



Rep. Kelly M. Burke

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LRB100 17359 RJF 36477 a

1 AMENDMENT TO HOUSE BILL 4754

2 AMENDMENT NO. _____. Amend House Bill 4754 by replacing
3 everything after the enacting clause with the following:

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 selected by the

1 State Treasurer to administer the daily operations of the ABLE
2 account plan and provide marketing, recordkeeping, investment
3 management, and other services for the plan.

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

7 "Beneficiary" means the ABLE account owner.

8 "Board" means the Illinois State Board of Investment.

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

13 "Designated representative" means a person who is
14 authorized to act on behalf of an account owner. An account
15 owner is authorized to act on his or her own behalf unless the
16 account owner is a minor or the account owner has been
17 adjudicated to have a disability so that a guardian has been
18 appointed. A designated representative acts in a fiduciary
19 capacity to the account owner. The State Treasurer shall
20 recognize a person as a designated representative without
21 appointment by a court in the following order of priority:

22 (1) The account owner's plenary guardian of the estate,
23 or the account owner's limited guardian of financial or
24 contractual matters. Any guardian acting in this capacity
25 shall not be required to seek court approval for any ABLE
26 qualified distributions.

1 (2) The agent named by the account owner in a property
2 power of attorney recognized as a statutory short form
3 power of attorney for property.

4 (3) Such individual or entity that the account owner so
5 designates in writing, in a manner to be established by the
6 State Treasurer.

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

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

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

13 "Participation agreement" means an agreement to
14 participate in the ABLE account plan between an account owner
15 and the State, through its agencies and the State Treasurer.

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

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

21 (b) The "Achieving a Better Life Experience" or "ABLE"
22 account program is hereby created and shall be administered by
23 the State Treasurer. The purpose of the ABLE plan is to
24 encourage and assist individuals and families in saving private
25 funds for the purpose of supporting individuals with
26 disabilities to maintain health, independence, and quality of

1 life, and to provide secure funding for disability-related
2 expenses on behalf of designated beneficiaries with
3 disabilities that will supplement, but not supplant, benefits
4 provided through private insurance, federal and State medical
5 and disability insurance, the beneficiary's employment, and
6 other sources. Under the plan, a person may make contributions
7 to an ABLE account to meet the qualified disability expenses of
8 the designated beneficiary of the account. The plan must be
9 operated as an accounts-type plan that permits persons to save
10 for qualified disability expenses incurred by or on behalf of
11 an eligible individual.

12 The State Treasurer shall promote awareness of the
13 availability and advantages of the ABLE account plan as a way
14 to assist individuals and families in saving private funds for
15 the purpose of supporting individuals with disabilities. The
16 cost of these promotional efforts shall not be funded with fees
17 imposed on participants by the State Treasurer.

18 The State Treasurer shall not accept contributions for ABLE
19 accounts under this Section until the Internal Revenue Service
20 has issued its final regulations or interim guidance concerning
21 ABLE accounts.

22 A separate account must be maintained for each beneficiary
23 for whom contributions are made, and no more than one account
24 shall be established per beneficiary. If an ABLE account is
25 established for a designated beneficiary, no account
26 subsequently established for such beneficiary shall be treated

1 as an ABLE account. The preceding sentence shall not apply in
2 the case of an ABLE account established for purposes of a
3 rollover as permitted under Section 529A of the Internal
4 Revenue Code.

5 An ABLE account may be established under this Section for a
6 designated beneficiary who is a resident of Illinois, a
7 resident of a contracting state, or a resident of any other
8 state.

9 Prior to the establishment of an ABLE account, an account
10 owner must provide documentation to the State Treasurer that
11 the account beneficiary is an eligible individual.

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 may
15 make a contribution to an ABLE account if such a contribution
16 would result in the aggregate account balance of an ABLE
17 account exceeding the account balance limit authorized under
18 Section 529A of the Internal Revenue Code. The Treasurer shall
19 review the contribution limit at least annually.

