

SB0539



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB0539

Introduced 2/23/2021, by Sen. Laura Fine

SYNOPSIS AS INTRODUCED:

15 ILCS 505/16.6

Amends the State Treasurer Act. Provides that for purposes of the ABLE account program, a designated beneficiary means the ABLE account owner. Provides that upon the death of a designated beneficiary, proceeds from an account may be transferred pursuant to a payable on death account agreement. Provides that upon the death of a designated beneficiary, the State Treasurer may require verification that the funeral and burial expenses of the designated beneficiary have been paid. Makes conforming changes. Effective immediately.

LRB102 04041 RJF 14057 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" 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 who is
8 authorized to act on behalf of a "designated beneficiary" ~~an~~
9 ~~account owner~~. A designated beneficiary ~~An account owner~~ is
10 authorized to act on his or her own behalf unless the
11 designated beneficiary ~~account owner~~ is a minor or the
12 designated beneficiary ~~account owner~~ has been adjudicated to
13 have a disability so that a guardian has been appointed. A
14 designated representative acts in a fiduciary capacity to the
15 designated beneficiary ~~account owner~~. The State Treasurer
16 shall recognize the following as a designated representative
17 without appointment by a court:

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

24 (2) The agent named by the designated beneficiary
25 ~~account owner~~ in a property power of attorney recognized
26 as a statutory short form power of attorney for property.

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

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

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

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

10 "Participation agreement" means an agreement to
11 participate in the ABLE account plan between a designated
12 beneficiary ~~an account owner~~ and the State, through its
13 agencies and the State Treasurer.

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

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

19 (b) Establishment of the ABLE Program. The "Achieving a
20 Better Life Experience" or "ABLE" account program is hereby
21 created and shall be administered by the State Treasurer. The
22 purpose of the ABLE program is to encourage and assist
23 individuals and families in saving private funds for the
24 purpose of supporting individuals with disabilities to
25 maintain health, independence, and quality of life, and to
26 provide secure funding for disability-related expenses on

1 behalf of designated beneficiaries with disabilities that will
2 supplement, but not supplant, benefits provided through
3 private insurance, federal and State medical and disability
4 insurance, the beneficiary's employment, and other sources.
5 Under the plan, a person may make contributions to an ABLE
6 account to meet the qualified disability expenses of the
7 designated beneficiary of the account. The plan must be
8 operated as an accounts-type plan that permits persons to save
9 for qualified disability expenses incurred by or on behalf of
10 an eligible individual.

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

16 (d) Availability of the ABLE Program. An ABLE account may
17 be established under this Section for a designated beneficiary
18 who is a resident of Illinois, a resident of a contracting
19 state, or a resident of any other state.

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

1 review the contribution limit at least annually. A separate
2 account must be maintained for each beneficiary for whom
3 contributions are made, and no more than one account shall be
4 established per beneficiary. If an ABLE account is established
5 for a designated beneficiary, no account subsequently
6 established for such beneficiary shall be treated as an ABLE
7 account. The preceding sentence shall not apply in the case of
8 an ABLE account established for purposes of a rollover as
9 permitted under Sections 529 and 529A of the Internal Revenue
10 Code.

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

25 (f) Fees. The State Treasurer may establish fees to be
26 imposed on participants to cover the costs of administration,

1 recordkeeping, and investment management. The State Treasurer
2 must use his or her best efforts to keep these fees as low as
3 possible, consistent with efficient administration.

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

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

22 (h) Privacy. Applications for accounts, designated
23 beneficiary ~~account owner~~ data, account data, and data on
24 beneficiaries of accounts are confidential and exempt from
25 disclosure under the Freedom of Information Act.

