
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 AND
YOUNGBLOOD, JUNE 10, 2015

REFERRED TO COMMITTEE ON FINANCE, JUNE 10, 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.

17 "Account." An individual savings account held in trust for a

1 designated beneficiary established within the department in
2 accordance with this act.

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

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

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

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

15 "Disability certification." A certification which:

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

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

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

29 (2) is accompanied by a copy of the diagnosis relating
30 to the eligible individual's relevant impairment that is

1 signed by a physician.

2 "Eligible individual." A person who:

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

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

12 "Fund." The ABLE Savings Program Fund.

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

17 "Management contract." The contract executed by the
18 department and a financial institution selected to act as a
19 depository and manager of the qualified program.

20 "Nonqualified withdrawal." A withdrawal from an account
21 which is not:

22 (1) A qualified withdrawal.

23 (2) A rollover distribution.

24 "Qualified ABLE Program." An ABLE account program
25 established and maintained by the Commonwealth or an agency or
26 instrumentality of the Commonwealth.

27 "Qualified disability expense." An expense relating to an
28 eligible individual's blindness or disability that is made for
29 the benefit of the eligible individual as designated
30 beneficiary. The term shall include but is not limited to each

1 qualified expense enumerated in IRC § 529A.

2 "Qualified withdrawal." A withdrawal from an account to pay
3 the qualified disability expenses of the designated beneficiary
4 of the account.

5 "Rollover distribution." A rollover distribution as defined
6 in IRC § 529A.

7 Section 3. ABLE savings program.

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

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

19 (2) A designated beneficiary shall be limited to one
20 account.

21 (3) An account shall be only for a designated
22 beneficiary who is a resident of this Commonwealth or a
23 resident of a contracting state.

24 (b) Exemption.--A qualified ABLE program shall be exempt
25 from taxation under IRC § 529A.

26 (c) Contributions.--Contributions to an account may be
27 accepted only in cash and if the contribution does not result in
28 aggregate contributions to an account from all contributors for
29 the taxable year exceeding \$14,000 for the calendar year in
30 which the taxable year begins.

1 (d) Development and administration.--The department shall
2 develop and administer the qualified ABLE program in accordance
3 with the Stephen Beck, Jr., ABLE Act of 2014 (Pub. L. 113-295,
4 div. B, §1(a), 128 Stat. 4056) and this act and in a manner that
5 allows account owners and designated beneficiaries to obtain and
6 maintain Federal income tax benefits or treatment provided by
7 the Internal Revenue Code and exemptions under Federal
8 securities laws.

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

13 (f) Management contracts.--The department may enter into
14 management contracts with one or more financial institutions.
15 The department and the financial institution must account for
16 each contribution made to an account.

17 (g) Fees.--The department may charge administrative and
18 other qualified ABLE program fees for services rendered under
19 this act.

20 (h) Other states.--The department may contract with other
21 states that do not have qualified ABLE account programs to
22 provide qualified ABLE account program services to residents of
23 the contracting states.

24 (i) Rules.--The department shall prescribe qualified ABLE
25 program rules that the department determines are necessary or
26 appropriate to carry out the purposes of this act, including
27 rules to:

28 (1) Enforce the single account per eligible individual
29 limit.

30 (2) Provide for the information required to be presented

1 to open an account.

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

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

6 (j) Fiduciary.--To the extent that Federal law requires an
7 eligible individual to be the account owner, the following may
8 enter into an ABLE account contract as fiduciary for an eligible
9 individual who is a minor or who lacks capacity to enter into an
10 ABLE account contract:

11 (1) A parent or guardian.

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

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

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

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

23 Section 4. Interdepartmental cooperation.

24 The head of a department, a board, a commission, an agency or
25 an instrumentality of the Commonwealth, unless otherwise
26 prohibited by law, must assist the department in providing
27 information about the program to potential eligible individuals
28 and the eligible individual's families.

29 Section 5. ABLE Savings Program Fund.

30 The department may establish a special fund to be known as

1 the ABLE Savings Program Fund. The following shall apply:

2 (1) The fund shall consist of:

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

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

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

12 (2) All money in the fund, including fees and charges
13 levied on an ABLE account to cover the expenses in
14 administering the program, contributions and increase in
15 value on the money for distribution to or on behalf of
16 eligible individuals, is appropriated to the department on a
17 continuing basis to carry out the provisions of this act.

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

21 (4) The money in the fund shall be invested under
22 policies established by the department to provide for an
23 appropriate balance of risk, liquidity and return
24 commensurate with the management of a prudent investor. The
25 department and the department's investment managers, program
26 managers and trustees may invest and reinvest the funds in
27 any lawful investments.

28 Section 6. ABLE accounts.

29 (a) ABLE account contract.--An ABLE account may be opened
30 through a contract entered into by an account owner and the

1 department. If the account owner is a fiduciary as enumerated
2 under section 3(j), the account owner shall continue to have
3 signatory authority over the account until the account owner
4 relinquishes the authority.

5 (b) Change of designated beneficiary.--An account owner may
6 change the designated beneficiary named in the ABLE account
7 contract to another eligible individual if permitted under IRC §
8 529A.

9 (c) Reports.--

10 (1) The department or the department's investment
11 managers, program managers and trustees must make monthly
12 reports to designated beneficiaries with respect to
13 contributions, distributions, the return of excess
14 contributions and any other matters involving the state of a
15 designated beneficiary's account.

16 (2) On or before September 1, 2017, and each September 1
17 thereafter, the department shall issue a report annually to
18 the Governor, the chairman and minority chairman of the
19 Finance Committee of the Senate, the chairman and minority
20 chairman of the Finance Committee of the House of
21 Representatives, account owners and designated beneficiaries.
22 The report must include the following:

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

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

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

30 (iv) The rate of return on the investment of the

1 qualified ABLE program assets during the preceding fiscal
2 year.

3 (3) For research purposes, the department shall make
4 available reports containing aggregate information by
5 diagnosis and other relevant characteristics and on
6 contributions and distributions from the qualified ABLE
7 program. Information may not be made available to the public
8 if the information can be associated with, or otherwise
9 identify, directly or indirectly a specific qualified
10 individual.

11 Section 7. Qualified disability expenses.

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

- 14 (1) Education.
- 15 (2) Housing.
- 16 (3) Transportation.
- 17 (4) Employment training and support.
- 18 (5) Assistive technology and personal support services.
- 19 (6) Health, prevention and wellness.
- 20 (7) Financial management and administrative services.
- 21 (8) Legal fees.
- 22 (9) Expenses for oversight and monitoring.
- 23 (10) Funeral and burial expenses.
- 24 (11) Other expenses approved by the Secretary of the
25 Treasury of the United States.

26 Section 8. Nonqualified withdrawals.

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

1 amount requested.

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

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

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

18 Section 9. Electronic distribution statements.

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

23 Section 10. Exemption from securities law.

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

26 Section 11. Treatment of ABLE accounts.

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

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

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

14 (d) Federal means-tested programs.--

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

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

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

30 (2) The benefits of a designated beneficiary under the

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

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

13 Section 12. Commonwealth as creditor of accounts.

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

27 Section 13. Tax exemptions.

28 (a) Property of the program.--The property of the ABLE
29 savings program and the earnings from the program shall be
30 exempt from all taxation by the Commonwealth and the political

1 subdivisions of the Commonwealth.

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

9 Section 14. Limitation.

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

15 Section 15. Effective date.

16 This act shall take effect immediately.