

AN ACT relating to persons with developmental or intellectual disabilities.

WHEREAS, it is appropriate to encourage and assist individuals and families to save private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life; and

WHEREAS, personal savings will serve as a primary source of funding for the disability related expenses of individuals with disabilities; and

WHEREAS, personal savings should supplement but not supplant any benefits provided through private insurance, federal and state medical and disability insurance, a beneficiary's employment, or other sources; and

WHEREAS, the federal government has provided authorization by way of the provisions of 26 U.S.C. sec. 529A for individuals with disabilities to accumulate and utilize funds for the payment of disability related expenses;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 11 of this Act:

(1) "ABLE Act" means the provisions of 26 U.S.C. sec. 529A;

(2) "ABLE trust" or "trust" means the Kentucky Achieving a Better Life Experience Trust created in Section 2 of this Act;

(3) "Account" or "ABLE account" means an individual account established pursuant to Section 5 of this Act;

(4) "Account holder" means the person who establishes and maintains an account within the ABLE trust, for the purpose of paying the qualified disability expenses of a beneficiary;

(5) "Administrative fund" means the funds used to administer the ABLE trust;

(6) "Beneficiary" means:

- (a) An eligible individual designated to benefit from payments from an account; or
- (b) A new beneficiary, in the case of a change of beneficiaries pursuant to Sections 5 and 7 of this Act;
- (7) "Benefits" means the payment of qualified expenses on behalf of a beneficiary by the ABLE trust;
- (8) "Board" means the board of directors of the Kentucky Achieving a Better Life Experience Trust;
- (9) "Eligible individual" means a person who qualifies as an eligible individual pursuant to the ABLE Act;
- (10) "Financial organization" means:
- (a) A bank;
- (b) An insurance company;
- (c) Any other licensed financial institution; or
- (d) A broker-dealer registered with the Securities and Exchange Commission;
- (11) "Program fund" means the program fund established by Section 6 of this Act, which shall be held as a separate fund within the ABLE trust;
- (12) "Program manager" means a financial organization selected by the Treasurer to be a depository and manager of funds invested in the ABLE trust and deposited in ABLE accounts;
- (13) "Qualified disability expenses" means expenses described in the ABLE Act, that are expenses of an eligible individual; and
- (14) "Qualified withdrawal" means a withdrawal from an account to pay the qualified disability expenses of a beneficiary of the account.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

- (1) The Kentucky Achieving a Better Life Experience Trust is hereby created within

the Office of the State Treasurer.

(2) The trust shall be under the direction and control of the Treasurer. The Treasurer shall be advised by a board of directors, consisting of the following members:

(a) The Treasurer, who shall be the chairperson of the board;

(b) The secretary of the Cabinet for Health and Family Services or the secretary's designee;

(c) The executive director of the Kentucky Higher Education Assistance Authority or the director's designee;

(d) The executive director of the Commonwealth Council on Developmental Disabilities;

(e) The executive director of The Arc of Kentucky; and

(f) Six (6) citizens of Kentucky:

1. One (1) who shall be familiar with banking, finance, or accounting;

2. One (1) who shall be familiar with advocacy for the disabled community;

3. Two (2) who shall be individuals with a disability; and

4. Two (2) who shall be the parent or guardian of an individual with a disability;

to be appointed by the Treasurer. Initial appointments shall be made by October 1, 2016, and shall be for four (4) year terms. Appointments to fill vacancies shall be made as needed. Individuals currently serving may be reappointed to successive terms.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

The Treasurer, as trustee, shall have all powers necessary to carry out and implement the purposes, objectives, and provisions of Sections 1 to 11 of this Act pertaining to the

trust, either directly or through the use of a program manager, including but not limited to the power to:

(1) Sue and be sued;

(2) Make and enter into contracts necessary for the administration of the trust pursuant to Sections 1 to 11 of this Act;

(3) Engage investment advisors to assist in the investment of trust assets, and invest moneys in any investments determined by the board to be appropriate, notwithstanding any other statutory limitations contained in the Kentucky Revised Statutes, which are specifically determined to be inapplicable to the trust;

(4) Accept any grants, gifts, legislative appropriations, and other moneys from the Commonwealth, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation for deposit to the administrative fund;

(5) Enter into agreements with account holders to open accounts for beneficiaries;

(6) Make refunds to account holders upon the termination of accounts pursuant to the provisions, limitations, and restrictions set forth in Sections 5, 6, and 7 of this Act;

(7) Administer the funds of the trust, and make provision for the payment of costs of administration and operation of the trust;

(8) Carry out the duties and obligations of the trust pursuant to Sections 1 to 11 of this Act, and have any and all other powers as may be reasonably necessary to accomplish the purposes of the trust;

(9) Take actions necessary to ensure that the Kentucky ABLÉ trust is in compliance with the requirements of the ABLÉ Act;

