (d) Taxation.--In the event of a nonqualified withdrawal, to
25 the extent the amount withdrawn includes earnings on the
26 contributions to the account or contributions to the account
27 that are eligible to be deducted from Pennsylvania income tax
28 for the tax year in which the contributions were made, the
29 amount of earnings and deductible contributions shall be subject
30 to taxation as income under the laws of this Commonwealth.

1 Section 503. Treatment of accounts.

2 (a) Limitation.--An account shall not be subject to
3 attachment, levy or execution by any creditor of a contributor,
4 account owner or designated beneficiary and shall not be used as
5 security for a loan.

6 (b) Disability or health benefits.--Amounts contributed to
7 an account, increases in the value of the account and qualified
8 withdrawals from the account shall not be used in calculating
9 personal assets of a designated beneficiary or an account owner
10 in order to determine eligibility for disability, medical
11 assistance or other health benefits conferred by the
12 Commonwealth.

13 (c) Student aid.--Amounts contributed to an account and
14 increases in the value of the account shall not be used in
15 calculating personal asset contributions for determining
16 eligibility or need to qualify for student loan programs,
17 student grant programs or other student aid programs
18 administered by a Commonwealth agency, except as otherwise may
19 be provided by Federal law.

20 (d) Death of beneficiary.--Unless prohibited by Federal law,
21 upon the death of a designated beneficiary, proceeds from an
22 account may be transferred to the estate of a designated
23 beneficiary, or to an account for another eligible individual
24 specified by the designated beneficiary or the estate of the
25 designated beneficiary. An agency or instrumentality of the
26 Commonwealth may not seek payment under section 529A(f) of the
27 Internal Revenue Code from the account or its proceeds for
28 benefits provided to a designated beneficiary.

29

CHAPTER 7

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EXEMPTIONS

1 Section 701. Exemption from security laws.

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

6 Section 702. State tax exemption.

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

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

17 CHAPTER 21

18 MISCELLEANOUS PROVISIONS

19 Section 2101. Limitation.

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

25 Section 2102. Effective date.

26 This act shall take effect immediately.