

SENATE BILL 429

By Massey

AN ACT to amend Tennessee Code Annotated, Section 5-8-102; Title 33; Title 55, Chapter 4; Title 67, Chapter 2, Part 1 and Title 67, Chapter 4, Part 17, relative to authorizing ABLE accounts for persons with disabilities.

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

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 5, is amended by adding Sections 2 through 17 as a new part.

SECTION 2. This part shall be known and may be cited as the “Achieving a Better Life Experience Act” or “ABLE Act.”

SECTION 3. The purposes of this part are:

(1) To encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life; and

(2) To provide secure funding for disability-related expenses on behalf of individuals with disabilities that will supplement, but not supplant, benefits provided through private insurance, the supplemental security income program under Title XVI of the Social Security Act (42 U.S.C. §§ 1381 et seq.); the TennCare programs under Title XIX of the Social Security Act, (42 U.S.C. §§ 1396 et seq.); or any successor to the TennCare program administered pursuant to the federal Medicaid laws, the individual’s employment, and other sources.

SECTION 4. As used in this part:

(1) “ABLE account” and “account” means an account that is established and owned by an eligible individual and maintained under a qualified ABLE account plan;

(2) “Account administrator” means the person selected by the commissioner to administer the daily operations of the qualified ABLE account plan and provide marketing, record keeping, investment management, and other services for the plan;

(3) “Code” means Section 529A of the Internal Revenue Code of 1986 (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;

(4) “Commissioner” means the commissioner of intellectual and developmental disabilities;

(5) “Contributor” means one (1) or more individuals, associations, corporations, trusts, charitable organizations, or other such entities that contributes money or makes a payment to an ABLE account established pursuant to this part;

(6) “Department” means the department of intellectual and developmental disabilities;

(7) “Designated beneficiary” means the eligible individual who establishes an ABLE account and is the owner of the account;

(8) “Eligible individual” has the same meaning as defined in Section 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A);

(9) “Member of the family” means an individual who bears a relationship to the designated beneficiary as described in Section 152(f)(1)(B) of the Internal Revenue Code (26 U.S.C. § 152);

(10) “Qualified ABLE account plan” and “plan” means a plan that permits an eligible individual to establish an ABLE account and one (1) or more contributors to make contributions to an ABLE account that is intended to be applied to a designated beneficiary’s qualified disability expenses;

(11) “Qualified ABLE account program” or “program” means the program established by this part and maintained by the department under which a person may

make contributions to an ABLE account that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account;

(12) “Qualified disability expenses” has the same meaning as defined in Section 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A);

(13) “Qualified withdrawal” means a withdrawal from an ABLE account to pay the qualified disability expenses of the designated beneficiary of the account;

(14) “Participation agreement” means an agreement to participate in the qualified ABLE account plan between the designated beneficiary and the state, through the department;

(15) “Redemption value” means the cash value of the account attributable to the sum of the principal invested, the interest earned or losses incurred in the principal, less any fees imposed by rule of the department; and

(16) “Total account balance” means the amount in an account on a particular date or the fair market value of an account on a particular date.

SECTION 5.

(a) There is created a qualified ABLE account plan.

(b) The commissioner, or if designated by the commissioner, the state treasurer shall serve as account administrator.

(c) Any eligible individual who is a resident of this state may participate in the plan to create an ABLE account.

(d) The plan shall allow any person or entity to make contributions to the account intending for the contributions and any earnings on the account to be applied toward the qualified disability expenses of the designated beneficiary.

(e) A separate account shall be maintained for each designated beneficiary for whom contributions are made, and no more than one (1) account shall be established for each designated beneficiary.

(f) The designated beneficiary shall retain ownership of all amounts on deposit in the account unless otherwise provided in this part. Earnings accrued to the account shall be considered to be held in trust in the same manner as contributions. Amounts on deposit in the account shall be available for expenses and penalties imposed by the plan. A plan created on behalf of a designated beneficiary under this part shall entitle the designated beneficiary to an amount equal to the funds on deposit in the account during the year in which the funds are needed to cover the beneficiary's qualified disability expenses, not to exceed the redemption value of the account.

SECTION 6.

(a) The department shall administer the qualified ABLE account plan, including accepting and processing applications, maintaining account records, making payments, and undertaking any other necessary tasks to administer the plan.

(b) The department may operate the plan and may provide, itself or through its designees, for the operation of the plan in a manner that qualifies the plan under the code, and takes any and all necessary action to maintain the qualification; provided, that the eligible individual's rights to fund the ABLE account shall not be limited or impaired.

(c) The department may contract with one (1) or more third parties for the provision of services necessary for the management and operation of the qualified ABLE account program, including providing incentives and marketing the plan. The department may also contract with any other program established by any other state pursuant to the code in order to provide similar benefits for residents of this state.

(d) The commissioner may delegate to the state treasurer the duty to carry out the day-to-day operations and responsibilities of the program. In exercising the delegation, the state treasurer shall be authorized to exercise such powers as are vested in the commissioner that are necessary to fulfill the delegated duties and responsibilities; 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 exercising the state treasurer's delegation from the department.

