HB3809

LRB101 11427 RJF 57057 b

101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3809

by Rep. Allen Skillicorn

SYNOPSIS AS INTRODUCED:

15 ILCS 505/16.5
15 ILCS 505/16.6

Amends the State Treasurer Act. In a Section concerning a college savings pool, provides that the term "qualified expenses" includes any qualified higher education expense allowed under specified provisions of the Internal Revenue Code. In a Section concerning the ABLE account program, provides the funds contained in a College Savings Pool account established under the Act may be rolled over into an eligible ABLE account to the extent permitted by specified provisions of the Internal Revenue Code. Effective immediately.

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A BILL FOR

AN ACT concerning State government.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The State Treasurer Act is amended by changing Sections 16.5 and 16.6 as follows:

(15 ILCS 505/16.5)

Sec. 16.5. College Savings Pool.

(a) Definitions. As used in this Section:

"Account owner" means any person or entity who has opened an account or to whom ownership of an account has been transferred, as allowed by the Internal Revenue Code, and who has authority to withdraw funds, direct withdrawal of funds, change the designated beneficiary, or otherwise exercise control over an account in the College Savings Pool.

"Donor" means any person or entity who makes contributions to an account in the College Savings Pool.

"Designated beneficiary" means any individual designated as the beneficiary of an account in the College Savings Pool by an account owner. A designated beneficiary must have a valid social security number or taxpayer identification number. In the case of an account established as part of a scholarship program permitted under Section 529 of the Internal Revenue Code, the designated beneficiary is any individual receiving benefits accumulated in the account as a scholarship.

"Member of the family" has the same meaning ascribed to that term under Section 529 of the Internal Revenue Code.

"Nonqualified withdrawal" means a distribution from an account other than a distribution that (i) is used for the qualified expenses of the designated beneficiary; (ii) results from the beneficiary's death or disability; (iii) is a rollover to another account in the College Savings Pool; or (iv) is a rollover to an ABLE account, as defined in Section 16.6 of this Act, or any distribution that, within 60 days after such distribution, is transferred to an ABLE account of the designated beneficiary or a member of the family of the designated beneficiary to the extent that the distribution, when added to all other contributions made to the ABLE account for the taxable year, does not exceed the limitation under Section 529A(b)(2)(B)(i) of the Internal Revenue Code.

"Program manager" means any financial institution or entity lawfully doing business in the State of Illinois selected by the State Treasurer to oversee the recordkeeping, custody, customer service, investment management, and marketing for one or more of the programs in the College Savings Pool.

"Qualified expenses" means: (i) tuition, fees, and the costs of books, supplies, and equipment required for enrollment or attendance at an eligible educational institution; (ii) expenses for special needs services, in the case of a special needs beneficiary, which are incurred in connection with such enrollment or attendance; (iii) certain expenses for the purchase of computer or peripheral equipment, as defined in Section 168 of the federal Internal Revenue Code (26 U.S.C. 168), computer software, as defined in Section 197 of the federal Internal Revenue Code (26 U.S.C. 197), or Internet access and related services, if such equipment, software, or services are to be used primarily by the beneficiary during any of the years the beneficiary is enrolled at an eligible educational institution, except that, such expenses shall not include expenses for computer software designed for sports, games, or hobbies, unless the software is predominantly educational in nature; ~~and~~ (iv) room and board expenses incurred while attending an eligible educational institution at least half-time; and (v) any qualified higher education expense, as that term is used in subsection (c) of Section 529 of the federal Internal Revenue Code. "Eligible educational institutions", as used in this Section, means public and private colleges, junior colleges, graduate schools, and certain vocational institutions that are described in Section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and that are eligible to participate in Department of Education student aid programs. A student shall be considered to be enrolled at least half-time if the student is enrolled for at least half the full-time academic workload for the course of study the student is pursuing as determined under the standards of the institution at which the student is enrolled.

(b) Establishment of the Pool. The State Treasurer may establish and administer a College Savings Pool as a qualified tuition program under Section 529 of the Internal Revenue Code. The Pool may consist of one or more college savings programs. The State Treasurer, in administering the College Savings Pool, may receive, hold, and invest moneys paid into the Pool and perform such other actions as are necessary to ensure that the Pool operates as a qualified tuition program in accordance with Section 529 of the Internal Revenue Code.

(c) Administration of the College Savings Pool. The State Treasurer may engage one or more financial institutions to handle the overall administration, investment management, recordkeeping, and marketing of the programs in the College Savings Pool. The contributions deposited in the Pool, and any earnings thereon, shall not constitute property of the State or be commingled with State funds and the State shall have no claim to or against, or interest in, such funds.

