

# SENATE BILL No. 361

June 3, 2015, Introduced by Senators WARREN, BRANDENBURG, ANANICH, ROCCA and STAMAS and referred to the Committee on Finance.

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 and who enters into a Michigan ABLE savings program

1 agreement and establishes an ABLE savings account. The account  
2 owner shall be the designated beneficiary of the account unless the  
3 designated beneficiary is a minor or lacks capacity to enter into  
4 an agreement, then a trustee or guardian may be appointed as an  
5 account owner.

6 (d) "Department" means the department of treasury.

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

15 (f) "Disability certification" means that term as defined in  
16 section 529A of the internal revenue code.

17 (g) "Eligible individual" means that term as defined in  
18 section 529A of the internal revenue code.

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

22 (i) "Management contract" means the contract executed between  
23 the treasurer and a program manager.

24 (j) "Member of the family" means a family member as defined in  
25 section 529A of the internal revenue code.

26 (k) "Michigan ABLE savings program agreement" means the  
27 agreement between the program and an account owner that establishes

1 an ABLE savings account.

2 (l) "Program" means the Michigan ABLE savings program  
3 established pursuant to this act.

4 (m) "Program manager" means an entity selected by the  
5 treasurer to act as a manager of the program.

6 (n) "Qualified disability expenses" means that term as defined  
7 in section 529A of the internal revenue code.

8 (o) "Qualified withdrawal" means a distribution that is not  
9 subject to a penalty or an excise tax under section 529A of the  
10 internal revenue code, a penalty under this act, or taxation under  
11 the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, and  
12 that meets any of the following:

13 (i) A withdrawal from an account to pay the qualified  
14 disability expenses of the designated beneficiary incurred after  
15 the account is established.

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

18 (iii) A transfer of funds due to the termination of the  
19 management contract as provided in section 5.

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

21 (p) "Savings plan" or "plan" means a plan that provides  
22 different investment strategies and allows account distributions  
23 for qualified disability expenses.

24 (q) "Treasurer" means the state treasurer.

25 Sec. 3. (1) The Michigan ABLE savings program is established  
26 in the department of treasury. The program may consist of 1 or more  
27 savings plans.

1           (2) The treasurer shall solicit proposals from entities to be  
2 a program manager to provide the services described in subsection  
3 (5).

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

7           (4) The state treasurer shall administer the Michigan ABLE  
8 savings program and shall be the trustee for the funds of the  
9 Michigan ABLE savings program.

10          (5) The treasurer may employ or contract with personnel and  
11 contract for services necessary for the administration of each  
12 savings plan under the program and the investment of the assets of  
13 each savings plan under the program including, but not limited to,  
14 managerial, professional, legal, clerical, technical, and  
15 administrative personnel or services.

16          (6) When selecting a program manager, the treasurer shall give  
17 preference to proposals from single entities that propose to  
18 provide all of the functions described in subsection (5) and that  
19 demonstrate the most advantageous combination, to both potential  
20 participants and this state, of the following factors and the  
21 management contract shall address these factors:

22           (a) Financial stability.

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

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

26           (d) The ability of the entity to satisfy the record-keeping  
27 and reporting requirements of this act.

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

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

5 (g) The minimum initial deposit and minimum contributions that  
6 the entity will require which, for the first year of the savings  
7 plan, shall not be greater than \$25.00 for a cash contribution or  
8 \$15.00 per pay period for payroll deduction plans.

9 (h) The ability of the entity to accept electronic  
10 withdrawals, including payroll deduction plans.

11 (7) The treasurer shall enter into a contract with each  
12 program manager which shall address the respective authority and  
13 responsibility of the treasurer and the program manager to do all  
14 of the following:

15 (a) Develop and implement the savings plan or plans offered  
16 under the program.

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

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

21 (d) Determine the use of financial organizations as account  
22 depositories and financial managers.

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

1 (f) Develop marketing plans and promotional material.

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

4 (h) Provide criteria for terminating and not renewing the  
5 management contract.

6 (i) Address the ability of the program manager to take any  
7 action required to keep the savings plan or plans offered under the  
8 program in compliance with requirements of this act and its  
9 management contract and to manage the savings plan or plans offered  
10 under the program to qualify as a qualified ABLE program under  
11 section 529A of the internal revenue code.

12 (j) Keep adequate records of each account and provide the  
13 treasurer with information that the treasurer requires related to  
14 those records.

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

18 (l) Hold all accounts for the benefit of the account owner.

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

21 (n) Provide the treasurer with copies of all regulatory  
22 filings and reports related to the savings plan or plans offered  
23 under the program made during the term of the management contract  
24 or while the program manager is holding any accounts, other than  
25 confidential filings or reports except to the extent those filings  
26 or reports are related to or are a part of the savings plan or  
27 plans offered under the program. It is the responsibility of the

1 program manager to make available for review by the treasurer the  
2 results of any periodic examination of the program manager by any  
3 state or federal banking, insurance, or securities commission,  
4 except to the extent that the report or reports are not required to  
5 be disclosed under state or federal law.

