Rep. Kelly M. Burke

Filed: 3/3/2023

AMENDMENT TO HOUSE BILL 3811

AMENDMENT NO. ______. Amend House Bill 3811 by replacing everything after the enacting clause with the following:

"Section 5. The State Treasurer Act is amended by changing Sections 16.5 and 16.6 as follows:

(15 ILCS 505/16.5)

Sec. 16.5. College Savings Pool.

(a) Definitions. As used in this Section:

"Account owner" means any person or entity who has opened an account or to whom ownership of an account has been transferred, as allowed by the Internal Revenue Code, and who has authority to withdraw funds, direct withdrawal of funds, change the designated beneficiary, or otherwise exercise control over an account in the College Savings Pool.

"Donor" means any person or entity who makes contributions to an account in the College Savings Pool.

"Designated beneficiary" means any individual designated as the beneficiary of an account in the College Savings Pool by an account owner. A designated beneficiary must have a valid social security number or taxpayer identification number. In the case of an account established as part of a scholarship program permitted under Section 529 of the Internal Revenue Code, the designated beneficiary is any individual receiving benefits accumulated in the account as a scholarship.

"Eligible educational institution" means public and private colleges, junior colleges, graduate schools, and certain vocational institutions that are described in Section 1001 of the Higher Education Resource and Student Assistance Chapter of Title 20 of the United States Code (20 U.S.C. 1001) and that are eligible to participate in Department of Education student aid programs.

"Member of the family" has the same meaning ascribed to that term under Section 529 of the Internal Revenue Code.

"Nonqualified withdrawal" means a distribution from an account other than a distribution that (i) is used for the qualified expenses of the designated beneficiary; (ii) results from the beneficiary's death or disability; (iii) is a rollover to another account in the College Savings Pool; ~~or~~ (iv) is a rollover to an ABLE account, as defined in Section 16.6 of this Act, or any distribution that, within 60 days after such distribution, is transferred to an ABLE account of the designated beneficiary or a member of the family of the designated beneficiary to the extent that the distribution, when added to all other contributions made to the ABLE account for the taxable year, does not exceed the limitation under Section 529A(b) of the Internal Revenue Code; or (v) is a rollover to a Roth IRA account to the extent permitted by Section 529 of the Internal Revenue Code.

"Qualified expenses" means: (i) tuition, fees, and the costs of books, supplies, and equipment required for enrollment or attendance at an eligible educational institution; (ii) expenses for special needs services, in the case of a special needs beneficiary, which are incurred in connection with such enrollment or attendance; (iii) certain expenses, to the extent they qualify as qualified higher education expenses under Section 529 of the Internal Revenue Code, for the purchase of computer or peripheral equipment or Internet access and related services, if such equipment, software, or services are to be used primarily by the beneficiary during any of the years the beneficiary is enrolled at an eligible educational institution, except that, such expenses shall not include expenses for computer software designed for sports, games, or hobbies, unless the software is predominantly educational in nature; (iv) room and board expenses incurred while attending an eligible educational institution at least half-time; (v) expenses for fees, books, supplies, and equipment required for the participation of a designated beneficiary in an apprenticeship program registered and certified with the Secretary of Labor under the National Apprenticeship Act (29 U.S.C. 50); and (vi) amounts paid as principal or interest on any qualified education loan of the designated beneficiary or a sibling of the designated beneficiary, as allowed under Section 529 of the Internal Revenue Code. A student shall be considered to be enrolled at least half-time if the student is enrolled for at least half the full-time academic workload for the course of study the student is pursuing as determined under the standards of the institution at which the student is enrolled.

(b) Establishment of the Pool. The State Treasurer may establish and administer the College Savings Pool as a qualified tuition program under Section 529 of the Internal Revenue Code. The Pool may consist of one or more college savings programs. The State Treasurer, in administering the College Savings Pool, may: (1) receive, hold, and invest moneys paid into the Pool; and (2) perform any other action he or she deems necessary to administer the Pool, including any other actions necessary to ensure that the Pool operates as a qualified tuition program in accordance with Section 529 of the Internal Revenue Code.

(c) Administration of the College Savings Pool. The State Treasurer may delegate duties related to the College Savings Pool to one or more contractors. The contributions deposited in the Pool, and any earnings thereon, shall not constitute property of the State or be commingled with State funds and the

State shall have no claim to or against, or interest in, such funds; provided that the fees collected by the State Treasurer in accordance with this Act, scholarship programs administered by the State Treasurer, and seed funds deposited by the State Treasurer under Section 16.8 of the Act are State funds.

(c-5) College Savings Pool Account Summaries. The State Treasurer shall provide a separate accounting for each designated beneficiary. The separate accounting shall be provided to the account owner of the account for the designated beneficiary at least annually and shall show the account balance, the investment in the account, the investment earnings, and the distributions from the account.