(d) Availability of the College Savings Pool. The State Treasurer may permit persons, including trustees of trusts and custodians under a Uniform Transfers to Minors Act or Uniform Gifts to Minors Act account, and certain legal entities to be account owners, including as part of a scholarship program, provided that: (1) an individual, trustee or custodian must have a valid social security number or taxpayer identification number, be at least 18 years of age, and have a valid United

States street address; and (2) a legal entity must have a valid taxpayer identification number and a valid United States street address. Both in-state and out-of-state persons may be account owners and donors, and both in-state and out-of-state individuals may be designated beneficiaries in the College Savings Pool.

(e) Fees. The State Treasurer shall establish fees to be imposed on accounts to recover the costs of administration, recordkeeping, and investment management. The Treasurer must use his or her best efforts to keep these fees as low as possible and consistent with administration of high quality competitive college savings programs.

(f) Investments in the State. To enhance the safety and liquidity of the College Savings Pool, to ensure the diversification of the investment portfolio of the College Savings Pool, and in an effort to keep investment dollars in the State of Illinois, the State Treasurer may make a percentage of each account available for investment in participating financial institutions doing business in the State.

(g) Investment policy. The Treasurer shall develop, publish, and implement an investment policy covering the investment of the moneys in each of the programs in the College Savings Pool. The policy shall be published each year as part of the audit of the College Savings Pool by the Auditor General, which shall be distributed to all account owners in such program. The Treasurer shall notify all account owners in such program in writing, and the Treasurer shall publish in a newspaper of general circulation in both Chicago and Springfield, any changes to the previously published investment policy at least 30 calendar days before implementing the policy. Any investment policy adopted by the Treasurer shall be reviewed and updated if necessary within 90 days following the date that the State Treasurer takes office.

(h) Investment restrictions. An account owner may, directly or indirectly, direct the investment of any contributions to the College Savings Pool (or any earnings thereon) only as provided in Section 529(b)(4) of the Internal Revenue Code. Donors and designated beneficiaries, in those capacities, may not, directly or indirectly, direct the investment of any contributions to the Pool (or any earnings thereon).

(i) Distributions. Distributions from an account in the College Savings Pool may be used for the designated beneficiary's qualified expenses. Funds contained in a College Savings Pool account may be rolled over into an eligible ABLE account, as defined in Section 16.6 of this Act, to the extent permitted by Section 529(c)(3)(C) of the Internal Revenue Code. To the extent a nonqualified withdrawal is made from an account, the earnings portion of such distribution may be treated by the Internal Revenue Service as income subject to income tax and a 10% federal penalty tax. ~~Internet~~

Distributions made from the College Savings Pool may be made directly to the educational institution, directly to a vendor, in the form of a check payable to both the designated beneficiary and the institution or vendor, directly to the designated beneficiary or account owner, or in any other manner that is permissible under Section 529 of the Internal Revenue Code.

(j) Contributions. Contributions to the College Savings Pool shall be as follows:

(1) Contributions to an account in the College Savings Pool may be made only in cash.

(2) The Treasurer shall limit the contributions that may be made to the College Savings Pool on behalf of a designated beneficiary, as required under Section 529 of the Internal Revenue Code, to prevent contributions for the benefit of a designated beneficiary in excess of those necessary to provide for the qualified expenses of the designated beneficiary. The Pool shall not permit any additional contributions to an account as soon as the aggregate accounts for the designated beneficiary in the Pool reach a specified account balance limit applicable to all designated beneficiaries.

(3) The contributions made on behalf of a designated beneficiary who is also a beneficiary under the Illinois Prepaid Tuition Program shall be further restricted to ensure that the contributions in both programs combined do

not exceed the limit established for the College Savings Pool.

(k) Illinois Student Assistance Commission. The Treasurer shall provide the Illinois Student Assistance Commission each year at a time designated by the Commission, an electronic report of all account owner accounts in the Treasurer's College Savings Pool, listing total contributions and disbursements from each individual account during the previous calendar year. As soon thereafter as is possible following receipt of the Treasurer's report, the Illinois Student Assistance Commission shall, in turn, provide the Treasurer with an electronic report listing those College Savings Pool account owners who also participate in the State's prepaid tuition program, administered by the Commission. The Commission shall be responsible for filing any combined tax reports regarding State qualified savings programs required by the United States Internal Revenue Service.

