

HOUSE BILL 999

By McManus

AN ACT to enact "The Achieving a Better Life Experience Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as "The Achieving a Better Life Experience (ABLE) Act."

SECTION 2. The purpose of this act is to authorize the establishment of a qualified ABLE program as an agency or instrumentality of the state to assist an eligible individual in saving money to meet the eligible individual's qualified disability expenses. The intent of the program is 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.

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Account" means an account established by; owned by; and for the benefit of an eligible individual, who is also the designated beneficiary on the account, and maintained under a qualified ABLE program for payment of the eligible individual's qualified disability expenses, as provided in this act;

(2) "Code" means § 529A of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 529A, as amended, and all rules, regulations, notices, and interpretations released by the United States treasury, including the internal revenue service;

(3) "Contracting state" means a state without a qualified ABLE program that has entered into a contract with a state with a qualified ABLE program to provide residents of the contracting state access to a qualified ABLE program;

(4) “Designated beneficiary” means the eligible individual who has established and owns an ABLE account, and for whose benefit the account has been established;

(5) “Disability certification” means a certification acceptable to the social security administration made by the eligible individual or the eligible individual’s parent or guardian certifying that the eligible individual has a medically determinable physical or mental impairment that results in marked and severe functional limitations and that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months, or is blind within the meaning of § 1614(a)(2) of the Social Security Act; and such blindness or disability occurred before the individual attained the age of twenty-six (26); and including a copy of the eligible individual’s diagnosis relating to the individual’s relevant impairment or impairments, signed by a physician meeting the criteria of § 1861(r)(1) of the Social Security Act;

(6) “Eligible individual” means an individual who is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the individual attained age twenty-six (26), or a disability certification for the individual was filed with the United States department of the treasury. The eligible individual is the account owner and the designated beneficiary on the account;

(7) “Legal representative” means an individual who or entity that can act on behalf of an eligible individual for the purpose of establishing, maintaining, transacting, and terminating an account, including, but not limited, to a parent, conservator, guardian, custodian, fiduciary, trustee, or individual or entity with a power of attorney;

(8) “Person” means an individual, association, corporation, trust, charitable organization, or other such entity;

(9) “Qualified ABLE program” or “program” means the ABLE program that is a qualified program pursuant to and in compliance with the code, and that is created pursuant to this act;

(10) "Qualified disability expenses" means any expenses related to the eligible individual's blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary. Qualified disability expenses include the following: education; housing; transportation; employment training and support; assistive technology and personal support services; health; prevention and wellness; financial management and administrative services; legal fees; expenses for oversight and monitoring; funeral and burial expenses; and other expenses approved by federal rules and regulations; and

(11) "State" means the state of Tennessee.

SECTION 4.

(a) The commissioner of finance and administration, the chair of the finance, ways and means committee of the senate, the chair of the finance, ways and means committee of the house of representatives, and the state treasurer shall serve as trustees for a qualified ABLE program that may be established pursuant to this act.

(b) The state treasurer is authorized to establish a qualified ABLE program. If the state treasurer establishes a qualified ABLE program, the state treasurer shall develop a plan that shall include provisions for the implementation, administration, operation, marketing, investment options, customer service, and investment management services for the plan, which shall be approved by the remaining trustees. The state treasurer may modify the terms of the plan with the concurrence of the commissioner of finance and administration.

SECTION 5. The state treasurer has the following powers and authorities necessary and convenient to carry out the purposes and provisions of this act, the purposes and objectives of the program and the trustees' plan, and the powers delegated by any other law of this state and the code, including, but not limited to, the following express powers:

- (1) Provide investment options or investment products for eligible individuals who have established an ABLE account;
- (2) Purchase insurance from insurers licensed to do business in this state providing for coverage against any loss in connection with the program's property, assets, or activities;
- (3) Make, execute, and deliver contracts, conveyances, and other instruments necessary and proper for the implementation of the program;
- (4) Contract for the provision of all or any part of the services necessary for the administration, implementation, operation, or management of the program;
- (5) Enter into a contract with another state that has a qualified ABLE program as a contracting state in order to provide similar benefits to Tennessee residents, or allow residents of other states to participate in a Tennessee qualified ABLE program;
- (6) Contract with financial consultants, actuaries, auditors, investment managers, and other consultants and professionals as necessary to carry out the duties and responsibilities under this act and the plan established by the trustees. These services may be procured in a manner prescribed by the trustees without regard to the requirements of the former § 12-4-109, if the trustees determine that the services are necessary or desirable for the efficient administration of this act. All expenses and fees incidental to the procurement of services shall be charged to and paid from participant accounts;
- (7) Administer or operate the program at the direction of the trustees' plan;
- (8) Promote, advertise, market, and publicize the program;
- (9) Solicit and accept monetary gifts made by will, trust, or other disposition, grants, loans, and other monetary aids from any personal source or participate in any

other way in any federal, state, or local governmental programs in carrying out the purpose of this act;

(10) Establish and impose reasonable residency requirements for designated beneficiaries that must be met by the designated beneficiary prior to establishing an account;

(11) Establish and impose reasonable limits on the number of accounts;

(12) Establish and impose limits on contributions that may be made by or on behalf of a designated beneficiary;

(13) Provide adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the contribution limitations established by the trustees;

(14) Establish and impose restrictions for a change in or substitution of designated beneficiaries;

(15) Establish and impose limitations on distributions and rollovers from the account used for qualified disability expenses;