20 The State Treasurer shall administer the plan, including
21 accepting and processing applications, maintaining account
22 records, making payments, and undertaking any other necessary
23 tasks to administer the plan, including the appointment of an
24 account administrator. The State Treasurer may contract with
25 one or more third parties to carry out some or all of these
26 administrative duties, including, but not limited to,

1 providing investment management services, incentives, and
2 marketing the plan.

3 In designing and establishing the plan's requirements and
4 in negotiating or entering into contracts with third parties
5 under this Section, the State Treasurer shall consult with the
6 Board. The State Treasurer shall establish fees to be imposed
7 on participants to recover the costs of administration,
8 recordkeeping, and investment management. The State Treasurer
9 must use his or her best efforts to keep these fees as low as
10 possible, consistent with efficient administration.

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

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

5 Applications for accounts, account owner data, account
6 data, and data on beneficiaries of accounts are confidential
7 and exempt from disclosure under the Freedom of Information
8 Act.

9 (c) The State Treasurer may invest the moneys in ABLE
10 accounts in the same manner and in the same types of
11 investments provided for the investment of moneys by the Board.
12 To enhance the safety and liquidity of ABLE accounts, to ensure
13 the diversification of the investment portfolio of accounts,
14 and in an effort to keep investment dollars in the State, the
15 State Treasurer may make a percentage of each account available
16 for investment in participating financial institutions doing
17 business in the State, except that the accounts may be invested
18 without limit in investment options from open-ended investment
19 companies registered under Section 80a of the federal
20 Investment Company Act of 1940. The State Treasurer may
21 contract with one or more third parties for investment
22 management, recordkeeping, or other services in connection
23 with investing the accounts.

24 The account administrator shall annually prepare and adopt
25 a written statement of investment policy that includes a risk
26 management and oversight program. The risk management and

1 oversight program shall be designed to ensure that an effective
2 risk management system is in place to monitor the risk levels
3 of the ABLE plan, to ensure that the risks taken are prudent
4 and properly managed, to provide an integrated process for
5 overall risk management, and to assess investment returns as
6 well as risk to determine if the risks taken are adequately
7 compensated compared to applicable performance benchmarks and
8 standards.

9 The State Treasurer may enter into agreements with other
10 states to either allow Illinois residents to participate in a
11 plan operated by another state or to allow residents of other
12 states to participate in the Illinois ABLE plan.

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

23 A person may make contributions to an ABLE account on
24 behalf of a beneficiary. Contributions to an account made by
25 persons other than the account owner become the property of the
26 account owner. Contributions to an account shall be considered

1 as a transfer of assets for fair market value. A person does
2 not acquire an interest in an ABLE account by making
3 contributions to an account. A contribution to any account for
4 a beneficiary must be rejected if the contribution would cause
5 either the aggregate or annual account balance of the account
6 to exceed the limits imposed by Section 529A of the Internal
7 Revenue Code.

8 Any change in account owner must be done in a manner
9 consistent with Section 529A of the Internal Revenue Code.

10 Notice of any proposed amendments to the rules and
11 regulations shall be provided to all owners or their designated
12 representatives prior to adoption. Amendments to rules and
13 regulations shall apply only to contributions made after the
14 adoption of the amendment. Amendments to this Section
15 automatically amend the participation agreement. Any
16 amendments to the operating procedures and policies of the plan
17 shall automatically amend the participation agreement after
18 adoption by the State Treasurer.

19 All assets of the plan, including any contributions to
20 accounts, are held in trust for the exclusive benefit of the
21 account owner and shall be considered spendthrift accounts
22 exempt from all of the owner's creditors. The plan shall
23 provide separate accounting for each designated beneficiary
24 sufficient to satisfy the requirements of paragraph (3) of
25 subsection (b) of Section 529A of the Internal Revenue Code.
26 Assets must be held in either a state trust fund outside the

1 State treasury, to be known as the Illinois ABLE plan trust
2 fund, or in accounts with a third-party provider selected
3 pursuant to this Section. Amounts contributed to ABLE accounts
4 shall not be commingled with State funds and the State shall
5 have no claim to or against, or interest in, such funds.