The Treasurer shall work with the Illinois Student Assistance Commission to coordinate the marketing of the College Savings Pool and the Illinois Prepaid Tuition Program when considered beneficial by the Treasurer and the Director of the Illinois Student Assistance Commission. The Treasurer shall provide a separate accounting for each designated beneficiary to each account owner.

(l) Prohibition; exemption. No interest in the program, or any portion thereof, may be used as security for a loan. Moneys held in an account invested in the College Savings Pool shall be exempt from all claims of the creditors of the account owner, donor, or designated beneficiary of that account, except for the non-exempt College Savings Pool transfers to or from the account as defined under subsection (j) of Section 12-1001 of the Code of Civil Procedure.

(m) Taxation. The assets of the College Savings Pool and its income and operation shall be exempt from all taxation by the State of Illinois and any of its subdivisions. The accrued earnings on investments in the Pool once disbursed on behalf of a designated beneficiary shall be similarly exempt from all taxation by the State of Illinois and its subdivisions, so long as they are used for qualified expenses. Contributions to a College Savings Pool account during the taxable year may be deducted from adjusted gross income as provided in Section 203 of the Illinois Income Tax Act. The provisions of this paragraph are exempt from Section 250 of the Illinois Income Tax Act.

(n) Rules. The Treasurer shall adopt rules he or she considers necessary for the efficient administration of the College Savings Pool. The rules shall provide whatever additional parameters and restrictions are necessary to ensure that the College Savings Pool meets all of the requirements for a qualified state tuition program under Section 529 of the Internal Revenue Code.

The rules shall provide for the administration expenses of the Pool to be paid from its earnings and for the investment earnings in excess of the expenses to be credited at least monthly to the account owners in the Pool in a manner which equitably reflects the differing amounts of their respective investments in the Pool and the differing periods of time for which those amounts were in the custody of the Pool.

The rules shall require the maintenance of records that enable the Treasurer's office to produce a report for each account in the Pool at least annually that documents the account balance and investment earnings.

Notice of any proposed amendments to the rules and regulations shall be provided to all account owners prior to adoption. Amendments to rules and regulations shall apply only to contributions made after the adoption of the amendment.

(o) Bond. The State Treasurer shall give bond with at least one surety, payable to and for the benefit of the account owners in the College Savings Pool, in the penal sum of $10,000,000, conditioned upon the faithful discharge of his or her duties in relation to the College Savings Pool.

(Source: P.A. 99-143, eff. 7-27-15; 100-161, eff. 8-18-17; 100-863, eff. 8-14-18; 100-905, eff. 8-17-18; revised 10-18-18.)

(15 ILCS 505/16.6)

Sec. 16.6. ABLE account program.

(a) As used in this Section:

"ABLE account" or "account" means an account established for the purpose of financing certain qualified expenses of eligible individuals as specifically provided for in this Section and authorized by Section 529A of the Internal Revenue Code.

"ABLE account plan" or "plan" means the savings account plan provided for in this Section.

"Account administrator" means the person selected by the State Treasurer to administer the daily operations of the ABLE account plan and provide marketing, recordkeeping, investment management, and other services for the plan.

"Aggregate account balance" means the amount in an account on a particular date or the fair market value of an account on a particular date.

"Beneficiary" means the ABLE account owner.

"Board" means the Illinois State Board of Investment.

"Contracting state" means a state without a qualified ABLE program which has entered into a contract with Illinois to provide residents of the contracting state access to a qualified ABLE program.

"Designated representative" means a person who is authorized to act on behalf of an account owner. An account owner is authorized to act on his or her own behalf unless the account owner is a minor or the account owner has been adjudicated to have a disability so that a guardian has been appointed. A designated representative acts in a fiduciary capacity to the account owner. The State Treasurer shall recognize a person as a designated representative without appointment by a court in the following order of priority:

(1) The account owner's plenary guardian of the estate, or the account owner's limited guardian of financial or contractual matters. Any guardian acting in this capacity shall not be required to seek court approval for any ABLE qualified distributions.

(2) The agent named by the account owner in a property power of attorney recognized as a statutory short form power of attorney for property.

(3) Such individual or entity that the account owner so designates in writing, in a manner to be established by the State Treasurer.

(4) Such other individual or entity designated by the State Treasurer pursuant to its rules.

"Disability certification" has the meaning given to that term under Section 529A of the Internal Revenue Code.

"Eligible individual" has the meaning given to that term under Section 529A of the Internal Revenue Code.

"Participation agreement" means an agreement to participate in the ABLE account plan between an account owner and the State, through its agencies and the State Treasurer.

