



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB4937

Introduced 1/27/2022, by Rep. Dagmara Avelar

#### SYNOPSIS AS INTRODUCED:

15 ILCS 505/16.6

Amends the State Treasurer Act. In provisions concerning the ABLE account program, provides that a "designated representative" means a person or entity (currently, person only) who is authorized to act on behalf of a "designated beneficiary". Provides that a person or entity seeking to open an ABLE account on behalf of a designated beneficiary must provide certification, subject to penalties of perjury, of the basis for the person's or entity's authority to act as a designated representative and that there is no other person or entity with higher priority to establish the ABLE account. Removes provisions allowing the State Treasurer to recognize specified persons or entities as a designated representative without appointment by a court. Provides that the State Treasurer may require any certifications that he or she deems necessary to implement the ABLE program, including oaths or affirmations made under penalties of perjury. Defines "Internal Revenue Code". Effective immediately.

LRB102 25945 RJF 35326 b

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" or "designated beneficiary" means the ABLE  
2 account owner.

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

7 "Designated representative" means a person or entity who  
8 is authorized to act on behalf of a "designated beneficiary".  
9 A designated beneficiary is authorized to act on his or her own  
10 behalf unless the designated beneficiary is a minor or the  
11 designated beneficiary has been adjudicated to have a  
12 disability so that a guardian has been appointed. A designated  
13 representative acts in a fiduciary capacity to the designated  
14 beneficiary. A person or entity seeking to open an ABLE  
15 account on behalf of a designated beneficiary must provide  
16 certification, subject to penalties of perjury, of the basis  
17 for the person's or entity's authority to act as a designated  
18 representative and that there is no other person or entity  
19 with higher priority to establish the ABLE account under  
20 Section 529A of the Internal Revenue Code and federal  
21 regulations. ~~The State Treasurer shall recognize the following~~  
22 ~~as a designated representative without appointment by a court:~~

23 ~~(1) The designated beneficiary's guardian of the~~  
24 ~~person, plenary guardian of the estate, limited guardian~~  
25 ~~of financial or contractual matters, or any other~~  
26 ~~State appointed guardian. A guardian acting in this~~

1 ~~capacity shall not be required to seek court approval for~~  
2 ~~any ABLE account activity.~~

3 ~~(2) The agent named by the designated beneficiary in a~~  
4 ~~property power of attorney recognized as a statutory short~~  
5 ~~form power of attorney for property.~~

6 ~~(3) Such individual or entity that the designated~~  
7 ~~beneficiary so designates in writing, in a manner to be~~  
8 ~~established by the State Treasurer.~~

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

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

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

15 "Internal Revenue Code" means the federal Internal Revenue  
16 Code.

17 "Participation agreement" means an agreement to  
18 participate in the ABLE account plan between a designated  
19 beneficiary and the State, through its agencies and the State  
20 Treasurer.

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

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

26 (b) Establishment of the ABLE Program. The "Achieving a

1 Better Life Experience" or "ABLE" account program is hereby  
2 created and shall be administered by the State Treasurer. The  
3 purpose of the ABLE program is to encourage and assist  
4 individuals and families in saving private funds for the  
5 purpose of supporting individuals with disabilities to  
6 maintain health, independence, and quality of life, and to  
7 provide secure funding for disability-related expenses on  
8 behalf of designated beneficiaries with disabilities that will  
9 supplement, but not supplant, benefits provided through  
10 private insurance, federal and State medical and disability  
11 insurance, the beneficiary's employment, and other sources.  
12 Under the plan, a person may make contributions to an ABLE  
13 account to meet the qualified disability expenses of the  
14 designated beneficiary of the account. The plan must be  
15 operated as an accounts-type plan that permits persons to save  
16 for qualified disability expenses incurred by or on behalf of  
17 an eligible individual.

18 (c) Promotion of the ABLE Program. The State Treasurer  
19 shall promote awareness of the availability and advantages of  
20 the ABLE account plan as a way to assist individuals and  
21 families in saving private funds for the purpose of supporting  
22 individuals with disabilities.

23 (d) Availability of the ABLE Program. An ABLE account may  
24 be established under this Section for a designated beneficiary  
25 who is a resident of Illinois, a resident of a contracting  
26 state, or a resident of any other state.

