

# HB4611



## 101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4611

Introduced 2/5/2020, by Rep. Bob Morgan

### SYNOPSIS AS INTRODUCED:

15 ILCS 505/16.6

Amends the State Treasurer Act. Provides that upon the death of a designated beneficiary, proceeds from an ABLE account may be transferred pursuant to a payable on death account agreement executed by the designated beneficiary or designated representative. Effective immediately.

LRB101 17168 RJF 66569 b

A BILL FOR

1 AN ACT concerning State government.

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

4 Section 5. The State Treasurer Act is amended by changing  
5 Section 16.6 as follows:

6 (15 ILCS 505/16.6)

7 Sec. 16.6. ABLE account program.

8 (a) As used in this Section:

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

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

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

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

1 "Beneficiary" means the ABLE account owner.

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

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

15 (1) The account owner's guardian of the person, plenary  
16 guardian of the estate, limited guardian of financial or  
17 contractual matters, or any other State-appointed  
18 guardian. A guardian acting in this capacity shall not be  
19 required to seek court approval for any ABLE account  
20 activity.

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

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

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

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

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

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

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

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

15          (b) Establishment of the ABLE Program. The "Achieving a  
16          Better Life Experience" or "ABLE" account program is hereby  
17          created and shall be administered by the State Treasurer. The  
18          purpose of the ABLE program is to encourage and assist  
19          individuals and families in saving private funds for the  
20          purpose of supporting individuals with disabilities to  
21          maintain health, independence, and quality of life, and to  
22          provide secure funding for disability-related expenses on  
23          behalf of designated beneficiaries with disabilities that will  
24          supplement, but not supplant, benefits provided through  
25          private insurance, federal and State medical and disability  
26          insurance, the beneficiary's employment, and other sources.

1 Under the plan, a person may make contributions to an ABLE  
2 account to meet the qualified disability expenses of the  
3 designated beneficiary of the account. The plan must be  
4 operated as an accounts-type plan that permits persons to save  
5 for qualified disability expenses incurred by or on behalf of  
6 an eligible individual.

7 (c) Promotion of the ABLE Program. The State Treasurer  
8 shall promote awareness of the availability and advantages of  
9 the ABLE account plan as a way to assist individuals and  
10 families in saving private funds for the purpose of supporting  
11 individuals with disabilities.

12 (d) Availability of the ABLE Program. An ABLE account may  
13 be established under this Section for a designated beneficiary  
14 who is a resident of Illinois, a resident of a contracting  
15 state, or a resident of any other state.

16 Annual contributions to an ABLE account on behalf of a  
17 beneficiary are subject to the requirements of subsection (b)  
18 of Section 529A of the Internal Revenue Code. No person may  
19 make a contribution to an ABLE account if such a contribution  
20 would result in the aggregate account balance of an ABLE  
21 account exceeding the account balance limit authorized under  
22 Section 529A of the Internal Revenue Code. The Treasurer shall  
23 review the contribution limit at least annually. A separate  
24 account must be maintained for each beneficiary for whom  
25 contributions are made, and no more than one account shall be  
26 established per beneficiary. If an ABLE account is established

1 for a designated beneficiary, no account subsequently  
2 established for such beneficiary shall be treated as an ABLE  
3 account. The preceding sentence shall not apply in the case of  
4 an ABLE account established for purposes of a rollover as  
5 permitted under Sections 529 and 529A of the Internal Revenue  
6 Code.

7 (e) Administration of the ABLE Program. The State Treasurer  
8 shall administer the plan, including accepting and processing  
9 applications, maintaining account records, making payments,  
10 and undertaking any other necessary tasks to administer the  
11 plan, including the appointment of an account administrator.  
12 The State Treasurer may contract with one or more third parties  
13 to carry out some or all of these administrative duties,  
14 including, but not limited to, providing investment management  
15 services, incentives, and marketing the plan. The State  
16 Treasurer may enter into agreements with other states to either  
17 allow Illinois residents to participate in a plan operated by  
18 another state or to allow residents of other states to  
19 participate in the Illinois ABLE plan.

20 (f) Fees. The State Treasurer may establish fees to be  
21 imposed on participants to cover the costs of administration,  
22 recordkeeping, and investment management. The State Treasurer  
23 must use his or her best efforts to keep these fees as low as  
24 possible, consistent with efficient administration.

