

118TH CONGRESS
2D SESSION

S. 4911

To amend the Internal Revenue Code to allow employers to contribute to
ABLE accounts in lieu of retirement plan contributions.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2024

Mr. CASEY (for himself, Ms. HIRONO, Mr. WYDEN, Mr. WELCH, Mr. VAN
HOLLEN, Ms. KLOBUCHAR, Mr. SANDERS, and Ms. DUCKWORTH) intro-
duced the following bill; which was read twice and referred to the Com-
mittee on Finance

A BILL

To amend the Internal Revenue Code to allow employers
to contribute to ABLE accounts in lieu of retirement
plan contributions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “ABLE Employment
5 Flexibility Act”.

1 **SEC. 2. PROTECTING WORKING ABLE INDIVIDUALS FROM**
2 **LOSING BENEFITS BECAUSE OF RETIREMENT**
3 **PLAN RULES.**

4 (a) IN GENERAL.—Section 414 of the Internal Rev-
5 enue Code of 1986 is amended by adding at the end the
6 following new subsection:

7 “(dd) ABLE ACCOUNT CONTRIBUTIONS.—

8 “(1) IN GENERAL.—An applicable employer
9 plan (as defined in subsection (v)(6)(A)) which is a
10 defined contribution plan shall not be treated as fail-
11 ing to meet any requirement of this title solely be-
12 cause the plan provides that an eligible ABLE indi-
13 vidual may elect for a plan year that employer con-
14 tributions which would otherwise be made under the
15 terms of the plan for such plan year shall (in lieu
16 of contribution to the plan) be contributed by the
17 employer to a qualified ABLE program described in
18 section 529A on behalf of such eligible ABLE indi-
19 vidual.

20 “(2) TREATMENT OF CONTRIBUTIONS.—

21 “(A) NO DEDUCTION FOR AMOUNTS CON-
22 TRIBUTED TO ABLE ACCOUNT.—Except as pro-
23 vided in subparagraph (B), a contribution to a
24 qualified ABLE program pursuant to an elec-
25 tion under paragraph (1) shall not be treated as
26 a contribution to an applicable employer plan.

1 “(B) APPLICATION OF NONDISCRIMINA-
2 TION RULES.—Under rules prescribed by the
3 Secretary, for purposes of applying sections
4 401(a)(4), 401(k)(3), 401(k)(12), 401(k)(13),
5 401(m)(2), 403(b)(12), 408(k)(3),
6 408(p)(2)(iii), 408(p)(2)(B), 410, and 416, con-
7 tributions made to a qualified ABLE program
8 pursuant to an election under paragraph (1)
9 shall be treated as if such contributions were
10 made to the plan.

11 “(3) UNIVERSAL AVAILABILITY.—Paragraph
12 (1) shall not apply unless the plan provides that the
13 election described therein is available to all eligible
14 ABLE individuals who are eligible to participate in
15 the plan.

16 “(4) CASH OR DEFERRED ARRANGEMENT.—A
17 plan shall not fail to be treated as including a quali-
18 fied cash or deferred arrangement described in sec-
19 tion 401(k)(1) solely because such plan provides for
20 the election described in paragraph (1).

21 “(5) ELIGIBLE ABLE INDIVIDUAL.—For pur-
22 poses of this subsection, the term ‘eligible ABLE in-
23 dividual’ means an employee who, as of the first day
24 of a plan year, is an eligible individual within the

1 meaning of section 529A(e)(1) for the taxable year
2 containing such first day of the plan year.

3 “(6) TREATMENT OF PERMISSIVE WITH-
4 DRAWALS.—An eligible ABLE individual may direct
5 amounts eligible for withdrawal from an eligible con-
6 tribution arrangement pursuant to section 414(w) to
7 be contributed to a qualified ABLE program de-
8 scribed in section 529A on behalf of such eligible
9 ABLE individual.”.

10 (b) TREATMENT AS BENEFICIARY CONTRIBUTION.—
11 Section 529A(b)(7) of the Internal Revenue Code of 1986
12 is amended by redesignating subparagraph (B) as sub-
13 paragraph (C) and by inserting after subparagraph (A)
14 the following new subparagraph:

15 “(B) EMPLOYER CONTRIBUTIONS.—Con-
16 tributions made to a qualified ABLE program
17 by an employer on behalf of a designated bene-
18 ficiary described in this paragraph pursuant to
19 paragraph (1) or (6) of section 414(a)(a) shall
20 be treated as made by the designated bene-
21 ficiary.”.

22 (c) CLARIFICATION OF AVAILABILITY OF EMPLOYER
23 CONTRIBUTIONS.—Section 529A(e) of the Internal Rev-
24 enue Code of 1986 is amended by adding at the end the
25 following new paragraph:

1 “(7) EMPLOYER CONTRIBUTIONS.—An em-
2 ployer of an eligible individual may contribute to any
3 qualified ABLE program for which the eligible indi-
4 vidual is the designated beneficiary, including
5 through a contribution matching a contribution
6 made by such eligible individual to the qualified
7 ABLE program.”.

8 (d) DEDUCTION FOR CONTRIBUTIONS REMITTED BY
9 EMPLOYER TO A QUALIFIED ABLE PROGRAM.—Not later
10 than 1 year after the date of the enactment of this Act,
11 the Secretary of the Treasury shall—

12 (1) amend the regulations under section 162 of
13 the Internal Revenue Code of 1986 to confirm that
14 contributions made by an employer to a qualified
15 ABLE program described in section 529A of such
16 Code on behalf of an eligible ABLE individual de-
17 scribed in section 414(dd)(5) of such Code who is an
18 employee of such employer shall be considered a rea-
19 sonable allowance for salaries or other compensation
20 for personal service if such contribution for a year,
21 taking into account all other contributions to such
22 qualified ABLE program, does not exceed the max-
23 imum contribution described in section
24 529A(b)(2)(B) of such Code with respect to such in-
25 dividual; and

1 (2) update the publications issued for employers
2 to encourage employers offering a retirement plan
3 with automatic enrollment to notify employees who
4 elect not to contribute to the plan and who may be
5 eligible to contribute to a qualified ABLE program
6 to notify such employees of the possibility of a con-
7 tribution under section 529A(b)(2)(B)(ii) of such
8 Code.

9 (e) EFFECTIVE DATE.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), the amendments made by this section
12 shall apply to plan and taxable years beginning after
13 the date of the enactment of this Act.

14 (2) CLARIFICATIONS.—The amendment made
15 by subsection (c) and the amendments made pursu-
16 ant to subsection (d)(1) shall apply to plan and tax-
17 able years beginning before, on, or after the date of
18 the enactment of this Act.

19 (f) MODEL AMENDMENT AUTHORITY.—The Sec-
20 retary of the Treasury (or such Secretary's delegate) shall
21 promulgate model amendments which plans may adopt to
22 implement contributions to qualified ABLE programs pur-
23 suant to the amendments made by this section.

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