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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 583 Session of  
2015

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GINGRICH, MACKENZIE AND BRIGGS, FEBRUARY 26, 2015

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REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 26, 2015

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AN ACT

1 Providing for tax deferred savings accounts for individuals with  
2 disabilities; establishing the Pennsylvania ABLE Savings  
3 Program; and imposing duties on the Treasury Department.

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

6 CHAPTER 1

7 PRELIMINARY PROVISIONS

8 Section 101. Short title.

9 This act shall be known and may be cited as the Pennsylvania  
10 ABLE Savings Program Act.

11 Section 102. 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 savings account." An individual savings account  
16 established in accordance with this act.

17 "Account." An ABLE savings account.

1 "Account owner." A person who enters into a savings  
2 agreement under this act as the designated beneficiary or the  
3 trustee or guardian who is appointed for a designated  
4 beneficiary who is a minor or lacks capacity to enter into an  
5 agreement.

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

7 "Designated beneficiary." A resident of this Commonwealth  
8 whose qualified disability expenses may be paid from the  
9 account.

10 "Eligible individual." An individual who is entitled to  
11 benefits based on blindness or disability under Title II of the  
12 Social Security Act (49 Stat. 620, 42 U.S.C. § 401 et seq.) or  
13 Title XVI of the Social Security Act (42 U.S.C. § 1381 et seq.)  
14 as long as the blindness or disability occurs before the date on  
15 which the individual attains 26 years of age, or an individual  
16 who files a disability certification, to the satisfaction of the  
17 Secretary of the Treasury of the United States, with the  
18 secretary for the taxable year.

19 "Financial organization." An organization authorized to do  
20 business in this Commonwealth that is one of the following:

21 (1) Licensed or chartered by the Federal Government or  
22 the Commonwealth.

23 (2) Subject to the jurisdiction and regulation of the  
24 Securities and Exchange Commission.

25 "Management contract." A contract executed by the State  
26 Treasurer and a financial organization selected to act as a  
27 depository and manager of the program.

28 "Member of the family." As defined in section 529A of the  
29 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
30 529A).

1 "Nonqualified withdrawal." A withdrawal from an account  
2 which is not:

3 (1) A qualified withdrawal.

4 (2) A rollover distribution.

5 "Program." The Pennsylvania ABLE Savings Program established  
6 under section 301.

7 "Program manager." A financial organization selected by the  
8 State Treasurer to act as a depository and manager of the  
9 program.

10 "Qualified disability expense." Any qualified disability  
11 expense included in section 529A of the Internal Revenue Code of  
12 1986 (Public Law 99-514, 26 U.S.C. § 529A).

13 "Qualified withdrawal." A withdrawal from an account to pay  
14 the qualified disability expenses of the designated beneficiary  
15 of the account.

16 "Rollover distribution." A rollover distribution as defined  
17 in section 529A of the Internal Revenue Code of 1986 (Public Law  
18 99-514, 26 U.S.C. § 529A).

19 "Savings agreement." An agreement between the program  
20 manager or the department and the account owner.

21 "Statement." Includes an amendment to a statement.

22 CHAPTER 3

23 PENNSYLVANIA ABLE SAVINGS PROGRAM

24 Section 301. Pennsylvania ABLE Savings Program.

25 An enabling savings program is established, to be known as  
26 the Pennsylvania ABLE Savings Program. The purpose of the  
27 program is:

28 (1) To authorize the establishment of savings accounts  
29 to empower an individual with a disability and the  
30 individual's family to save private funds to support the

1 individual.

2 (2) To provide guidelines for the maintenance of the  
3 savings accounts.

4 Section 302. Duties of department.

5 (a) Implementation and administration.--The department  
6 shall:

7 (1) Develop and implement the program in a manner  
8 consistent with the provisions of this act.

9 (2) Engage the services of consultants, including  
10 organizations with experience in trust administration for  
11 people with disabilities, on a contract basis for rendering  
12 professional and technical assistance and advice.

13 (3) Seek rulings and other guidance from the Secretary  
14 of the Treasury of the United States and the Internal Revenue  
15 Service relating to the program.

16 (4) Make changes to the program required for  
17 participants in the program to obtain the Federal income tax  
18 benefits or treatment provided by section 529A of the  
19 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
20 529A).

21 (5) Charge, impose and collect administrative fees and  
22 service charges in connection with any agreement, contract or  
23 transaction relating to the program.

24 (6) Develop marketing plans and promotion material.

25 (7) Establish the methods by which the funds held in  
26 accounts shall be disbursed.

27 (8) Establish the method by which funds shall be  
28 allocated to pay for administrative costs.

29 (9) Do all things necessary and proper to carry out the  
30 purposes of this act.