1 Annual contributions to an ABLE account on behalf of a  
2 beneficiary are subject to the requirements of subsection (b)  
3 of Section 529A of the Internal Revenue Code. No person may  
4 make a contribution to an ABLE account if such a contribution  
5 would result in the aggregate account balance of an ABLE  
6 account exceeding the account balance limit authorized under  
7 Section 529A of the Internal Revenue Code. The Treasurer shall  
8 review the contribution limit at least annually. A separate  
9 account must be maintained for each beneficiary for whom  
10 contributions are made, and no more than one account shall be  
11 established per beneficiary. If an ABLE account is established  
12 for a designated beneficiary, no account subsequently  
13 established for such beneficiary shall be treated as an ABLE  
14 account. The preceding sentence shall not apply in the case of  
15 an ABLE account established for purposes of a rollover as  
16 permitted under Sections 529 and 529A of the Internal Revenue  
17 Code.

18 (e) Administration of the ABLE Program. The State  
19 Treasurer shall administer the plan, including accepting and  
20 processing applications, maintaining account records, making  
21 payments, and undertaking any other necessary tasks to  
22 administer the plan, including the appointment of an account  
23 administrator. The State Treasurer may contract with one or  
24 more third parties to carry out some or all of these  
25 administrative duties, including, but not limited to,  
26 providing investment management services, incentives, and

1 marketing the plan. The State Treasurer may enter into  
2 agreements with other states to either allow Illinois  
3 residents to participate in a plan operated by another state  
4 or to allow residents of other states to participate in the  
5 Illinois ABLE plan. The State Treasurer may require any  
6 certifications that he or she deems necessary to implement the  
7 Program, including oaths or affirmations made under penalties  
8 of perjury.

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

14 (g) The Illinois ABLE Accounts Administrative Fund. The  
15 Illinois ABLE Accounts Administrative Fund is created as a  
16 nonappropriated trust fund in the State treasury. The State  
17 Treasurer shall use moneys in the Administrative Fund to cover  
18 administrative expenses incurred under this Section. The  
19 Administrative Fund may receive any grants or other moneys  
20 designated for administrative purposes from the State, or any  
21 unit of federal, state, or local government, or any other  
22 person, firm, partnership, or corporation. Any interest  
23 earnings that are attributable to moneys in the Administrative  
24 Fund must be deposited into the Administrative Fund. Any fees  
25 established by the State Treasurer to cover the costs of  
26 administration, recordkeeping, and investment management shall

1 be deposited into the Administrative Fund.

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

6 (h) Privacy. Applications for accounts, designated  
7 beneficiary data, account data, and data on beneficiaries of  
8 accounts are confidential and exempt from disclosure under the  
9 Freedom of Information Act.

10 (i) Investment Policy. The Treasurer shall prepare and  
11 adopt a written statement of investment policy that includes a  
12 risk management and oversight program which shall be reviewed  
13 annually and posted on the Treasurer's website prior to  
14 implementation. The risk management and oversight program  
15 shall be designed to ensure that an effective risk management  
16 system is in place to monitor the risk levels of the ABLE plan,  
17 to ensure that the risks taken are prudent and properly  
18 managed, to provide an integrated process for overall risk  
19 management, and to assess investment returns as well as risk  
20 to determine if the risks taken are adequately compensated  
21 compared to applicable performance benchmarks and standards.  
22 To enhance the safety and liquidity of ABLE accounts, to  
23 ensure the diversification of the investment portfolio of  
24 accounts, and in an effort to keep investment dollars in the  
25 State, the State Treasurer may make a percentage of each  
26 account available for investment in participating financial



1 institutions doing business in the State, except that the  
2 accounts may be invested without limit in investment options  
3 from open-ended investment companies registered under Section  
4 80a of the federal Investment Company Act of 1940. The State  
5 Treasurer may contract with one or more third parties for  
6 investment management, recordkeeping, or other services in  
7 connection with investing the accounts.

8 (j) Investment restrictions. The State Treasurer shall  
9 ensure that the plan meets the requirements for an ABLE  
10 account under Section 529A of the Internal Revenue Code. The  
11 State Treasurer may request a private letter ruling or rulings  
12 from the Internal Revenue Service and must take any necessary  
13 steps to ensure that the plan qualifies under relevant  
14 provisions of federal law. Notwithstanding the foregoing, any  
15 determination by the Secretary of the Treasury of the United  
16 States that an account was utilized to make non-qualified  
17 distributions shall not result in an ABLE account being  
18 disregarded as a resource.

