

HB3811



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3811

Introduced 2/17/2023, by Rep. Kelly M. Burke

SYNOPSIS AS INTRODUCED:

15 ILCS 505/16.6

Amends the State Treasurer Act. Provides that any entity may make contributions to an ABLE account. Makes changes concerning privacy of ABLE account information. Provides that the ABLE Account Program may also be referred to as the Senator Scott Bennett ABLE Program. Effective immediately.

LRB103 31048 DTM 57666 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 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.

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

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

26 "Internal Revenue Code" means the federal Internal Revenue

1 Code.

2 "Participation agreement" means an agreement to
3 participate in the ABLE account plan between a designated
4 beneficiary and the State, through its agencies and the State
5 Treasurer.

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

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

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

1 ~~to save~~ for qualified disability expenses incurred by or on
2 behalf of an eligible individual.

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

8 (d) Availability of the ABLE Program. An ABLE account may
9 be established under this Section for a designated beneficiary
10 who is a resident of Illinois, a resident of a contracting
11 state, or a resident of any other state.

12 Annual contributions to an ABLE account on behalf of a
13 beneficiary are subject to the requirements of subsection (b)
14 of Section 529A of the Internal Revenue Code. No person or
15 entity may make a contribution to an ABLE account if such a
16 contribution would result in the aggregate account balance of
17 an ABLE account exceeding the account balance limit authorized
18 under Section 529A of the Internal Revenue Code. The Treasurer
19 shall review the contribution limit at least annually. A
20 separate account must be maintained for each beneficiary for
21 whom contributions are made, and no more than one account
22 shall be established per beneficiary. If an ABLE account is
23 established for a designated beneficiary, no account
24 subsequently established for such beneficiary shall be treated
25 as an ABLE account. The preceding sentence shall not apply in
26 the case of an ABLE account established for purposes of a

1 rollover as permitted under Sections 529 and 529A of the
2 Internal Revenue Code.

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

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
16 in the Administrative Fund for that purpose.

17 (h) Privacy. Applications for accounts and other records
18 obtained or compiled by the Treasurer or the Treasurer's
19 agents reflecting ~~7~~ designated beneficiary information ~~data,~~
20 account information ~~data,~~ or designated representative
21 information ~~and data on beneficiaries of accounts~~ are
22 confidential and exempt from disclosure under the Freedom of
23 Information Act.

24 (i) Investment Policy. The Treasurer shall prepare and
25 adopt a written statement of investment policy that includes a
26 risk management and oversight program which shall be reviewed

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

22 (j) Investment restrictions. The State Treasurer shall
23 ensure that the plan meets the requirements for an ABLE
24 account under Section 529A of the Internal Revenue Code. The
25 State Treasurer may request a private letter ruling or rulings
26 from the Internal Revenue Service and must take any necessary

1 steps to ensure that the plan qualifies under relevant
2 provisions of federal law. Notwithstanding the foregoing, any
3 determination by the Secretary of the Treasury of the United
4 States that an account was utilized to make non-qualified
5 distributions shall not result in an ABLE account being
6 disregarded as a resource.

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

19 Any change in designated beneficiary must be done in a
20 manner consistent with Section 529A of the Internal Revenue
21 Code.

22 (l) Notice. Notice of any proposed amendments to the rules
23 and regulations shall be provided to all designated
24 beneficiaries or their designated representatives prior to
25 adoption. Amendments to rules and regulations shall apply only
26 to contributions made after the adoption of the amendment.

1 Amendments to this Section automatically amend the
2 participation agreement. Any amendments to the operating
3 procedures and policies of the plan shall automatically amend
4 the participation agreement after adoption by the State
5 Treasurer.

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

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

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

26 (n) Taxation. The assets of ABLE accounts and their income

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

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

21 (o) Distributions. The designated beneficiary or the
22 designated representative of the designated beneficiary may
23 make a qualified distribution for the benefit of the
24 designated beneficiary. Qualified distributions shall be made
25 for qualified disability expenses allowed pursuant to Section
26 529A of the Internal Revenue Code. Qualified distributions

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

22 (p) Rules. The State Treasurer may adopt rules to carry
23 out the purposes of this Section. The State Treasurer shall
24 further have the power to issue peremptory rules necessary to
25 ensure that ABLE accounts meet all of the requirements for a
26 qualified state ABLE program under Section 529A of the

1 Internal Revenue Code and any regulations issued by the
2 Internal Revenue Service.

3 (q) Name. The ABLE Account Program may also be referred to
4 as the Senator Scott Bennett ABLE Program.

5 (Source: P.A. 101-329, eff. 8-9-19; 102-392, eff. 8-16-21;
6 102-1024, eff. 5-27-22.)

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