1 (10) Promulgate rules and regulations necessary to  
2 effectuate the provisions of this act.

3 (11) Make an annual evaluation of the program and  
4 prepare an annual report of the evaluation to be submitted to  
5 the Governor and the General Assembly.

6 (12) Notify the Secretary of the Treasury of the United  
7 States when an account has been opened for a designated  
8 beneficiary and submit other reports concerning the program  
9 required by the secretary.

10 (b) Agreements.--The State Treasurer may enter into  
11 agreements with other states to either allow residents of this  
12 Commonwealth to participate in a plan operated by another state  
13 or to allow residents of other states to participate in the  
14 program.

15 Section 303. Program operation.

16 (a) Depositories and managers.--The department may implement  
17 the program through use of financial organizations as account  
18 depositories and managers. The department may solicit proposals  
19 from financial organizations to act as depositories and managers  
20 of the program. Financial organizations submitting proposals  
21 shall describe the investment instruments which will be held in  
22 accounts. The department may select more than one financial  
23 organization and investment instrument for the program. The  
24 department shall select as a program depository and manager the  
25 financial organization, from among the bidding financial  
26 organizations, that demonstrates the most advantageous  
27 combination, both to potential program participants and this  
28 Commonwealth, of the following factors:

29 (1) Financial stability and integrity of the financial  
30 organization.

1           (2) The safety of the investment instrument being  
2 offered.

3           (3) The ability of the financial organization to satisfy  
4 recordkeeping and reporting requirements.

5           (4) The financial organization's plan for promoting the  
6 program and the investment the organization is willing to  
7 make to promote the program.

8           (5) The fees, if any, proposed to be charged to the  
9 account owners.

10          (6) The minimum initial deposit and minimum  
11 contributions that the financial organization will require.

12          (7) The ability of the financial organization to accept  
13 electronic withdrawals, including payroll deduction plans.

14          (8) Other benefits to the Commonwealth or its residents  
15 included in the proposal, including fees payable to the  
16 Commonwealth to cover expenses of operation of the program.

17          (9) Experience in trust administration for people with  
18 disabilities.

19          (b) Contracts.--The State Treasurer may enter into any  
20 contracts with a financial organization necessary to effectuate  
21 the provisions of this act. A management contract shall include,  
22 at a minimum, terms requiring the financial organization to:

23           (1) Take any action required to keep the program in  
24 compliance with requirements of this act and any actions not  
25 contrary to its contract to manage the program to qualify as  
26 a "qualified ABLE program," as defined in section 529A of the  
27 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
28 529A).

29           (2) Keep adequate records of each account, keep each  
30 account segregated from each other account and provide the

1 department with the information necessary to prepare the  
2 statements required by section 501.

3 (3) Compile and total information contained in  
4 statements required to be prepared under section 501 and  
5 provide the compilations to the department.

6 (4) If there is more than one program manager, provide  
7 the department with the information necessary to determine  
8 compliance with section 501.

9 (5) Provide the department with access to the books and  
10 records of the program manager to the extent needed to  
11 determine compliance with the contract, this act and section  
12 529A of the Internal Revenue Code of 1986.

13 (6) Hold all accounts for the benefit of the account  
14 owner or owners.

15 (7) Review distributions from accounts for compliance  
16 with terms and conditions relating to qualified and  
17 nonqualified withdrawals.

18 (8) Be audited at least annually by a firm of certified  
19 public accountants selected by the program manager and  
20 provide the results of the audit to the department.

21 (9) Provide the department with copies of all regulatory  
22 filings and reports made by the financial organization during  
23 the term of the management contract or while the financial  
24 organization is holding any accounts, other than confidential  
25 filings or reports that will not become part of the program.  
26 The program manager shall make available for review by the  
27 department the results of any periodic examination of the  
28 manager by any Federal or state banking, insurance or  
29 securities commission, except to the extent that the report  
30 may not be disclosed under law.



1 designated beneficiary may have only one account. The designated  
2 beneficiary must be an eligible individual at the time the  
3 account is established.

4 (b) Application.--An application for an account shall be in  
5 the form prescribed by the department and contain the following:

6 (1) Name, address and Social Security number of the  
7 account owner.

8 (2) Name, address and Social Security number of the  
9 designated beneficiary, if the account owner is the  
10 beneficiary's trustee or guardian.

11 (3) Certification relating to no excess contributions.

12 (4) Additional information as the department may  
13 require.

14 (c) Application fee.--The department may establish a  
15 nonrefundable application fee.

16 (d) Contributions.--Any person may make contributions to an  
17 ABLE savings account after the account is opened, subject to the  
18 limitations imposed by section 529A of the Internal Revenue Code  
19 of 1986 (Public Law 99-514, 26 U.S.C. § 529A), or any rules and  
20 regulations promulgated by the Secretary of the Treasury of the  
21 United States applicable to this act.

