

SB3786



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3786

Introduced 1/21/2022, by Sen. Laura Ellman

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 designated representative must provide certification, subject to penalties of perjury, of the basis for the person'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. Defines "Internal Revenue Code". Effective immediately.

LRB102 23327 RJF 32493 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 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 designated representative must provide
15 certification, subject to penalties of perjury, of the basis
16 for the person's authority to act as a designated
17 representative and that there is no other person or entity
18 with higher priority to establish the ABLE account under
19 Section 529A of the Internal Revenue Code and federal
20 regulations. ~~The State Treasurer shall recognize the following~~
21 ~~as a designated representative without appointment by a court:~~

22 ~~(1) The designated beneficiary's guardian of the~~
23 ~~person, plenary guardian of the estate, limited guardian~~
24 ~~of financial or contractual matters, or any other~~
25 ~~State appointed guardian. A guardian acting in this~~
26 ~~capacity shall not be required to seek court approval for~~

1 ~~any ABLE account activity.~~

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

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

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

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

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

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

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

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

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

25 (b) Establishment of the ABLE Program. The "Achieving a
26 Better Life Experience" or "ABLE" account program is hereby

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

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

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

26 Annual contributions to an ABLE account on behalf of a

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

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

1 agreements with other states to either allow Illinois
2 residents to participate in a plan operated by another state
3 or to allow residents of other states to participate in the
4 Illinois ABLE plan.

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

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

24 Subject to appropriation, the State Treasurer may pay
25 administrative costs associated with the creation and
26 management of the plan until sufficient assets are available

1 in the Administrative Fund for that purpose.

2 (h) Privacy. Applications for accounts, designated
3 beneficiary data, account data, and data on beneficiaries of
4 accounts are confidential and exempt from disclosure under the
5 Freedom of Information Act.

6 (i) Investment Policy. The Treasurer shall prepare and
7 adopt a written statement of investment policy that includes a
8 risk management and oversight program which shall be reviewed
9 annually and posted on the Treasurer's website prior to
10 implementation. The risk management and oversight program
11 shall be designed to ensure that an effective risk management
12 system is in place to monitor the risk levels of the ABLE plan,
13 to ensure that the risks taken are prudent and properly
14 managed, to provide an integrated process for overall risk
15 management, and to assess investment returns as well as risk
16 to determine if the risks taken are adequately compensated
17 compared to applicable performance benchmarks and standards.
18 To enhance the safety and liquidity of ABLE accounts, to
19 ensure the diversification of the investment portfolio of
20 accounts, and in an effort to keep investment dollars in the
21 State, the State Treasurer may make a percentage of each
22 account available for investment in participating financial
23 institutions doing business in the State, except that the
24 accounts may be invested without limit in investment options
25 from open-ended investment companies registered under Section
26 80a of the federal Investment Company Act of 1940. The State

1 Treasurer may contract with one or more third parties for
2 investment management, recordkeeping, or other services in
3 connection with investing the accounts.

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

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

1 Any change in designated beneficiary must be done in a
2 manner consistent with Section 529A of the Internal Revenue
3 Code.

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

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

1 against, or interest in, such funds.

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

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

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

17 Notwithstanding any other provision of law that requires
18 consideration of one or more financial circumstances of an
19 individual, for the purpose of determining eligibility to
20 receive, or the amount of, any assistance or benefit
21 authorized by such provision to be provided to or for the
22 benefit of such individual, any amount, including earnings
23 thereon, in the ABLE account of such individual, any
24 contributions to the ABLE account of the individual, and any
25 distribution for qualified disability expenses shall be
26 disregarded for such purpose with respect to any period during

1 which such individual maintains, makes contributions to, or
2 receives distributions from such ABLE account.

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

1 not seek payment under subsection (f) of Section 529A of the
2 federal Internal Revenue Code from the account or its proceeds
3 for benefits provided to a designated beneficiary.

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

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

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