26 (i) Investment Policy. The Treasurer shall prepare and

1 adopt a written statement of investment policy that includes a
2 risk management and oversight program which shall be reviewed
3 annually and posted on the Treasurer's website prior to
4 implementation. The risk management and oversight program
5 shall be designed to ensure that an effective risk management
6 system is in place to monitor the risk levels of the ABLE plan,
7 to ensure that the risks taken are prudent and properly
8 managed, to provide an integrated process for overall risk
9 management, and to assess investment returns as well as risk
10 to determine if the risks taken are adequately compensated
11 compared to applicable performance benchmarks and standards.
12 To enhance the safety and liquidity of ABLE accounts, to
13 ensure the diversification of the investment portfolio of
14 accounts, and in an effort to keep investment dollars in the
15 State, the State Treasurer may make a percentage of each
16 account available for investment in participating financial
17 institutions doing business in the State, except that the
18 accounts may be invested without limit in investment options
19 from open-ended investment companies registered under Section
20 80a of the federal Investment Company Act of 1940. The State
21 Treasurer may contract with one or more third parties for
22 investment management, recordkeeping, or other services in
23 connection with investing the accounts.

24 (j) Investment restrictions. The State Treasurer shall
25 ensure that the plan meets the requirements for an ABLE
26 account under Section 529A of the Internal Revenue Code. The

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

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

21 Any change in designated beneficiary ~~account owner~~ must be
22 done in a manner consistent with Section 529A of the Internal
23 Revenue Code.

24 (l) Notice. Notice of any proposed amendments to the rules
25 and regulations shall be provided to all designated
26 beneficiaries ~~owners~~ or their designated representatives prior

1 to adoption. Amendments to rules and regulations shall apply
2 only to contributions made after the adoption of the
3 amendment. Amendments to this Section automatically amend the
4 participation agreement. Any amendments to the operating
5 procedures and policies of the plan shall automatically amend
6 the participation agreement after adoption by the State
7 Treasurer.

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

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

26 The assets of ABLE accounts and their income may not be

1 used as security for a loan.

2 (n) Taxation. The assets of ABLE accounts and their income
3 and operation shall be exempt from all taxation by the State of
4 Illinois and any of its subdivisions to the extent exempt from
5 federal income taxation. The accrued earnings on investments
6 in an ABLE account once disbursed on behalf of a designated
7 beneficiary shall be similarly exempt from all taxation by the
8 State of Illinois and its subdivisions to the extent exempt
9 from federal income taxation, so long as they are used for
10 qualified expenses.

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

23 (o) Distributions. The designated beneficiary ~~account~~
24 ~~owner~~ or the designated representative of the designated
25 beneficiary ~~account owner~~ may make a qualified distribution
26 for the benefit of the designated beneficiary ~~account owner~~.

1 Qualified distributions shall be made for qualified disability
2 expenses allowed pursuant to Section 529A of the Internal
3 Revenue Code. Qualified distributions must be withdrawn
4 proportionally from contributions and earnings in a designated
5 beneficiary's ~~an account owner's~~ account on the date of
6 distribution as provided in Section 529A of the Internal
7 Revenue Code. Unless prohibited by federal law, upon the death
8 of a designated beneficiary, proceeds from an account may be
9 transferred to the estate of a designated beneficiary, or to
10 an account for another eligible individual specified by the
11 designated beneficiary or the estate of the designated
12 beneficiary, or transferred pursuant to a payable on death
13 account agreement. A payable on death account agreement may be
14 executed by the designated beneficiary or a designated
15 representative who has been granted such power. Upon the death
16 of a designated beneficiary, prior to distribution of the
17 balance to the estate, account for another eligible
18 individual, or transfer pursuant to a payable on death account
19 agreement, the State Treasurer may require verification that
20 the funeral and burial expenses of the designated beneficiary
21 have been paid. An agency or instrumentality of the State may
22 not seek payment under subsection (f) of Section 529A of the
23 federal Internal Revenue Code from the account or its proceeds
24 for benefits provided to a designated beneficiary.

25 (p) Rules. The State Treasurer may adopt rules to carry
26 out the purposes of this Section. The State Treasurer shall

1 further have the power to issue peremptory rules necessary to
2 ensure that ABLE accounts meet all of the requirements for a
3 qualified state ABLE program under Section 529A of the
4 Internal Revenue Code and any regulations issued by the
5 Internal Revenue Service.

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

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