(e) The department may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for purposes of implementing and administering the plan and the program.

SECTION 7.

(a) An ABLE account shall be held and maintained as a separate account in the manner provided in subsection (b).

(b) The qualified ABLE account plan shall consist solely of:

(1) Contributions received by the department from designated beneficiaries or contributors on behalf of designated beneficiaries for a particular ABLE account or from any other source, whether public or private;

(2) All interest and investment income earned by the plan;

(3) Any monetary gift of any nature made by any individual by testamentary disposition, including any specific monetary gift or bequeath made by will, trust, or other disposition; and

(4) All other receipts of the department from any other source that the department determines appropriate.

(c) The department shall maintain an account for each ABLE account participation agreement showing the designated beneficiary of that participation agreement.

(d) The assets of the plan shall be preserved, invested, and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. The assets of the plan shall be expended solely to:

(1) Make payments to, or on behalf of, designated beneficiaries pursuant to Section 12; and

(2) Pay the investment fees and other costs of administering the plan.

(e) The amounts on deposit in the program shall not constitute property of the state. The assets of the plan shall be preserved, invested, and expended pursuant to and for the purposes set forth in this part, and the plan's moneys shall be held in trust for designated beneficiaries. The plan shall not be construed to be a department, institution, or agency of the state. Amounts on deposit in the plan shall not be commingled with state funds and the state shall have no claim to or against, or interest in, the funds. Any agreement entered into by or any obligation of the plan shall not constitute a debt or obligation of the state and the state shall have no obligation to any contributor, designated beneficiary, or any other person on account of the plan and all amounts obligated to be paid from the plan shall be limited to amounts available for the obligation on deposit in the plan. The amounts on deposit in any ABLE account may only be disbursed at the direction of the designated beneficiary or otherwise in accordance with Section 12. A plan shall continue in existence as long as the plan holds any contributions or has any obligations and until its existence is terminated by law, and upon termination any unclaimed assets shall return to the state.

(f) All revenues collected by the program shall not revert to the general fund but shall remain in the program and shall be used to fund the program.

SECTION 8.

(a) The department shall invest the money deposited in accounts in the plan. The department may develop one (1) or more plans for offering ABLE accounts. The plans shall include the investment vehicles for investing the contributions made to the accounts.

(b) The department may cause the imposition and collection of reasonable administrative fees and charges in connection with the creation and maintenance of the ABLE accounts.

(c) No designated beneficiary nor any contributor participating in the program shall direct, whether directly or indirectly, the investment of or earnings on contributions to the program more than two (2) times in any calendar year.

SECTION 9.

(a) A contributor may make contributions to an ABLE account on behalf of a designated beneficiary. Contributions to an account made by persons other than the designated beneficiary become the property of the designated beneficiary. A contributor does not acquire an interest in an ABLE account by making contributions to an account.

(b) Contributions to an ABLE account are subject to the requirements of the code. The maximum balance of an ABLE account shall not exceed the limit imposed under the code. A contribution to any account for a designated beneficiary shall be rejected if the contribution would cause the total account balance of the account to exceed the limit imposed under the code.

(c) A designated beneficiary is the only person entitled to:

(1) Select or change a designated beneficiary; or

(2) Request distributions or rollover distributions from an account.

(d) A qualified withdrawal may be made by an agent of the designated beneficiary who has the power of attorney or by the designated beneficiary's legal guardian.

(e) A designated beneficiary may designate a member of the family who is an eligible individual as a new designated beneficiary and transfer the account to the member of the family.

SECTION 10. Notwithstanding any law to the contrary, all assets, income, and distributions of qualified ABLE account plans are exempt from any state, county, or municipal tax and shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court. This exemption shall include plans and any properly authorized payments made to or by the plans.

SECTION 11. In designing and establishing the plan's requirements and in negotiating or entering into contracts with third parties under Section 6, the commissioner shall consult with the state treasurer.

SECTION 12.

(a) Qualified distributions may be made:

(1) Directly to participating providers of goods and services that are qualified disability expenses, if purchased for a designated beneficiary;

(2) In the form of a check payable to both the designated beneficiary and provider of goods or services that are qualified disability expenses; or

(3) Directly to the designated beneficiary, if the designated beneficiary has already paid qualified disability expenses.

(b) Qualified distributions shall be withdrawn proportionally from contributions and earnings in a designated beneficiary's account on the date of distribution as provided in the code.

SECTION 13. Upon the death of a beneficiary, the amount remaining in the designated beneficiary's account shall be distributed pursuant to the code.

SECTION 14. If the department determines that any of the qualified ABLE account plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of this state or to the state itself, the department may suspend or terminate the plan immediately.

SECTION 15.

(a) Notwithstanding any other law to the contrary, except as provided in subsection (b), the department and any officer, employee, agent, or contractor of the department shall not disclose personal information about any person obtained by the department in connection with the making of contributions to any ABLE account under this part.

(b) The department and any officer or employee of the department may release information described in subsection (a) under the following circumstances:

- (1) To the extent that the designated beneficiary or their respective legal representative consents to disclosure;
- (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 of the department;
- (4) To the internal revenue service for the purpose of filing reports of distributions made under the program; or

(5) In any administrative proceeding or court action between the contributor, designated beneficiary, or their respective legal representative and the department.

