COMMONWEALTH OF KENTUCKY STATE FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2016 REGULAR SESSION

MEASURE

2016 BR NUMBER **0812** **SENATE** BILL NUMBER **70**

RESOLUTION NUMBER_____ AMENDMENT NUMBER _____

SUBJECT/TITLE An ACT relating to persons with developmental or intellectual disabilities.

SPONSOR Senator Ray S. Jones II

NOTE SUMMARY

FISCAL ANALYSIS: ☒ IMPACT ☐ NO IMPACT ☐ INDETERMINABLE IMPACT

LEVEL(S) OF IMPACT: ☒ STATE ☐ LOCAL ☐ FEDERAL

BUDGET UNIT(S) IMPACT: **Office of the State Treasurer**

FUND(S) IMPACT: ☒ GENERAL ☐ ROAD ☐ FEDERAL ☐ RESTRICTED AGENCY _____ ☐ OTHER

FISCAL SUMMARY

FISCAL ESTIMATES	2015-2016	2016-2017	2017-2018	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES		Indeterminable	Indeterminable	Indeterminable
EXPENDITURES		Indeterminable	Indeterminable	Indeterminable
NET EFFECT		Indeterminable	Indeterminable	Indeterminable

( ) indicates a decrease/negative

MEASURE'S PURPOSE: The purpose of this measure is to require the Office of the State Treasurer to create the Achieve a Better Living Experience (ABLE) program in Kentucky. This is a program offering federally tax-advantaged savings accounts used to pay for a person's qualified disability expenses who were disabled or blind prior to the age of 26.

PROVISIONS/MECHANICS:

Section 1 creates a new section of KRS Chapter 41 that provides definitions.

Section 2 creates a new section of KRS Chapter 41 that establishes the ABLE program, requires the State Treasurer to implement the program, and to be advised by a board of directors.

Section 3 creates a new section of KRS Chapter 41 authorizing the Treasurer to have all powers necessary to carry out and implement the purposes, objectives and provisions of the Act, including the power to: sue and be sued; make and enter into contracts; engage investment advisors; accept any grants, gifts, legislative appropriations and other moneys; enter into agreements with account holders; make refunds to account holders; administer funds of the trusts; carry out the duties and obligations of the trust; take actions necessary to ensure the trust is in compliance with the requirements of the ABLE Act; contract for goods and professional services; participate in government programs for the benefit of the trust; comply with all reporting requirements; impose and collect administrative fees and charges; procure insurance; procure board insurance; manage the trust and associated funds in association with similar programs of other states; enter in agreements to allow Kentucky residents to participate in a plan operated in another state and allow residents of other states to participate in the Kentucky trust; promulgate administrative regulations for the administration of the trust.

Section 4 creates a new section of KRS Chapter 41 authorizing the Treasurer to appoint a program manager who to the extent performs any functions on behalf of the Treasurer, or the board, shall be held to the same standards as the Treasurer and the board.

Section 5 creates a new section of KRS Chapter 41 that enables the trust to enter into agreements to establish accounts with account holders on behalf of beneficiaries.

Section 6 creates a new section of KRS Chapter 41 establishing the Treasurer as trustee of two funds within the trust, to be identified as the Able Program Fund and the Able Administrative Fund. The ABLE Administrative Fund shall be used to pay for the operating costs associated with the program and shall be funded with fees assessed to the Program Fund. All contributions paid by account holders shall be deposited as received into the program fund and shall be promptly invested and accounted for separately.

Section 7 creates a new section of KRS Chapter 41 defining ownership of contributions, account holders' rights to cancel accounts and transfer balances, exempts contributions and earnings on contributions to be claimed by debtors, and forbids any interest of the account holder or beneficiary to be pledged as security for a debt.

Section 8 creates a new section of KRS Chapter 41 directing the Treasurer to submit an annual audited financial report, prepared in accordance to generally accepted accounting principles by an independent CPA.

Section 9 creates a new section of KRS Chapter 41 declaring that the property of the trust and its income from operations shall be exempt from all taxation by the Commonwealth of Kentucky and by any of its political subdivisions. In addition, investment income earned on contributions paid by any account holder and used for qualified disability expenses shall not be subject to Kentucky income tax.

Section 10 creates a new section of KRS Chapter 41 that mandates that the assets of the trust shall at all times be preserved, invested and expended solely for the purposes of the trust and shall not be transferred or used by the Commonwealth for any purposes other than the purposes of the trust.

Section 12 amends KRS 205.200 to direct that the value of an ABLE account is to be disregarded in determining whether a person is eligible for state or local means-tested public assistance.

<u>FISCAL EXPLANATION</u>: This bill would significantly increase the Office of the State Treasurer's administrative costs to implement and administer the ABLE program. The ABLE Administrative Fund will collect fees and penalties, governmental or private grants to help defray as much of the program costs as possible.

Implementation costs include technological investments needed to meet database and reporting requirements as well as finance and customer service personnel expected to be needed to support the program. Investment and other financial services will also be needed to administer the accounts. Additional expenses will include auditing, insurance and legal services. Disclosure and other communication materials will need to be developed and marketed.

Under current rules, withdrawals (including earnings) from a qualified ABLE account that are used for any qualified purposes would not be included in federal and Kentucky income, and as such would be exempt from both federal and Kentucky income taxes. Therefore, the legislation potentially reduces Kentucky personal income tax revenue. The potential revenue loss would depend on the number of ABLE accounts opened by Kentucky residents and the total values of such accounts. However, withdrawals used for unqualified disbursements or purposes may be subject to income tax and a penalty.

DATA SOURCE(S): **<u>Office of the State Treasurer; US Internal Revenue Service; US Federal Register</u>**
PREPARER: **<u>Ray Griffith</u>** **NOTE NUMBER**: **<u>36</u>** **REVIEW**: **<u>JRS</u>** **DATE**: **<u>1/25/2016</u>**