(16) Establish and impose restrictions or conditions on the transfer of account ownership;

(17) Establish and impose restrictions on the investment direction of deposits in an account and the interest earned thereon;

(18) Determine the disposition of an account upon the designated beneficiary's death or the abandonment of an account;

(19) Enter into memoranda of understanding with appropriate state agencies to develop, implement, and market educational programs and related informational materials to inform individuals with disabilities and their legal representatives about the ABLE program;

(20) Impose and collect application fees and other administrative fees and charges in connection with any transaction under this act;

(21) Promulgate reasonable rules as are necessary to carry out the purpose and intent of this act, and to ensure that the program is in compliance with the code and other applicable provisions of federal or state laws or rules. All such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(22) Enter into participation agreements with eligible individuals or an eligible individual's legal representative;

(23) Define the terms and conditions under which payments may be withdrawn from the program and impose reasonable charges for withdrawal;

(24) Enter into agreements with any public or private employer under which an employee may agree to have a designated amount deducted in each payroll period from the wages or salary due the employee for the purpose of making contributions to an account pursuant to a participation agreement. The agreement shall be subject to the approval of the trustees and in conformity with such terms and conditions as determined by the trustees. In the event the agreement is approved by the trustees, the employer shall be responsible for submitting to the trustees such information and for performing the duties prescribed by the trustees to implement its employee contributions to an account by payroll deduction. All costs and expenses incidental to implementing and administering a payroll deduction program shall be borne by the respective employer;

(25) Operate and provide for the operation of the program in a manner that qualifies the program under the code and takes any and all necessary action to maintain such qualification; provided, that the account owner's rights to fund the respective accounts shall not be limited or impaired;

(26) Seek rulings from the secretary of the United States department of the treasury and the internal revenue service relating to the program; and

(27) Make changes to the program that are required for eligible individuals to obtain federal income tax benefits or treatment provided by the code.

SECTION 6.

(a) The qualified ABLE program that is established and maintained by the state as an agency or instrumentality thereof shall comply with all requirements of the code and shall:

(1) Allow one (1) or more persons to make contributions for a taxable year into an account for the benefit of an eligible individual who is also the designated beneficiary during the taxable year. The designated beneficiary shall be an eligible individual at the time the account is established, at the time of any contribution to the account, and at the time of a distribution from an account for qualified disability expenses;

(2) Limit one (1) eligible individual or designated beneficiary to one (1) account; and

(3) Limit the establishment of an account to an eligible individual who is a resident of this state or a resident of a contracting state.

(b) The state treasurer shall submit a notice to the secretary of the United States department of the treasury at the time that an account is established. The notice shall contain the name and state of residence of the designated beneficiary and such other and further information as the secretary of the United States department of the treasury may require.

(c) On a monthly basis, the qualified ABLE program shall submit electronic statements to the commissioner of the social security administration containing distributions and account balances from all accounts.

SECTION 7. The state treasurer shall carry out the day-to-day operations and responsibilities of the program. The state treasurer shall exercise such powers, duties, and responsibilities contained in this act to implement the purpose of this act; may assign any duties and responsibilities to the state treasurer's staff or private vendors and contractors, as the state treasurer deems necessary and proper; and may consult with professionals as necessary about the administration of the program. The state treasurer may also establish policies, guidelines, and operating procedures in accordance with the provisions of this act.

SECTION 8. Notwithstanding any other law to the contrary, the trustees shall be authorized to offer investment options to eligible individuals participating in the qualified ABLE program.

SECTION 9. In conjunction with the state treasurer's authority contained in this act, the state treasurer has the authority to request assistance from, and exchange data with, other departments and agencies of the state in carrying out the purpose and intent of this act and the requirements contained in the code, including, but not limited to, the office of vital records. Notwithstanding any other law to the contrary, the office of vital records shall provide the state treasurer with vital records information without charge.

SECTION 10. Notwithstanding any other law to the contrary, all assets, income, and distributions of qualified ABLE programs as defined by the code, this act, or the laws of another state are exempt from any state, county, or municipal tax and shall not be subject to execution, attachment, or garnishment, nor shall any assignment thereof be enforceable in any court. This exemption shall include a qualified ABLE program defined in § 529A of the Internal Revenue

Code, codified in 26 U.S.C. § 529A, and shall include any properly authorized payments made to or by such funds.

SECTION 11. If the trustees determine that the program is financially infeasible or is not beneficial to the citizens of this state or the state itself, the trustees may suspend or terminate the program immediately.

SECTION 12.

(a) Notwithstanding any other law to the contrary, the state shall not disclose personal information about any person obtained in connection with an account established under this act, except under the following circumstances:

(1) To any individual or entity authorized by the eligible individual or the eligible individual's legal representative;

(2) In compliance with a subpoena or a court order;

(3) To the comptroller of the treasury or the comptroller's designees for the purpose of an audit;

(4) To the internal revenue service, the United States department of the treasury, or the social security administration for the purpose of filing notices, reports, statements, or any other required documentation; or

(5) In any administrative proceeding or court action involving the state, the department of the treasury, the state treasurer, or the remaining trustees relative to an account established under this act.

(b) For the purposes of this section, "personal information" shall include, but not be limited to, social security number; bank account numbers; transit routing numbers; credit card numbers; debit card numbers; business or residential addresses; telephone or cell phone numbers; e-mail addresses; disability certifications or determinations; and medical records.

SECTION 13. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2015, the public welfare requiring it.