

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4542

A bill to create the Michigan achieving a better life experience (ABLE) program; to provide for ABLE accounts; to prescribe the powers and duties of certain state agencies, boards, and departments; to allow certain tax credits or deductions; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan achieving a better life experience (ABLE) program act".

3 Sec. 2. As used in this act:

4 (a) "ABLE" means achieving a better life experience.

5 (b) "ABLE savings account" or "account" means an account
6 established under this act.

7 (c) "Account owner" means an individual who is a resident of
8 this state, or a resident of a contracting state, and who enters

1 into a Michigan ABLE savings program agreement and establishes an
2 ABLE savings account. The account owner shall be the designated
3 beneficiary of the account unless the designated beneficiary is a
4 minor or lacks capacity to enter into an agreement, in which case a
5 designated representative may open an account on behalf of the
6 minor or incapacitated individual and serve as the account owner.

7 (d) "Contracting state" means a state without a qualified ABLE
8 program that has entered into a contract with this state to provide
9 its residents access to the Michigan ABLE program.

10 (e) "Department" means the department of treasury.

11 (f) "Designated beneficiary" means an eligible individual
12 designated as the individual whose qualified disability expenses
13 are expected to be paid from the account. The designated
14 beneficiary must be an eligible individual at the time the account
15 is established. The designated beneficiary shall be the account
16 owner unless he or she is a minor or lacks capacity to enter into
17 an agreement. The account owner may change the designated
18 beneficiary as provided in this act.

19 (g) "Designated representative" means an individual who is
20 authorized to act on behalf of the designated beneficiary if the
21 designated beneficiary is a minor or has a guardian, conservator,
22 or other fiduciary who has been appointed for purposes of managing
23 that designated beneficiary's financial affairs.

24 (h) "Disability certification" means that term as defined in
25 section 529A of the internal revenue code.

26 (i) "Eligible individual" means that term as defined in
27 section 529A of the internal revenue code.

1 (j) "Internal revenue code" means the United States internal
2 revenue code of 1986 in effect on January 1, 2015 or at the option
3 of the taxpayer, in effect for the current year.

4 (k) "Management contract" means the contract executed between
5 the treasurer and a program manager.

6 (l) "Member of the family" means a family member as defined in
7 section 529A of the internal revenue code.

8 (m) "Michigan ABLE savings program agreement" means the
9 agreement between the program and an account owner that establishes
10 an ABLE savings account.

11 (n) "Program" means the Michigan ABLE savings program
12 established pursuant to this act.

13 (o) "Program manager" means 1 or more entities selected by the
14 treasurer to act as a manager of the program.

15 (p) "Qualified disability expenses" means that term as defined
16 in section 529A of the internal revenue code.

17 (q) "Qualified withdrawal" means a distribution that is not
18 subject to a penalty or an excise tax under section 529A of the
19 internal revenue code or taxation under the income tax act of 1967,
20 1967 PA 281, MCL 206.1 to 206.713, and that meets any of the
21 following:

22 (i) A withdrawal from an account to pay the qualified
23 disability expenses of the designated beneficiary incurred after
24 the account is established.

25 (ii) A withdrawal made as the result of the death or
26 disability of the designated beneficiary of an account.

27 (iii) A transfer of funds due to the termination of the

1 management contract as provided in section 5.

2 (iv) A transfer of funds as provided in section 8.

3 (r) "Savings plan" or "plan" means a plan that provides
4 different investment strategies and allows account distributions
5 for qualified disability expenses.

6 (s) "Treasurer" means the state treasurer.

7 Sec. 3. (1) The Michigan ABLE savings program is established
8 in the department of treasury. The program shall consist of more
9 than 1 program manager and shall provide multiple savings plans.

10 (2) The treasurer shall solicit proposals from entities to be
11 a program manager to provide the services described in subsection
12 (5).

13 (3) The purposes, powers, and duties of the Michigan ABLE
14 savings program are vested in and shall be exercised by the
15 treasurer or the designee of the treasurer.

16 (4) The state treasurer shall administer the Michigan ABLE
17 savings program and shall be the trustee for the funds of the
18 Michigan ABLE savings program.

19 (5) The treasurer may employ or contract with personnel and
20 contract for services necessary for the administration of each
21 savings plan under the program and the investment of the assets of
22 each savings plan under the program including, but not limited to,
23 managerial, professional, legal, clerical, technical, and
24 administrative personnel or services.

25 (6) When selecting program managers, the treasurer shall give
26 preference to proposals from single entities that propose to
27 provide all of the functions described in subsection (5) and that

1 demonstrate the most advantageous combination, to both potential
2 participants and this state, of the following factors and the
3 management contract shall address these factors:

4 (a) Financial stability.

5 (b) The safety of the investment instruments being offered.