6 (o) Ensure that any description of the savings plan or plans  
7 offered under the program, whether in writing or through the use of  
8 any media, is consistent with the marketing plan developed by the  
9 program manager.

10 (p) Take any other necessary and proper activities to carry  
11 out the purposes of this act.

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

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

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

18 Sec. 6. The treasurer may enter into contracts that it  
19 considers necessary and proper for the implementation of this  
20 program.

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

23 (2) Any individual may open an ABLE savings account to save  
24 money to pay the qualified disability expenses of the designated  
25 beneficiary. An account owner shall open only 1 account for any 1  
26 designated beneficiary. Each account opened under this act shall  
27 have only 1 designated beneficiary.

1           (3) To open an ABLE savings account, the individual or a  
2 trustee or guardian of a designated beneficiary who lacks capacity  
3 to enter into a contract shall enter into a Michigan ABLE savings  
4 program agreement with the program. The Michigan ABLE savings  
5 program agreement shall be in the form prescribed by a program  
6 manager and approved by the treasurer and contain all of the  
7 following:

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

10          (b) A designated beneficiary. The name, address, and social  
11 security number of the designated beneficiary, if the account owner  
12 is the beneficiary's trustee or guardian.

13          (c) Any other information that the treasurer or program  
14 manager considers necessary.

15          (4) Any person may make contributions to an account after the  
16 account is opened, subject to the limitations imposed by section  
17 529A of the internal revenue code or any rules and regulations  
18 promulgated by the treasurer pursuant to this act.

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

22          (6) An account owner may withdraw all or part of the balance  
23 from an account on 60 days' notice, or a shorter period as  
24 authorized in the Michigan ABLE savings program agreement.

25          (7) Distributions from an account shall be requested on a form  
26 approved by the treasurer. A program manager may retain from the  
27 distribution the amount necessary to comply with federal and state



1 tax laws. Distributions may be made in the following manner:

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

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

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

9 (8) For a distribution made after December 31, 2015 that is  
10 not a qualified withdrawal, if an excise tax or penalty is imposed  
11 under section 529A of the internal revenue code, a penalty shall  
12 not be imposed under this subsection for that distribution. If a  
13 distribution that is not a qualified withdrawal is made after  
14 December 31, 2015 and an excise tax or penalty is not imposed under  
15 section 529A of the internal revenue code on that distribution, a  
16 program manager shall withhold an amount equal to 10% of the  
17 accumulated earnings attributable to that distribution amount as a  
18 penalty and pay that amount to the department for deposit into the  
19 general fund. The penalty under this subsection may be increased or  
20 decreased if the treasurer and the program manager determine that  
21 it is necessary to increase or decrease the penalty to comply with  
22 section 529A of the internal revenue code.

23 (9) Each savings plan under the program shall provide separate  
24 accounting for each designated beneficiary.

25 Sec. 8. (1) If the account owner is a trustee or guardian of  
26 the designated beneficiary, then that account owner may designate  
27 another individual as a successor owner of the account in the event

1 of his or her death.

2 (2) An account owner may change the designated beneficiary of  
3 an account to another eligible individual as long as that eligible  
4 individual is a member of the family of the previously designated  
5 beneficiary as provided in the management contract or as otherwise  
6 provided in this act.

7 (3) An account owner may transfer ownership of all or a  
8 portion of an account to an individual who is eligible to be an  
9 account owner under this act.

10 (4) An account owner may transfer all or a portion of an  
11 account to another ABLE savings account. The designated beneficiary  
12 of the account to which the transfer is made must be a member of  
13 the family.

14 (5) An account owner may transfer all or a portion of an  
15 account to an account in an ABLE program under section 529A of the  
16 internal revenue code, other than the program under this act, once  
17 every 12 months, without a change in designated beneficiary.

18 (6) Changes in designated beneficiaries and transfers under  
19 this section are not permitted to the extent that the change or  
20 transfer would constitute excess contributions or unauthorized  
21 investment choices.

22 Sec. 9. (1) Except as otherwise provided in this section, an  
23 account owner or a designated beneficiary of any account shall not  
24 direct the investment of any contributions to an account or the  
25 earnings on an account.

26 (2) An account owner may select among different investment  
27 strategies designed by a program manager in all of the following

1 circumstances to the extent allowed under section 529A of the  
2 internal revenue code:

3 (a) At the time any contribution is made to an account with  
4 respect to the amount of that contribution.

5 (b) Once each calendar year with respect to the accumulated  
6 account balance.

7 (c) When an account owner makes a change in designated  
8 beneficiary of an account.