(d) Availability of the College Savings Pool. The State Treasurer may permit persons, including trustees of trusts and custodians under a Uniform Transfers to Minors Act or Uniform Gifts to Minors Act account, and certain legal entities to be account owners, including as part of a scholarship program, provided that: (1) an individual, trustee or custodian must have a valid social security number or taxpayer identification number, be at least 18 years of age, and have a valid United States street address; and (2) a legal entity must have a valid taxpayer identification number and a valid United States street address. In-state and out-of-state persons, trustees, custodians, and legal entities may be account owners and donors, and both in-state and out-of-state individuals may be designated beneficiaries in the College Savings Pool.

(e) Fees. Any fees, costs, and expenses, including investment fees and expenses and payments to third parties, related to the College Savings Pool, shall be paid from the assets of the College Savings Pool. The State Treasurer shall establish fees to be imposed on accounts to cover such fees, costs, and expenses, to the extent not paid directly out of the investments of the College Savings Pool, and to maintain an adequate reserve fund in line with industry standards for government operated funds. The Treasurer must use his or her best efforts to keep these fees as low as possible and consistent with administration of high quality competitive college savings programs.

(f) Investments in the State. To enhance the safety and liquidity of the College Savings Pool, to ensure the diversification of the investment portfolio of the College Savings Pool, and in an effort to keep investment dollars in the State of Illinois, the State Treasurer may make a percentage of each account available for investment in participating financial institutions doing business in the State.

(g) Investment policy. The Treasurer shall develop, publish, and implement an investment policy covering the investment of the moneys in each of the programs in the College Savings Pool. The policy shall be published each year as part of the audit of the College Savings Pool by the Auditor General, which shall be distributed to all account owners in such program. The Treasurer shall notify all account owners in such program in writing, and the Treasurer shall publish in a newspaper of general circulation in both Chicago and Springfield, any changes to the previously published investment policy at least 30 calendar days before implementing the policy. Any investment policy adopted by the Treasurer shall be reviewed and updated if necessary within 90 days following the date that the State Treasurer takes office.

(h) Investment restrictions. An account owner may, directly or indirectly, direct the investment of his or her account only as provided in Section 529(b)(4) of the Internal Revenue Code. Donors and designated beneficiaries, in those capacities, may not, directly or indirectly, direct the investment of an account.

(i) Distributions. Distributions from an account in the College Savings Pool may be used for the designated beneficiary's qualified expenses, and if not used in that manner, may be considered a nonqualified withdrawal. Funds contained in a College Savings Pool account may be rolled over into:

(1) an eligible ABLE account, as defined in Section 16.6 of this Act to the extent permitted by Section 529 of the Internal Revenue Code;~~, or~~

(2) another qualified tuition program, to the extent permitted by Section 529 of the Internal Revenue Code; or

(3) a Roth IRA account, to the extent permitted by

Section 529 of the Internal Revenue Code.

Distributions made from the College Savings Pool may be made directly to the eligible educational institution, directly to a vendor, in the form of a check payable to both the designated beneficiary and the institution or vendor, directly to the designated beneficiary or account owner, or in any other manner that is permissible under Section 529 of the Internal Revenue Code.

(j) Contributions. Contributions to the College Savings Pool shall be as follows:

(1) Contributions to an account in the College Savings Pool may be made only in cash.

(2) The Treasurer shall limit the contributions that may be made to the College Savings Pool on behalf of a designated beneficiary, as required under Section 529 of the Internal Revenue Code, to prevent contributions for the benefit of a designated beneficiary in excess of those necessary to provide for the qualified expenses of the designated beneficiary. The Pool shall not permit any additional contributions to an account as soon as the sum of (i) the aggregate balance in all accounts in the Pool for the designated beneficiary and (ii) the aggregate contributions in the Illinois Prepaid Tuition Program for the designated beneficiary reaches the specified balance limit established from time to time by the Treasurer.

(k) Illinois Student Assistance Commission. The Treasurer and the Illinois Student Assistance Commission shall each cooperate in providing each other with account information, as necessary, to prevent contributions in excess of those necessary to provide for the qualified expenses of the designated beneficiary, as described in subsection (j).

The Treasurer shall work with the Illinois Student Assistance Commission to coordinate the marketing of the College Savings Pool and the Illinois Prepaid Tuition Program when considered beneficial by the Treasurer and the Director of the Illinois Student Assistance Commission.

(l) Prohibition; exemption. No interest in the program, or any portion thereof, may be used as security for a loan. Moneys held in an account invested in the College Savings Pool shall be exempt from all claims of the creditors of the account owner, donor, or designated beneficiary of that account, except for the non-exempt College Savings Pool transfers to or from the account as defined under subsection (j) of Section 12-1001 of the Code of Civil Procedure.