6 (c) The ability of the investment instruments to track the
7 increasing costs of disability expenses.

8 (d) The ability of an entity to satisfy the record-keeping and
9 reporting requirements of this act.

10 (e) The entity's plan for marketing the savings plan and the
11 investment it is willing to make to promote the savings plan.

12 (f) The fees, if any, proposed to be charged to persons for
13 opening or maintaining an account.

14 (g) The minimum initial deposit and minimum contributions that
15 the entity will require which, for the first year of the savings
16 plan, shall not be greater than \$25.00 for a cash contribution or
17 \$15.00 per pay period for payroll deduction plans.

18 (h) The ability of an entity to accept electronic withdrawals,
19 including payroll deduction plans.

20 (i) The willingness of an entity to offer a program of broker-
21 sold products available through financial advisors.

22 (j) The ability of an entity to provide financial literacy
23 materials and training resources, as described by the department,
24 to all account owners.

25 (k) The ability of an entity to provide a higher level of
26 customer service to support the unique needs of designated
27 beneficiaries.

1 (7) The treasurer shall enter into a contract with each
2 program manager which shall address the respective authority and
3 responsibility of the treasurer and the program manager to do all
4 of the following:

5 (a) Develop and implement the savings plan or plans offered
6 under the program.

7 (b) Invest the money received from account owners in 1 or more
8 investment instruments.

9 (c) Engage the services of consultants on a contractual basis
10 to provide professional and technical assistance and advice.

11 (d) Determine the use of financial organizations as account
12 depositories and financial managers.

13 (e) Charge, impose, and collect annual administrative fees and
14 service in connection with any agreements, contracts, and
15 transactions relating to individual accounts, exclusive of initial
16 sales charges, which shall not exceed 2.0% of the average daily net
17 assets of the account.

18 (f) Develop marketing plans and promotional material.

19 (g) Establish the methods by which funds are allocated to pay
20 for administrative costs.

21 (h) Provide criteria for terminating and not renewing the
22 management contract.

23 (i) Address the ability of the program manager to take any
24 action required to keep the savings plan or plans offered under the
25 program in compliance with requirements of this act and its
26 management contract and to manage the savings plan or plans offered
27 under the program to qualify as a qualified ABLE program under

1 section 529A of the internal revenue code.

2 (j) Keep adequate records of each account and provide the
3 treasurer with information that the treasurer requires related to
4 those records.

5 (k) Compile the information contained in statements required
6 to be prepared under this act and provide that compilation to the
7 treasurer in a timely manner.

8 (l) Hold all accounts for the benefit of the designated
9 beneficiary.

10 (m) Provide for audits at least annually by a firm of
11 certified public accountants.

12 (n) Provide the treasurer with copies of all regulatory
13 filings and reports related to the savings plan or plans offered
14 under the program made during the term of the management contract
15 or while the program manager is holding any accounts, other than
16 confidential filings or reports except to the extent those filings
17 or reports are related to or are a part of the savings plan or
18 plans offered under the program. It is the responsibility of the
19 program manager to make available for review by the treasurer the
20 results of any periodic examination of the program manager by any
21 state or federal banking, insurance, or securities commission,
22 except to the extent that the report or reports are not required to
23 be disclosed under state or federal law.

24 (o) Ensure that any description of the savings plan or plans
25 offered under the program, whether in writing or through the use of
26 any media, is consistent with the marketing plan developed by the
27 program manager.

1 (p) Offer a program of broker-sold products available through
2 financial advisors.

3 (q) Take any other necessary and proper activities to carry
4 out the purposes of this act.

5 Sec. 4. The treasurer shall be responsible for the ongoing
6 supervision of each management contract.

7 Sec. 5. (1) A management contract shall be for a term of years
8 specified in the management contract.

9 (2) The treasurer may terminate a management contract based on
10 the criteria specified in the management contract.

11 Sec. 6. The treasurer may enter into contracts that it
12 considers necessary and proper for the implementation of this
13 program.

14 Sec. 7. (1) Beginning January 1, 2016, ABLE savings accounts
15 may be established under this act.

16 (2) Any individual who is a resident of this state or a
17 resident of a contracting state may open an ABLE savings account to
18 save money to pay the qualified disability expenses of the
19 designated beneficiary. Each account opened under this act shall
20 have only 1 designated beneficiary. Only 1 account shall be opened
21 for any 1 designated beneficiary.

22 (3) To open an ABLE savings account, the individual or
23 designated representative of a designated beneficiary shall enter
24 into a Michigan ABLE savings program agreement with the program.
25 The program shall recognize an individual as a designated
26 representative and not require a designated representative to
27 obtain court approval before opening and funding an ABLE savings

1 account under this act. The Michigan ABLE savings program agreement
2 shall be in the form prescribed by a program manager and approved
3 by the treasurer and contain all of the following:

4 (a) The name, address, and social security number of the
5 account owner.