22 (e) Form of contributions.--Contributions to ABLE savings  
23 accounts may only be made in cash. The department or program  
24 manager shall reject or promptly withdraw contributions:

25 (1) in excess of the limits established under subsection

26 (d); or

27 (2) the total contributions if the:

28 (i) value of the account is equal to or greater than  
29 the account maximum established by the department. The  
30 account maximum is equal to the account maximum for

1 postsecondary education savings accounts established  
2 under the act of April 3, 1992 (P.L.28, No.11), known as  
3 the Tuition Account Programs and College Savings Bond  
4 Act; or

5 (ii) designated beneficiary is not an eligible  
6 individual in the current calendar year.

7 (f) Permitted conduct.--An account owner may:

8 (1) Change the designated beneficiary of an account to  
9 an individual who is a member of the family of the prior  
10 designated beneficiary in accordance with procedures  
11 established by the department.

12 (2) Transfer all or a portion of an account to another  
13 ABLE savings account, the designated beneficiary of which is  
14 a member of the family as defined in section 529A of the  
15 Internal Revenue Code of 1986.

16 (g) Prohibition.--No account owner may use an interest in an  
17 account as security for a loan. Any pledge of an interest in an  
18 account shall be of no force and effect.

19 (h) Report of distribution.--If there is any distribution  
20 from an account to any individual or for the benefit of any  
21 individual during a calendar year, the distribution shall be  
22 reported to the Internal Revenue Service and each account owner,  
23 the designated beneficiary or the distributee to the extent  
24 required by Federal or State law.

25 (i) Statements.--Statements shall be provided to each  
26 account owner on a quarterly basis. The statement shall  
27 identify:

28 (1) The contributions made during the preceding period.

29 (2) The total contributions made to the account through  
30 the end of the period.

1 (3) The value of the account at the end of the period.

2 (4) Distributions made during the period.

3 (5) Any other information that the department shall  
4 require to be reported to the account owner.

5 (j) Filing as required.--Statements and information relating  
6 to accounts shall be prepared and filed to the extent required  
7 by this act and any other Federal or State law.

8 (k) Separate accounting.--The program shall provide separate  
9 accounting for each designated beneficiary. An annual fee may be  
10 imposed upon the account owner for the maintenance of an  
11 account.

12 Section 502. Exemption from security laws.

13 Savings accounts are exempt from any statute regulating  
14 securities, including the act of December 5, 1972 (P.L.1280,  
15 No.284), known as the Pennsylvania Securities Act of 1972.

16 Section 503. State tax exemption.

17 (a) Property of funds.--The property of each of the funds  
18 and their income and operation and qualified withdrawals shall  
19 be exempt from all taxation by the Commonwealth and its  
20 political subdivisions.

21 (b) Contributions.--Contributions made pursuant to a savings  
22 account, any increase in the value of those contributions, the  
23 retention or transfer during life or as a result of death of any  
24 legal interest in a savings account and payment of qualified  
25 disability expenses of beneficiaries made pursuant to a savings  
26 account shall be exempt from all taxation by the Commonwealth  
27 and its political subdivisions.

28 Section 504. Federal taxation.

29 The department may take appropriate action in order to obtain  
30 a determination from the Internal Revenue Service or the Federal

1 courts as to whether contributions made to a savings account,  
2 the increase in value of the contributions and payment of  
3 qualified disability expenses pursuant to a savings account  
4 shall be a transaction which will subject account owners or the  
5 income of either or both of the funds to Federal taxation and  
6 may respond to the determination in any manner permitted under  
7 this act.

8 Section 505. Medical assistance.

9 Money in an ABLE savings account may be claimed for medical  
10 assistance reimbursement, only after the death of the designated  
11 beneficiary, subject to limitations imposed by the Secretary of  
12 the Treasury of the United States.

13 Section 506. Construction.

14 (a) General rule.--Nothing in this act shall create or be  
15 construed to create any obligation of the department, the  
16 Commonwealth or any agency or instrumentality of the  
17 Commonwealth to guarantee for the benefit of an account owner or  
18 designated beneficiary with respect to the:

- 19 (1) Return of principal.  
20 (2) Rate of interest or other return on any account.  
21 (3) Payment of interest or other return on any account.

22 (b) Regulations.--The department may promulgate regulations  
23 to provide that every contract, application or other similar  
24 document that may be used in connection with opening an account  
25 clearly indicates that the account is not insured by the  
26 Commonwealth and that the principal deposited and the investment  
27 return are not guaranteed by the Commonwealth.

## 28 CHAPTER 21

### 29 MISCELLANEOUS PROVISIONS

30 Section 2101. Effective date.

1 This act shall take effect immediately.