"Qualified disability expenses" has the meaning given to that term under Section 529A of the Internal Revenue Code.

"Qualified withdrawal" or "qualified distribution" means a withdrawal from an ABLE account to pay the qualified disability expenses of the beneficiary of the account.

(b) The "Achieving a Better Life Experience" or "ABLE" account program is hereby created and shall be administered by the State Treasurer. The purpose of the ABLE plan is 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 to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, federal and State medical and disability insurance, the beneficiary's employment, and other sources. Under the plan, a person may make contributions to an ABLE account to meet the qualified disability expenses of the designated beneficiary of the account. The plan must be operated as an accounts-type plan that permits persons to save for qualified disability expenses incurred by or on behalf of an eligible individual.

The State Treasurer shall promote awareness of the availability and advantages of the 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 participants by the State Treasurer.

The State Treasurer shall not accept contributions for ABLE accounts under this Section until the Internal Revenue Service has issued its final regulations or interim guidance concerning ABLE accounts.

A separate account must be maintained for each beneficiary for whom contributions are made, and no more than one account shall be established per beneficiary. If an ABLE account is established for a designated beneficiary, no account subsequently established for such beneficiary shall be treated as an ABLE account. The preceding sentence shall not apply in the case of an ABLE account established for purposes of a rollover as permitted under Section 529A of the Internal Revenue Code.

An ABLE account may be established under this Section for a designated beneficiary who is a resident of Illinois, a resident of a contracting state, or a resident of any other state.

Prior to the establishment of an ABLE account, an account owner must provide documentation to the State Treasurer that the account beneficiary is an eligible individual.

Annual contributions to an ABLE account on behalf of a beneficiary are subject to the requirements of subsection (b) of Section 529A of the Internal Revenue Code. No person may make a contribution to an ABLE account if such a contribution would result in the aggregate account balance of an ABLE account exceeding the account balance limit authorized under Section 529A of the Internal Revenue Code. The Treasurer shall review the contribution limit at least annually.

The State Treasurer shall administer the plan, including accepting and processing applications, maintaining account records, making payments, and undertaking any other necessary tasks to administer the plan, including the appointment of an account administrator. The State Treasurer may contract with one or more third parties to carry out some or all of these administrative duties, including, but not limited to, providing investment management services, incentives, and marketing the plan.

In designing and establishing the plan's requirements and in negotiating or entering into contracts with third parties under this Section, the State Treasurer shall consult with the Board. The State Treasurer shall establish fees to be imposed on participants to recover the costs of administration, recordkeeping, and investment management. The State Treasurer must use his or her best efforts to keep these fees as low as possible, consistent with efficient administration.

Funds contained in a College Savings Pool account established under Section 16.5 may be rolled over into an eligible ABLE account to the extent permitted by Section 529(c)(3)(C) of the Internal Revenue Code.

The Illinois ABLE Accounts Administrative Fund is created as a nonappropriated trust fund in the State treasury. The State Treasurer shall use moneys in the Administrative Fund to pay for administrative expenses he or she incurs in the performance of his or her duties under this Section. The State Treasurer shall use moneys in the Administrative Fund to cover administrative expenses incurred under this Section. The Administrative Fund may receive any grants or other moneys designated for administrative purposes from the State, or any unit of federal, state, or local government, or any other person, firm, partnership, or corporation. Any interest earnings that are attributable to moneys in the Administrative Fund must be deposited into the Administrative Fund. Any fees established by the State Treasurer to recover the costs of administration, recordkeeping, and investment management shall be deposited into the Administrative Fund.

Subject to appropriation, the State Treasurer may pay administrative costs associated with the creation and management of the plan until sufficient assets are available in the Administrative Fund for that purpose.

Applications for accounts, account owner data, account data, and data on beneficiaries of accounts are confidential and exempt from disclosure under the Freedom of Information Act.

(c) The State Treasurer may invest the moneys in ABLE accounts in the same manner and in the same types of investments provided for the investment of moneys by the Board. To enhance the safety and liquidity of ABLE accounts, to ensure the diversification of the investment portfolio of accounts, and in an effort to keep investment dollars in the State, the

State Treasurer may make a percentage of each account available for investment in participating financial institutions doing business in the State, except that the accounts may be invested without limit in investment options from open-ended investment companies registered under Section 80a of the federal Investment Company Act of 1940. The State Treasurer may contract with one or more third parties for investment management, recordkeeping, or other services in connection with investing the accounts.