(10) Contract, in accordance with KRS Chapter 45A, for goods and services, and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice, and pay for any of these from any moneys of the

administrative fund of the trust;

(11) Participate in any other way in any federal, state, or local governmental program for the benefit of the trust;

(12) Comply with all reporting requirements of the ABLE Act, and any associated federal regulations;

(13) Impose and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges;

(14) Procure insurance against any loss in connection with the property, assets, or activities of the trust;

(15) Procure insurance indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the board;

(16) Manage the trust and the associated funds and accounts in association with similar programs of other states, including operating the trust with another state or allowing another state to operate the Kentucky trust, so long as the trust, funds, and accounts comply with federal law and state law, and all accounts and earnings are properly protected for account holders;

(17) Enter into agreements to allow residents of Kentucky to participate in a plan operated by another state, and to allow residents of other states to participate in the Kentucky trust; and

(18) Promulgate administrative regulations for the administration of the trust.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

(1) The Treasurer may select a program manager to manage any or all functions of the trust and the funds and accounts created pursuant to Sections 1 to 11 of this Act.

(2) To the extent that a program manager performs any functions on behalf of the

Treasurer or the board, the program manager shall be held to the same standards as the Treasurer and the board, pursuant to Sections 1 to 11 of this Act.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

The trust may enter into agreements to establish accounts with account holders on behalf of beneficiaries pursuant to the following terms and conditions:

- (1) Each account shall be for the benefit of a specific beneficiary;
- (2) Beneficiaries may be changed as permitted by administrative regulations of the board upon written request of the account holder, except that the substitute beneficiary shall be an eligible individual;
- (3) An account may be canceled under the terms and conditions, including payment of the fees and costs, set forth in administrative regulations promulgated by the board;
- (4) Contributions to accounts shall only be made in cash;
- (5) The account holder and the beneficiary shall not directly, indirectly, or otherwise control the investment of contributions or earnings on contributions; and
- (6) Information obtained from an account holder or a beneficiary and other personally identifiable records made by the trust in the administration of Sections 1 to 11 of this Act shall not be published or be open for public inspection pursuant to KRS 61.870 to 61.884, except as provided below:
 - (a) An account holder or beneficiary or his or her legal representative shall be entitled to be advised of the aggregate balance of contributions and earnings for the beneficiary;
 - (b) Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall ensure the confidentiality, as provided for in this section, of all information so released;

(c) Statistical information derived from information and records obtained or made by the trust may be published if it in no way reveals the identity of any account holder or beneficiary; and

(d) Nothing in this section shall preclude the program manager or any employee of the Treasurer or board from testifying or introducing as evidence information or records obtained or made by the trust in any proceeding under Sections 1 to 11 of this Act in an action to which the trust is a party, or upon order of a court.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

(1) The Treasurer, as trustee, shall segregate moneys received by the trust into two (2) funds, which shall be identified as the program fund and the administrative fund.

(2) The administrative fund shall receive fees and penalties from account holders as permitted by Sections 3, 5, and 7 of this Act, and from other sources, for the purpose of paying operating costs associated with administering the trust, and as required by Sections 1 to 11 of this Act. All moneys credited to the administrative fund shall be deposited in accordance with KRS 41.070.

(3) All contributions paid by account holders in connection with Kentucky ABLÉ accounts shall be deposited as received into the program fund and shall be promptly invested and accounted for separately for each beneficiary. Contributions, earnings, and any other funds accumulated on behalf of beneficiaries may be used for payments of qualified disability expenses.

(4) No transfers to the administrative fund from individual accounts of the program fund shall be permitted except for fees or penalties assessed pursuant to Sections 3, 5, and 7 of this Act.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO

READ AS FOLLOWS:

For all purposes of Kentucky law, the following shall be applicable:

- (1) The trust shall exercise ownership of all contributions made into any account and all interest derived from the investment of the contributions, up to the date of utilization for payment of qualified disability expenses for the beneficiary. All contributions made into any account and interest derived from the investment of the contributions shall be deemed to be held in trust for the benefit of the beneficiary;
- (2) Any account holder may cancel an account at any time, and terminate the trust's ownership rights, by delivering an instrument in writing signed and delivered to the Treasurer or the Treasurer's designee. If an account is terminated, the account holder may be required to pay a penalty in accordance with subsection (4) of this section;
- (3) An account holder may transfer the balance of an account to another eligible individual, if that eligible individual is permitted to be the recipient of a transferred account pursuant to the ABLÉ Act;
- (4) (a) If any earnings on contributions are refunded due to cancellation of the account, the board may charge a penalty to the account holder against the earnings on contributions.