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

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

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

21 Notwithstanding any other provision of law that requires
22 consideration of one or more financial circumstances of an
23 individual, for the purpose of determining eligibility to
24 receive, or the amount of, any assistance or benefit authorized
25 by such provision to be provided to or for the benefit of such
26 individual, any amount, including earnings thereon, in the ABLE

1 account of such individual, any contributions to the ABLE
2 account of the individual, and any distribution for qualified
3 disability expenses shall be disregarded for such purpose with
4 respect to any period during which such individual maintains,
5 makes contributions to, or receives distributions from such
6 ABLE account.

7 (e) The account owner or the designated representative of
8 the account owner may request that a qualified distribution be
9 made for the benefit of the account owner. Qualified
10 distributions shall be made for qualified disability expenses
11 allowed pursuant to Section 529A of the Internal Revenue Code.
12 Qualified distributions must be withdrawn proportionally from
13 contributions and earnings in an account owner's account on the
14 date of distribution as provided in Section 529A of the
15 Internal Revenue Code. Unless prohibited by federal law, upon
16 the death of a designated beneficiary, proceeds from an account
17 may be transferred to the estate of a designated beneficiary,
18 or to an account for another eligible individual specified by
19 the designated beneficiary or the estate of the designated
20 beneficiary. An agency or instrumentality of the State may not
21 seek payment under subsection (f) of Section 529A of the
22 federal Internal Revenue Code from the account or its proceeds
23 for benefits provided to a designated beneficiary. Upon the
24 death of a beneficiary, the amount remaining in the
25 beneficiary's account must be distributed pursuant to
26 subsection (f) of Section 529A of the Internal Revenue Code.

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

8 (Source: P.A. 99-145, eff. 1-1-16; 99-563, eff. 7-15-16.)

9 Section 10. The Trusts and Trustees Act is amended by
10 changing Section 15.1 as follows:

11 (760 ILCS 5/15.1) (from Ch. 17, par. 1685.1)

12 Sec. 15.1. Trust for a beneficiary with a disability.

13 (a) A discretionary trust for the benefit of an individual
14 who has a disability that substantially impairs the
15 individual's ability to provide for his or her own care or
16 custody and constitutes a substantial disability shall not be
17 liable to pay or reimburse the State or any public agency for
18 financial aid or services to the individual except to the
19 extent the trust was created by the individual or trust
20 property has been distributed directly to or is otherwise under
21 the control of the individual, provided that such exception
22 shall not apply to a trust created with the property of the
23 individual with a disability or property within his or her
24 control if the trust complies with Medicaid reimbursement

1 requirements of federal law. Notwithstanding any other
2 provisions to the contrary, a trust created with the property
3 of the individual with a disability or property within his or
4 her control shall be liable, after reimbursement of Medicaid
5 expenditures, to the State for reimbursement of any other
6 service charges outstanding at the death of the individual with
7 a disability. Property, goods and services purchased or owned
8 by a trust for and used or consumed by a beneficiary with a
9 disability shall not be considered trust property distributed
10 to or under the control of the beneficiary. A discretionary
11 trust is one in which the trustee has discretionary power to
12 determine distributions to be made under the trust.

13 (b) The court or a person with a disability may irrevocably
14 assign resources of that person to either or both of: (i) an
15 ABLE account, as defined under Section 16.6 of the State
16 Treasurer Act; or (ii) a discretionary trust that complies with
17 the Medicaid reimbursement requirements of federal law. As used
18 in this subsection, "resources" includes, but is not limited
19 to, any interest in real or personal property, judgment,
20 settlement, annuity, maintenance, minor child support, and
21 support for non-minor children. Assignment is not authorized if
22 otherwise prohibited by law. A court may reserve the right to
23 determine the amount, duration, or enforcement of the
24 irrevocable assignment.

25 (Source: P.A. 99-143, eff. 7-27-15.)

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