(m) Taxation. The assets of the College Savings Pool and its income and operation shall be exempt from all taxation by the State of Illinois and any of its subdivisions. The accrued earnings on investments in the Pool once disbursed on behalf of a designated beneficiary shall be similarly exempt from all taxation by the State of Illinois and its subdivisions, so long as they are used for qualified expenses. Contributions to a College Savings Pool account during the taxable year may be deducted from adjusted gross income as provided in Section 203 of the Illinois Income Tax Act. The provisions of this paragraph are exempt from Section 250 of the Illinois Income Tax Act.

(n) Rules. The Treasurer shall adopt rules he or she considers necessary for the efficient administration of the College Savings Pool. The rules shall provide whatever additional parameters and restrictions are necessary to ensure that the College Savings Pool meets all the requirements for a qualified tuition program under Section 529 of the Internal Revenue Code.

Notice of any proposed amendments to the rules and regulations shall be provided to all account owners prior to adoption.

(o) Bond. The State Treasurer shall give bond with at least one surety, payable to and for the benefit of the account owners in the College Savings Pool, in the penal sum of $10,000,000, conditioned upon the faithful discharge of his or her duties in relation to the College Savings Pool.

(p) The changes made to subsections (c) and (e) of this Section by Public Act 101-26 are intended to be a restatement and clarification of existing law.

(Source: P.A. 101-26, eff. 6-21-19; 101-81, eff. 7-12-19; 102-186, eff. 7-30-21.)

(15 ILCS 505/16.6)

Sec. 16.6. ABLE account program.

(a) As used in this Section:

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

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

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

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

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

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

"Designated representative" means a person or entity who is authorized to act on behalf of a "designated beneficiary". A designated beneficiary is authorized to act on his or her own behalf unless the designated beneficiary is a minor or the designated beneficiary has been adjudicated to have a disability so that a guardian has been appointed. A designated representative acts in a fiduciary capacity to the designated beneficiary. 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 under Section 529A of the Internal Revenue Code and federal regulations.

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

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

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

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

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

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

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

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

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

Annual contributions to an ABLE account on behalf of a beneficiary are subject to the requirements of subsection (b) of Section 529A of the Internal Revenue Code. No person <u>or entity</u> may make a contribution to an ABLE account if such a contribution would result in the aggregate account balance of an ABLE account exceeding the account balance limit authorized under Section 529A of the Internal Revenue Code. The Treasurer shall review the contribution limit at least annually. A separate account must be maintained for each beneficiary for whom contributions are made, and no more than one account shall be established per beneficiary. If an ABLE account is established for a designated beneficiary, no account subsequently established for such beneficiary shall be treated as an ABLE account. The preceding sentence shall not apply in the case of an ABLE account established for purposes of a rollover as permitted under Sections 529 and 529A of the Internal Revenue Code.

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

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

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

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

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

(i) Investment Policy. The Treasurer shall prepare and adopt a written statement of investment policy that includes a risk management and oversight program which shall be reviewed annually and posted on the Treasurer's website prior to implementation. The risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the ABLE plan, to ensure that the risks taken are prudent and properly managed, to provide an integrated process for overall risk management, and to assess investment returns as well as risk to determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards.

To enhance the safety and liquidity of ABLE accounts, to ensure the diversification of the investment portfolio of accounts, and in an effort to keep investment dollars in the State, the State Treasurer may make a percentage of each account available for investment in participating financial institutions doing business in the State, except that the accounts may be invested without limit in investment options from open-ended investment companies registered under Section 80a of the federal Investment Company Act of 1940. The State Treasurer may contract with one or more third parties for investment management, recordkeeping, or other services in connection with investing the accounts.

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

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

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

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

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

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

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

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

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

(o) Distributions. The designated beneficiary or the designated representative of the designated beneficiary may make a qualified distribution for the benefit of the designated beneficiary. Qualified distributions shall be made for qualified disability expenses allowed pursuant to Section 529A of the Internal Revenue Code. Qualified distributions must be withdrawn proportionally from contributions and earnings in a designated beneficiary's account on the date of distribution as provided in Section 529A of the Internal Revenue Code. Unless prohibited by federal law, upon the death of a designated beneficiary, proceeds from an account may be transferred to the estate of a designated beneficiary, or to an account for another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary, or transferred pursuant to a payable on death account agreement. A payable on death account agreement may be executed by the designated beneficiary or a designated representative who has been granted such power. Upon the death of a designated beneficiary, prior to distribution of the balance to the estate, account for another eligible individual, or transfer pursuant to a payable on death account agreement, the State Treasurer may require verification that the funeral and burial expenses of the designated beneficiary have been paid. An agency or instrumentality of the State may not seek payment under subsection (f) of Section 529A of the federal Internal Revenue Code from the account or its proceeds for benefits provided to a designated beneficiary.

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

<u>(q) Name. The ABLE Account Program may also be referred to as the Senator Scott Bennett ABLE Program.</u>

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

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