19 (k) Contributions. A person may make contributions to an  
20 ABLE account on behalf of a beneficiary. Contributions to an  
21 account made by persons other than the designated beneficiary  
22 become the property of the designated beneficiary.  
23 Contributions to an account shall be considered as a transfer  
24 of assets for fair market value. A person does not acquire an  
25 interest in an ABLE account by making contributions to an  
26 account. A contribution to any account for a beneficiary must

1 be rejected if the contribution would cause either the  
2 aggregate or annual account balance of the account to exceed  
3 the limits imposed by Section 529A of the Internal Revenue  
4 Code.

5 Any change in designated beneficiary must be done in a  
6 manner consistent with Section 529A of the Internal Revenue  
7 Code.

8 (l) Notice. Notice of any proposed amendments to the rules  
9 and regulations shall be provided to all designated  
10 beneficiaries or their designated representatives prior to  
11 adoption. Amendments to rules and regulations shall apply only  
12 to contributions made after the adoption of the amendment.  
13 Amendments to this Section automatically amend the  
14 participation agreement. Any amendments to the operating  
15 procedures and policies of the plan shall automatically amend  
16 the participation agreement after adoption by the State  
17 Treasurer.

18 (m) Plan assets. All assets of the plan, including any  
19 contributions to accounts, are held in trust for the exclusive  
20 benefit of the designated beneficiary and shall be considered  
21 spendthrift accounts exempt from all of the designated  
22 beneficiary's creditors. The plan shall provide separate  
23 accounting for each designated beneficiary sufficient to  
24 satisfy the requirements of paragraph (3) of subsection (b) of  
25 Section 529A of the Internal Revenue Code. Assets must be held  
26 in either a state trust fund outside the State treasury, to be

1 known as the Illinois ABLE plan trust fund, or in accounts with  
2 a third-party provider selected pursuant to this Section.  
3 Amounts contributed to ABLE accounts shall not be commingled  
4 with State funds and the State shall have no claim to or  
5 against, or interest in, such funds.

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

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

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

21 Notwithstanding any other provision of law that requires  
22 consideration of one or more financial circumstances of an  
23 individual, for the purpose of determining eligibility to  
24 receive, or the amount of, any assistance or benefit  
25 authorized by such provision to be provided to or for the  
26 benefit of such individual, any amount, including earnings

1 thereon, in the ABLE account of such individual, any  
2 contributions to the ABLE account of the individual, and any  
3 distribution for qualified disability expenses shall be  
4 disregarded for such purpose with respect to any period during  
5 which such individual maintains, makes contributions to, or  
6 receives distributions from such ABLE account.

7 (o) Distributions. The designated beneficiary or the  
8 designated representative of the designated beneficiary may  
9 make a qualified distribution for the benefit of the  
10 designated beneficiary. Qualified distributions shall be made  
11 for qualified disability expenses allowed pursuant to Section  
12 529A of the Internal Revenue Code. Qualified distributions  
13 must be withdrawn proportionally from contributions and  
14 earnings in a designated beneficiary's account on the date of  
15 distribution as provided in Section 529A of the Internal  
16 Revenue Code. Unless prohibited by federal law, upon the death  
17 of a designated beneficiary, proceeds from an account may be  
18 transferred to the estate of a designated beneficiary, or to  
19 an account for another eligible individual specified by the  
20 designated beneficiary or the estate of the designated  
21 beneficiary, or transferred pursuant to a payable on death  
22 account agreement. A payable on death account agreement may be  
23 executed by the designated beneficiary or a designated  
24 representative who has been granted such power. Upon the death  
25 of a designated beneficiary, prior to distribution of the  
26 balance to the estate, account for another eligible

1 individual, or transfer pursuant to a payable on death account  
2 agreement, the State Treasurer may require verification that  
3 the funeral and burial expenses of the designated beneficiary  
4 have been paid. An agency or instrumentality of the State may  
5 not seek payment under subsection (f) of Section 529A of the  
6 federal Internal Revenue Code from the account or its proceeds  
7 for benefits provided to a designated beneficiary.

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

15 (Source: P.A. 101-329, eff. 8-9-19; 102-392, eff. 8-16-21.)

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