SECTION 16. The commissioner shall promote awareness of the availability and advantages of the qualified ABLE account plan as a way to assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities. The cost of these promotional efforts shall not be funded with fees imposed on designated beneficiaries.

SECTION 17.

(a) The department may establish, or contract for the establishment of, an incentive plan or plans to encourage residents of this state to participate in any such other qualified ABLE account program or in any qualified ABLE account program established by the state. The commissioner may delegate to the state treasurer the authority to implement the incentives. The implementation shall include determining the amount of the incentives not to exceed an amount approved by the department, the length of time the incentives shall be available, and the method by which the incentives shall be provided. Through the commissioner's delegation, the state treasurer may establish and administer a plan to implement the incentives that the state treasurer may change from time to time without additional commissioner authorization.

(b) The incentive plan or plans may consist, in whole or in part, of tax incentives to accounts established by or on behalf of residents of this state in any program and tax incentives, including the income tax levied pursuant to § 67-2-102; the professional privilege tax levied pursuant to § 67-4-1702; the passenger motor vehicle registration renewal fee prescribed in title 55, chapter 4; or wheel tax levied pursuant to § 5-8-102 or private act, for residents of this state who establish accounts in any such program.

(c) The commissioner may approve the expenditure of the funds, or funds using other services or programs deemed necessary or appropriate by the commissioner to encourage participation in plans by residents of this state within the department's approved annual budget. The state treasurer is authorized to use forms of electronic payment, including prepaid debit cards to provide the incentives. Notwithstanding this section or any other law to the contrary, the availability of the amount of the incentive or the cost to cover any other services or programs authorized by this section, if intended to be funded by state funds, shall be subject to the appropriation of funds in the general appropriations act for the purposes set forth in this section or from any amount collected by the department under this section.

SECTION 18. Tennessee Code Annotated, Section 5-8-102, is amended by adding the following as a new subsection:

(e)

(1) The department of revenue shall assist the department of intellectual and developmental disabilities, which administers the qualified ABLE account program, in the implementation of a wheel tax incentive established under Section 17 that shall include qualified ABLE account plan incentive inserts in the department's motor vehicle registration notifications, providing qualified ABLE account plan incentives information with any web site renewal, sending other notifications about qualified ABLE account plan incentives by electronic means, and providing information about qualified ABLE account plan incentives through any other web-based means.

(2) For any insert included in the mailing of renewal notices that causes the total postal weight to be over one ounce (1 oz.) as permitted by the United

States postal service, the department of intellectual and developmental disabilities shall pay the increased cost of mailing.

SECTION 19. Tennessee Code Annotated, Title 55, Chapter 4, Part 1, is amended by adding the following as a new section:

(a) The department shall assist the department of intellectual and developmental disabilities, which administers the qualified ABLE account program, in the implementation of a passenger motor vehicle registration incentive established under Section 17 that shall include qualified ABLE account plan incentive inserts in the department's motor vehicle registration notifications, providing qualified ABLE account plan incentives information with any web site renewal, sending other notifications about qualified ABLE account plan incentives by electronic means, and providing information about qualified ABLE account plan incentives through any other web-based means.

(b) For any insert included in the mailing of renewal notices that causes the total postal weight to be over one ounce (1 oz.) as permitted by the United States postal service, the department of intellectual and developmental disabilities shall pay the increased cost of mailing.

SECTION 20. Tennessee Code Annotated, Title 67, Chapter 2, Part 1, is amended by adding the following as a new section:

(a) The department shall assist the department of intellectual and developmental disabilities, which administers the qualified ABLE account program, in the implementation of an income tax incentive established under Section 17 that shall include qualified ABLE account plan incentive inserts in the department's income tax notifications, providing qualified ABLE account plan incentives information with any web site tax payment form, sending other notifications about qualified ABLE account plan

incentives by electronic means, and providing information about qualified ABLE account plan incentives through any other web-based means.

(b) For any insert included in the mailing of renewal notices that causes the total postal weight to be over one ounce (1 oz.) as permitted by the United States postal service, the department of intellectual and developmental disabilities shall pay the increased cost of mailing.

SECTION 21. Tennessee Code Annotated, Title 67, Chapter 4, Part 17, is amended by adding the following as a new section:

(a) The department shall assist the department of intellectual and developmental disabilities, which administers the qualified ABLE account plan program, in the implementation of a professional privilege tax incentive established under Section 17 that shall include qualified ABLE account plan inserts in the department's professional privilege tax notifications, providing qualified ABLE account plan incentives information with any web site tax payment form, sending other notifications about qualified ABLE account plan incentives by electronic means, and providing information about qualified ABLE account plan incentives through any other web-based means.

(b) For any insert included in the mailing of renewal notices that causes the total postal weight to be over one ounce (1 oz.) as permitted by the United States postal service, the department of intellectual and developmental disabilities shall pay the increased cost of mailing.

SECTION 22. This act shall take effect upon becoming a law, the public welfare requiring it.