The account administrator shall annually prepare and adopt a written statement of investment policy that includes a risk management and oversight program. The risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the ABLE plan, to ensure that the risks taken are prudent and properly managed, to provide an integrated process for overall risk management, and to assess investment returns as well as risk to determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards.

The State Treasurer may enter into agreements with other states to either allow Illinois residents to participate in a plan operated by another state or to allow residents of other states to participate in the Illinois ABLE plan.

(d) The State Treasurer shall ensure that the plan meets the requirements for an ABLE account under Section 529A of the

Internal Revenue Code. The State Treasurer may request a private letter ruling or rulings from the Internal Revenue Service and must take any necessary steps to ensure that the plan qualifies under relevant provisions of federal law. Notwithstanding the foregoing, any determination by the Secretary of the Treasury of the United States that an account was utilized to make non-qualified distributions shall not result in an ABLE account being disregarded as a resource.

A person may make contributions to an ABLE account on behalf of a beneficiary. Contributions to an account made by persons other than the account owner become the property of the account owner. Contributions to an account shall be considered as a transfer of assets for fair market value. A person does not acquire an interest in an ABLE account by making contributions to an account. A contribution to any account for a beneficiary must be rejected if the contribution would cause either the aggregate or annual account balance of the account to exceed the limits imposed by Section 529A of the Internal Revenue Code.

Any change in account owner must be done in a manner consistent with Section 529A of the Internal Revenue Code.

Notice of any proposed amendments to the rules and regulations shall be provided to all owners or their designated representatives prior to adoption. Amendments to rules and regulations shall apply only to contributions made after the adoption of the amendment. Amendments to this Section automatically amend the participation agreement. Any amendments to the operating procedures and policies of the plan shall automatically amend the participation agreement after adoption by the State Treasurer.

All assets of the plan, including any contributions to accounts, are held in trust for the exclusive benefit of the account owner and shall be considered spendthrift accounts exempt from all of the owner's creditors. The plan shall provide separate accounting for each designated beneficiary sufficient to satisfy the requirements of paragraph (3) of subsection (b) of Section 529A of the Internal Revenue Code. Assets must be held in either a state trust fund outside the State treasury, to be known as the Illinois ABLE plan trust fund, or in accounts with a third-party provider selected pursuant to this Section. Amounts contributed to ABLE accounts shall not be commingled with State funds and the State shall have no claim to or against, or interest in, such funds.

Plan assets are not subject to claims by creditors of the State and are not subject to appropriation by the State. Payments from the Illinois ABLE account plan shall be made under this Section.

The assets of ABLE accounts and their income may not be used as security for a loan.

The assets of ABLE accounts and their income and operation shall be exempt from all taxation by the State of Illinois and any of its subdivisions to the extent exempt from federal income taxation. The accrued earnings on investments in an ABLE account once disbursed on behalf of a designated beneficiary shall be similarly exempt from all taxation by the State of Illinois and its subdivisions to the extent exempt from federal income taxation, so long as they are used for qualified expenses.

Notwithstanding any other provision of law that requires consideration of one or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, any amount, including earnings thereon, in the ABLE account of such individual, any contributions to the ABLE account of the individual, and any distribution for qualified disability expenses shall be disregarded for such purpose with respect to any period during which such individual maintains, makes contributions to, or receives distributions from such ABLE account.

(e) The account owner or the designated representative of the account owner may request that a qualified distribution be made for the benefit of the account owner. Qualified distributions shall be made for qualified disability expenses allowed pursuant to Section 529A of the Internal Revenue Code. Qualified distributions must be withdrawn proportionally from contributions and earnings in an account owner's account on the date of distribution as provided in Section 529A of the

Internal Revenue Code. Unless prohibited by federal law, upon the death of a designated beneficiary, proceeds from an account may be transferred to the estate of a designated beneficiary, or to an account for another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary. An agency or instrumentality of the State may not seek payment under subsection (f) of Section 529A of the federal Internal Revenue Code from the account or its proceeds for benefits provided to a designated beneficiary.

(f) The State Treasurer may adopt rules to carry out the purposes of this Section. The State Treasurer shall further have the power to issue peremptory rules necessary to ensure that ABLE accounts meet all of the requirements for a qualified state ABLE program under Section 529A of the Internal Revenue Code and any regulations issued by the Internal Revenue Service.

(Source: P.A. 99-145, eff. 1-1-16; 99-563, eff. 7-15-16; 100-713, eff. 8-3-18.)

Section 99. Effective date. This Act takes effect upon becoming law.