6 (b) A designated beneficiary. The name, address, and social
7 security number of the designated beneficiary, if the account owner
8 is the designated beneficiary's designated representative.

9 (c) Any other information that the treasurer or program
10 manager considers necessary.

11 (4) Any person may make contributions to an account after the
12 account is opened, subject to the limitations imposed by section
13 529A of the internal revenue code or any rules and regulations
14 promulgated by the treasurer pursuant to this act.

15 (5) Contributions to accounts shall only be made in cash, by
16 check, by credit card, or by any similar method as approved by the
17 state treasurer but shall not be property.

18 (6) Notwithstanding any other provision of law to the
19 contrary, money in the ABLE savings account shall be exempt from
20 creditor process and shall not be liable to attachment,
21 garnishment, or other process, nor shall it be seized, taken,
22 appropriated, or applied by any legal or equitable process or
23 operation of law to pay any debt or liability of the designated
24 beneficiary or account owner. However, this state may be a creditor
25 of the account in the event of the death of the designated
26 beneficiary as provided under section 529A(f) of the internal
27 revenue code.

1 (7) Distributions from an account shall be made in the
2 following manner:

3 (a) In the form of a check payable to the designated
4 beneficiary or account owner.

5 (b) In the form of an electronic funds transfer to an account
6 specified by the designated beneficiary or account owner.

7 (c) Directly to a provider of goods and services that are
8 qualified disability expenses, if purchased for a designated
9 beneficiary.

10 (8) Each savings plan under the program shall provide separate
11 accounting for each designated beneficiary.

12 Sec. 8. (1) Changes in account owners or designated
13 beneficiaries are permitted as follows:

14 (a) An account owner may change the designated beneficiary of
15 an account to another eligible individual who is a member of the
16 family of the previously designated beneficiary.

17 (b) An account owner may transfer all or a portion of an
18 account to another ABLE savings account with another designated
19 beneficiary as long as the new designated beneficiary of the
20 account to which the transfer is made is an eligible individual and
21 a member of the family of the previous designated beneficiary.

22 (c) An account owner may designate another individual as a
23 successor owner of the account in the event of the death of the
24 account owner. The successor owner must meet the definition of an
25 account owner under this act.

26 (2) Changes in designated beneficiaries and transfers under
27 this section are not permitted to the extent that the change or

1 transfer would constitute excess contributions or unauthorized
2 investment choices.

3 Sec. 9. (1) An account owner shall not, directly or
4 indirectly, direct the investment of any contributions to an
5 account or the earnings on an account in violation of section 529A
6 of the internal revenue code. An account owner may select among
7 different investment strategies designed by a program manager to
8 the extent allowed under section 529A of the internal revenue code.

9 (2) The program may allow employees of the program, or the
10 employees of a contractor hired by the program to perform
11 administrative services, to make contributions to an account.

12 (3) An interest in an account shall not be used by an account
13 owner or a designated beneficiary as security for a loan. Any
14 pledge of an interest in an account has no force or effect.

15 Sec. 10. (1) The maximum account balance limit for an ABLE
16 account shall not exceed the maximum amount allowed for an
17 education savings account pursuant to section 10 of the Michigan
18 education savings program act, 2000 PA 161, MCL 390.1480.

19 (2) The program manager shall notify an account owner if the
20 annual contributions to an ABLE savings account get within
21 \$1,000.00 of the contributions limits established under section
22 7(4). The program manager shall provide an account owner with
23 written notification at least 5 business days before rejecting a
24 contribution as provided in subsection (3).

25 (3) The program manager shall reject a contribution to any
26 account for a designated beneficiary if, at the time of the
27 contribution, the total balance of the account for that designated

1 beneficiary has reached the maximum account balance limit under
2 subsection (1) or the contribution is in excess of the limits
3 established pursuant to section 7(4). An account may continue to
4 accrue earnings if the total balance of the account for that
5 beneficiary has reached the maximum account balance limit and shall
6 not be considered to have exceeded the maximum account balance
7 limit under subsection (1).

8 Sec. 11. (1) In accordance with section 529A(d) of the
9 internal revenue code, each program manager shall submit both of
10 the following to the internal revenue service and the department:

11 (a) A notice upon the establishment of each ABLE savings
12 account. The notice must contain the name and state of residence of
13 the designated beneficiary and any other information as required by
14 law or regulation.

15 (b) An aggregate report of the contributions, distributions,
16 the return of excess contributions, and any other matter as
17 required by law or regulation regarding its ABLE program during the
18 tax year.