25 (g) The Illinois ABLE Accounts Administrative Fund. The  
26 Illinois ABLE Accounts Administrative Fund is created as a

1 nonappropriated trust fund in the State treasury. The State  
2 Treasurer shall use moneys in the Administrative Fund to cover  
3 administrative expenses incurred under this Section. The  
4 Administrative Fund may receive any grants or other moneys  
5 designated for administrative purposes from the State, or any  
6 unit of federal, state, or local government, or any other  
7 person, firm, partnership, or corporation. Any interest  
8 earnings that are attributable to moneys in the Administrative  
9 Fund must be deposited into the Administrative Fund. Any fees  
10 established by the State Treasurer to cover the costs of  
11 administration, recordkeeping, and investment management shall  
12 be deposited into the Administrative Fund.

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

17 (h) Privacy. Applications for accounts, account owner  
18 data, account data, and data on beneficiaries of accounts are  
19 confidential and exempt from disclosure under the Freedom of  
20 Information Act.

21 (i) Investment Policy. The Treasurer shall prepare and  
22 adopt a written statement of investment policy that includes a  
23 risk management and oversight program which shall be reviewed  
24 annually and posted on the Treasurer's website prior to  
25 implementation. The risk management and oversight program  
26 shall be designed to ensure that an effective risk management

1 system is in place to monitor the risk levels of the ABLE plan,  
2 to ensure that the risks taken are prudent and properly  
3 managed, to provide an integrated process for overall risk  
4 management, and to assess investment returns as well as risk to  
5 determine if the risks taken are adequately compensated  
6 compared to applicable performance benchmarks and standards.  
7 To enhance the safety and liquidity of ABLE accounts, to ensure  
8 the diversification of the investment portfolio of accounts,  
9 and in an effort to keep investment dollars in the State, the  
10 State Treasurer may make a percentage of each account available  
11 for investment in participating financial institutions doing  
12 business in the State, except that the accounts may be invested  
13 without limit in investment options from open-ended investment  
14 companies registered under Section 80a of the federal  
15 Investment Company Act of 1940. The State Treasurer may  
16 contract with one or more third parties for investment  
17 management, recordkeeping, or other services in connection  
18 with investing the accounts.

19 (j) Investment restrictions. The State Treasurer shall  
20 ensure that the plan meets the requirements for an ABLE account  
21 under Section 529A of the Internal Revenue Code. The State  
22 Treasurer may request a private letter ruling or rulings from  
23 the Internal Revenue Service and must take any necessary steps  
24 to ensure that the plan qualifies under relevant provisions of  
25 federal law. Notwithstanding the foregoing, any determination  
26 by the Secretary of the Treasury of the United States that an



1 account was utilized to make non-qualified distributions shall  
2 not result in an ABLE account being disregarded as a resource.

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

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

16 (l) Notice. Notice of any proposed amendments to the rules  
17 and regulations shall be provided to all owners or their  
18 designated representatives prior to adoption. Amendments to  
19 rules and regulations shall apply only to contributions made  
20 after the adoption of the amendment. Amendments to this Section  
21 automatically amend the participation agreement. Any  
22 amendments to the operating procedures and policies of the plan  
23 shall automatically amend the participation agreement after  
24 adoption by the State Treasurer.

25 (m) Plan assets. All assets of the plan, including any  
26 contributions to accounts, are held in trust for the exclusive

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

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

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

18 (n) Taxation. The assets of ABLE accounts and their income  
19 and operation shall be exempt from all taxation by the State of  
20 Illinois and any of its subdivisions to the extent exempt from  
21 federal income taxation. The accrued earnings on investments in  
22 an ABLE account once disbursed on behalf of a designated  
23 beneficiary shall be similarly exempt from all taxation by the  
24 State of Illinois and its subdivisions to the extent exempt  
25 from federal income taxation, so long as they are used for  
26 qualified expenses.

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

13           (o) Distributions. The account owner or the designated  
14          representative of the account owner may make a qualified  
15          distribution for the benefit of the account owner. Qualified  
16          distributions shall be made for qualified disability expenses  
17          allowed pursuant to Section 529A of the Internal Revenue Code.  
18          Qualified distributions must be withdrawn proportionally from  
19          contributions and earnings in an account owner's account on the  
20          date of distribution as provided in Section 529A of the  
21          Internal Revenue Code. Unless prohibited by federal law, upon  
22          the death of a designated beneficiary, proceeds from an account  
23          may be transferred to the estate of a designated beneficiary,  
24          or to an account for another eligible individual specified by  
25          the designated beneficiary or the estate of the designated  
26          beneficiary, or transferred pursuant to a payable on death

1 account agreement executed by the designated beneficiary or  
2 designated representative. An agency or instrumentality of the  
3 State may not seek payment under subsection (f) of Section 529A  
4 of the federal Internal Revenue Code from the account or its  
5 proceeds for benefits provided to a designated beneficiary.

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

13 (Source: P.A. 100-713, eff. 8-3-18; 101-329, eff. 8-9-19.)

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