9 (3) 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 (4) 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 shall reject a contribution to any account for  
20 a designated beneficiary if, at the time of the contribution, the  
21 total balance of the account for that designated beneficiary has  
22 reached the maximum account balance limit under subsection (1) or  
23 the contribution is in excess of the limits established pursuant to  
24 section 7(4). An account may continue to accrue earnings if the  
25 total balance of the account for that beneficiary has reached the  
26 maximum account balance limit and shall not be considered to have  
27 exceeded the maximum account balance limit under subsection (1).

1       Sec. 11. (1) Each program manager shall report distributions  
2 from an account to any individual or for the benefit of any  
3 individual during a tax year to the internal revenue service and  
4 the account owner or, to the extent required by federal law or  
5 regulation, to the distributee.

6       (2) Each program manager shall provide statements that  
7 identify the individual contributions made during the tax year, the  
8 total contributions made to the account for the tax year, the value  
9 of the account at the end of the tax year, distributions made  
10 during the tax year, and any other information that the treasurer  
11 requires to each account owner on or before the January 31  
12 following the end of each calendar year.

13       Sec. 12. Each program manager shall disclose the following  
14 information in writing to each account owner of an ABLE savings  
15 account and any other person who requests information about an ABLE  
16 savings account:

17       (a) The terms and conditions for establishing an ABLE savings  
18 account.

19       (b) Restrictions on the substitutions of designated  
20 beneficiaries and transfer of account funds.

21       (c) The person entitled to terminate a Michigan ABLE savings  
22 program agreement.

23       (d) The period of time during which a designated beneficiary  
24 may receive benefits under the Michigan ABLE savings program  
25 agreement.

26       (e) The terms and conditions under which money may be wholly  
27 or partially withdrawn from an account or the program, including,

1 but not limited to, any reasonable charges and fees and penalties  
2 that may be imposed for withdrawal.

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

5 (g) Investment history and potential growth of account funds  
6 and a projection of the impact of the growth of the account funds  
7 on the maximum amount allowable in an account.

8 (h) All other rights and obligations under Michigan ABLE  
9 savings program agreements and any other terms, conditions, and  
10 provisions of a contract or an agreement entered into under this  
11 act.

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

14 (a) Give any designated beneficiary any rights or legal  
15 interest with respect to an account unless the designated  
16 beneficiary is the account owner.

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

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

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

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

25 (2) The contracts, applications, deposit slips, and other  
26 similar documents used in connection with a contribution to an  
27 account shall clearly indicate that the account is not insured by

1 this state and that the money deposited into and investment return  
2 earned on an account are not guaranteed by this state.

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

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

9 (b) The total amount contributed to all accounts during the  
10 year.

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

13 (d) Any information that the program manager or treasurer may  
14 require regarding the taxation of amounts contributed to or  
15 withdrawn from accounts.

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

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

22 Sec. 17. (1) Notwithstanding any other provision of law that  
23 requires consideration of 1 or more financial circumstances of an  
24 individual, for the purpose of determining eligibility to receive,  
25 or the amount of, any assistance or benefit authorized by that  
26 provision to be provided to or for the benefit of an individual,  
27 any amount and interest earned on an ABLE savings account for the

1 individual, any contributions to the ABLE savings account of the  
2 individual, and any distribution for qualified disability expenses  
3 shall be disregarded as provided in section 10g of the social  
4 welfare act, 1939 PA 280, MCL 400.10g, with respect to any period  
5 during which the individual maintains, makes contributions to, or  
6 receives distributions from his or her ABLE savings account, except  
7 that, in the case of the supplemental security income program under  
8 title XVI of the social security act, 42 USC 1381 to 1383f, a  
9 distribution for housing expenses shall not be disregarded and any  
10 amount and interest earned on that account shall be considered a  
11 resource of the designated beneficiary to the extent that the  
12 amount exceeds \$100,000.00.

13 (2) The benefits of an individual under the supplemental  
14 security income program under title XVI of the social security act,  
15 42 USC 1381 to 1383f, shall not be terminated, but shall be  
16 suspended, for excess resources of the individual attributable to  
17 the amount in his or her ABLE savings account that is not  
18 disregarded under subsection (1). An individual who would be  
19 receiving payment of supplemental security income benefits but for  
20 the application of this subsection shall be treated for purposes of  
21 title XIX of the social security act, 42 USC 1396 to 1396w-5, as if  
22 the individual continued to be receiving payment of those benefits.

23 (3) Upon the death of the designated beneficiary, all amounts  
24 remaining in his or her ABLE savings account shall be distributed  
25 pursuant to section 529a(f) of the internal revenue code. Section  
26 7(8) does not apply to a distribution under this subsection.

27 Enacting section 1. This act takes effect 90 days after the

1 date it is enacted into law.

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

5 (a) Senate Bill No. 362.

6

7 (b) Senate Bill No. 359.

8

9 (c) Senate Bill No. 360.

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