(b) No penalty shall be charged when a refund is made due to the death of the beneficiary; and
- (5) Notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a creditor of the account holder or the beneficiary. No interest of the account holder or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

- (1) (a) On or before November 1 of each year, the Treasurer shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the trust, to the Governor, the Legislative Research Commission, and the Auditor of Public Accounts. The annual audit shall be made by an independent certified public accountant and shall include all activity attributable to the trust.
- (b) The annual audit shall be supplemented by any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the trust.
- (2) The Treasurer shall comply with all reporting requirements for accounts and account holders, pursuant to the ABLE Act, to assure that all reports to account holders and to federal and state governments are properly completed and filed.
- (3) Annual contribution limits for all donors and accounts shall be established in accordance with the current limits established by the ABLE Act.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

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. Investment income earned on contributions paid by any account holder and used for qualified disability expenses or refunded under subsection (4)(b) of Section 7 of this Act shall not be subject to Kentucky income tax to either an account holder or any beneficiary of an account. Earnings that are not used for qualified disability expenses and are refunded pursuant to subsection (4)(a) of Section 7 of this Act shall be subject to Kentucky income tax.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO

READ AS FOLLOWS:

The assets of the trust shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the account holders and beneficiaries and no property rights therein shall exist in favor of the Commonwealth. The assets shall not be transferred or used by the Commonwealth for any purposes other than the purposes of the trust.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 41 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 11 of this Act shall be construed liberally in order to effectuate its legislative intent. All provisions of Sections 1 to 11 of this Act with respect to powers granted shall be broadly interpreted to effectuate the intent and purposes and not as to any limitation of powers.

➔Section 12. KRS 205.200 is amended to read as follows:

- (1) A needy aged person, a needy blind person, a needy child, a needy permanently and totally disabled person, or a person with whom a needy child lives shall be eligible to receive a public assistance grant only if he has made a proper application or an application has been made on his behalf in the manner and form prescribed by administrative regulation. No individual shall be eligible to receive public assistance under more than one (1) category of public assistance for the same period of time.
- (2) The secretary shall, by administrative regulations, prescribe the conditions of eligibility for public assistance in conformity with the public assistance titles of the Social Security Act, its amendments, and other federal acts and regulations. The secretary shall also promulgate administrative regulations to allow for between a forty percent (40%) and a forty-five percent (45%) ratable reduction in the method of calculating eligibility and benefits for public assistance under Title IV-A of the Federal Social Security Act. In no instance shall grants to families with no income

be less than the appropriate grant maximum used for public assistance under Title IV-A of the Federal Social Security Act. As used in this section, "ratable reduction" means the percentage reduction applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

- (3) The secretary may by administrative regulation prescribe as a condition of eligibility that a needy child regularly attend school, and may further by administrative regulation prescribe the degree of relationship of the person or persons in whose home such needy child must reside.
- (4) The secretary may by administrative regulation prescribe conditions for bringing paternity proceedings or actions for support in cases of out of wedlock birth or nonsupport by a parent in the public assistance under Title IV-A of the Federal Social Security Act program.
- (5) Public assistance shall not be payable to or in behalf of any individual who has taken any legal action in his own behalf or in the behalf of others with the intent and purpose of creating eligibility for the assistance.
- (6) The cabinet shall promptly notify the appropriate law enforcement officials of the furnishing of public assistance under Title IV-A of the Federal Social Security Act in respect to a child who has been deserted or abandoned by a parent.
- (7) No person shall be eligible for public assistance payments if, after having been determined to be potentially responsible, and afforded notice and opportunity for hearing, he refuses without good cause:
 - (a) To register for employment with the state employment service,
 - (b) To accept suitable training, or
 - (c) To accept suitable employment.

The secretary may prescribe by administrative regulation, subject to the provisions of KRS Chapter 13A, standards of suitability for training and employment.

- (8) To the extent permitted by federal law, scholarships, grants, or other types of

financial assistance for education shall not be considered as income for the purpose of determining eligibility for public assistance.

- (9) To the extent permitted by federal law, any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to "Agent Orange" by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam shall not be considered as income for the purpose of determining eligibility or continuing eligibility for public assistance and shall not be subject to a lien or be available for repayment to the Commonwealth for public assistance received by the recipient.

(10) (a) Notwithstanding any other provision of Kentucky law, the following shall be disregarded for the purposes of determining an individual's eligibility for a means-tested public assistance program, and the amount of assistance or benefits the individual is eligible to receive under the program:

- 1. Any amount in an ABLE account, created pursuant to Sections 1 to 11 of this Act;**
- 2. Any contributions to an ABLE account; and**
- 3. Any distribution from an ABLE account for qualified disability expenses.**

(b) For the purposes of this subsection:

- 1. "Able account" has the same meaning as in Section 1 of this Act;**
- 2. "Kentucky law" includes:**
 - a. All provisions of the Kentucky Revised Statutes;**
 - b. Any contract to provide Medicaid managed care established pursuant to this chapter;**
 - c. Any agreement to operate a Medicaid program established pursuant to this chapter; and**

- d. Any administrative regulation promulgated pursuant to this chapter; and*
- 3. "Qualified disability expenses" has the same meaning as in Section 1 of this Act.*