19 (2) Each program manager shall provide to the account owner,
20 on or before the January 31 following the end of each calendar
21 year, statements that identify the individual contributions made
22 during the tax year, the total contributions made to the account
23 for the tax year, the value of the account at the end of the tax
24 year, distributions made during the tax year, the amount of excess
25 contributions returned during the tax year, and any other
26 information as required by the department.

27 (3) As required under section 529A(d) of the internal revenue

1 code, the department shall electronically submit on a monthly basis
2 to the commissioner of social security, in a manner specified by
3 the commissioner of social security, statements on relevant
4 distributions and account balances from all ABLE savings accounts.

5 Sec. 12. Each program manager shall disclose the following
6 information in writing to each account owner of an ABLE savings
7 account and any other person who requests information about an ABLE
8 savings account:

9 (a) The terms and conditions for establishing an ABLE savings
10 account.

11 (b) Restrictions on the substitutions of designated
12 beneficiaries and transfer of account funds.

13 (c) The person entitled to terminate a Michigan ABLE savings
14 program agreement.

15 (d) The period of time during which a designated beneficiary
16 may receive benefits under the Michigan ABLE savings program
17 agreement.

18 (e) The terms and conditions under which money may be wholly
19 or partially withdrawn from an account or the program, including,
20 but not limited to, any reasonable charges and fees and penalties
21 that may be imposed for withdrawal.

22 (f) The potential tax consequences associated with
23 contributions to and distributions and withdrawals from accounts.

24 (g) Investment history and potential growth of account funds
25 and a projection of the impact of the growth of the account funds
26 on the maximum amount allowable in an account.

27 (h) All other rights and obligations under Michigan ABLE

1 savings program agreements and any other terms, conditions, and
2 provisions of a contract or an agreement entered into under this
3 act.

4 Sec. 13. This act and any agreement under this act shall not
5 be construed or interpreted to do any of the following:

6 (a) Give any designated beneficiary any rights or legal
7 interest with respect to an account unless the designated
8 beneficiary is the account owner.

9 (b) Give residency status to an individual merely because the
10 individual is a designated beneficiary.

11 Sec. 14. (1) This act does not create and shall not be
12 construed to create any obligation upon this state or any agency or
13 instrumentality of this state to guarantee for the benefit of an
14 account owner or designated beneficiary any of the following:

15 (a) The rate of interest or other return on an account.

16 (b) The payment of interest or other return on an account.

17 (2) The contracts, applications, deposit slips, and other
18 similar documents used in connection with a contribution to an
19 account shall clearly indicate that the account is not insured by
20 this state and that the money deposited into and investment return
21 earned on an account are not guaranteed by this state.

22 Sec. 15. Each program manager shall file an annual report with
23 the treasurer that includes all of the following:

24 (a) The names and identification numbers of account owners and
25 designated beneficiaries. The information reported pursuant to this
26 subdivision is not subject to the freedom of information act, 1976
27 PA 442, MCL 15.231 to 15.246.

1 (b) The total amount contributed to all accounts during the
2 year.

3 (c) All distributions from all accounts and whether or not
4 each distribution was a qualified withdrawal.

5 (d) Any information that the program manager or treasurer may
6 require regarding the taxation of amounts contributed to or
7 withdrawn from accounts.

8 Sec. 16. (1) Contributions to and interest earned on an ABLE
9 savings account are exempt from taxation as provided in section 30
10 of the income tax act of 1967, 1967 PA 281, MCL 206.30.

11 (2) Withdrawals made from ABLE savings accounts are taxable as
12 provided in section 30 of the income tax act of 1967, 1967 PA 281,
13 MCL 206.30.

14 Sec. 17. (1) Notwithstanding any other provision of law
15 regarding an assistance program offered by this state that requires
16 consideration of 1 or more financial circumstances of an
17 individual, for the purpose of determining eligibility to receive,
18 or the amount of, any assistance or benefit authorized by that
19 provision to be provided to or for the benefit of an individual,
20 any amount and interest earned on an ABLE savings account for the
21 individual, any contributions to the ABLE savings account of the
22 individual, and any distribution for qualified disability expenses
23 shall be disregarded as provided in section 10g of the social
24 welfare act, 1939 PA 280, MCL 400.10g, with respect to any period
25 during which the individual maintains, makes contributions to, or
26 receives distributions from his or her ABLE savings account.

27 (2) Upon the death of the designated beneficiary, the amount

1 remaining in his or her ABLE savings account shall be distributed
2 pursuant to section 529A(f) of the internal revenue code.

3 Enacting section 1. This act takes effect 90 days after the
4 date it is enacted into law.

5 Enacting section 2. This act does not take effect unless all
6 of the following bills of the 98th Legislature are enacted into
7 law:

8 (a) Senate Bill No. 360.

9 (b) House Bill No. 4543.

10 (c) House Bill No. 4544.