

SB2268



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB2268

Introduced 1/27/2016, by Sen. Scott M. Bennett and All
Senators

SYNOPSIS AS INTRODUCED:

15 ILCS 505/16.6

Amends the State Treasurer Act. Provides that the State Treasurer may accept contributions for ABLE accounts once the Internal Revenue Service has issued either interim guidance or final regulations (currently, only final regulations). Provides that ABLE accounts may also be established for residents of other states (currently, only residents of Illinois). Makes technical corrections. Effective immediately.

LRB099 16356 JWD 40688 b

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The State Treasurer Act is amended by changing
5 Section 16.6 as follows:

6 (15 ILCS 505/16.6)

7 Sec. 16.6. ABLE account program.

8 (a) As used in this Section:

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

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

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

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

23 "Beneficiary" means the ABLE account owner.

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

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

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

15 (1) The account owner's plenary guardian of the estate,
16 or the account owner's limited guardian of financial or
17 contractual matters. Any guardian acting in this capacity
18 shall not be required to seek court approval for any ABLE
19 qualified distributions.

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

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

26 (4) Such other individual or entity designated by the

1 State Treasurer pursuant to its rules.

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

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

6 "Participation agreement" means an agreement to
7 participate in the ABLE account plan between an account owner
8 and the State, through its agencies and the State Treasurer.

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

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

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

1 the designated beneficiary of the account. The plan must be
2 operated as an accounts-type plan that permits persons to save
3 for qualified disability expenses incurred by or on behalf of
4 an eligible individual.

5 The State Treasurer shall promote awareness of the
6 availability and advantages of the ABLE account plan as a way
7 to assist individuals and families in saving private funds for
8 the purpose of supporting individuals with disabilities. The
9 cost of these promotional efforts shall not be funded with fees
10 imposed on participants by the State Treasurer.

11 The State Treasurer shall not accept contributions for ABLE
12 accounts under this Section until the Internal Revenue Service
13 has issued its final regulations or interim guidance concerning
14 ABLE accounts.

15 A separate account must be maintained for each beneficiary
16 for whom contributions are made, and no more than one account
17 shall be established per beneficiary. If an ABLE account is
18 established for a designated beneficiary, no account
19 subsequently established for such beneficiary shall be treated
20 as an ABLE account. The preceding sentence shall not apply in
21 the case of an ABLE account established for purposes of a
22 rollover as permitted under Section 529A of the Internal
23 Revenue Code.

24 An ABLE account may be established under this Section ~~only~~
25 for a designated beneficiary who is a resident of Illinois, ~~or~~
26 a resident of a contracting state, or a resident of any other

1 state.

2 Prior to the establishment of an ABLE account, an account
3 owner must provide documentation to the State Treasurer that
4 the account beneficiary is an eligible individual.

5 Annual contributions to an ABLE account on behalf of a
6 beneficiary are subject to the requirements of subsection (b)
7 of Section 529A of the Internal Revenue Code. No person may
8 make a contribution to an ABLE account if such a contribution
9 would result in the aggregate account balance of an ABLE
10 account exceeding the account balance limit authorized under
11 Section 529A of the Internal Revenue Code. The Treasurer shall
12 review the contribution limit at least annually.

13 The State Treasurer shall administer the plan, including
14 accepting and processing applications, maintaining account
15 records, making payments, and undertaking any other necessary
16 tasks to administer the plan, including the appointment of an
17 account administrator. The State Treasurer may contract with
18 one or more third parties to carry out some or all of these
19 administrative duties, including, but not limited to,
20 providing investment management services, incentives, and
21 marketing the plan.

22 In designing and establishing the plan's requirements and
23 in negotiating or entering into contracts with third parties
24 under this Section, the State Treasurer shall consult with the
25 Board. The State Treasurer shall establish fees to be imposed
26 on participants to recover the costs of administration,

1 recordkeeping, and investment management. The State Treasurer
2 must use his or her best efforts to keep these fees as low as
3 possible, consistent with efficient administration.

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

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

24 Applications for accounts, account owner data, account
25 data, and data on beneficiaries of accounts are confidential
26 and exempt from disclosure under the Freedom of Information

1 Act.

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

17 The account administrator shall annually prepare and adopt
18 a written statement of investment policy that includes a risk
19 management and oversight program. The risk management and
20 oversight program shall be designed to ensure that an effective
21 risk management system is in place to monitor the risk levels
22 of the ABLE plan, to ensure that the risks taken are prudent
23 and properly managed, to provide an integrated process for
24 overall risk management, and to assess investment returns as
25 well as risk to determine if the risks taken are adequately
26 compensated compared to applicable performance benchmarks and

1 standards.

2 The State Treasurer may enter into agreements with other
3 states to either allow Illinois residents to participate in a
4 plan operated by another state or to allow residents of other
5 states to participate in the Illinois ABLE plan.

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

16 A person may make contributions to an ABLE account on
17 behalf of a beneficiary. Contributions to an account made by
18 persons other than the account owner become the property of the
19 account owner. Contributions to an account shall be considered
20 as a transfer of assets for fair market value. A person does
21 not acquire an interest in an ABLE account by making
22 contributions to an account. A contribution to any account for
23 a beneficiary must be rejected if the contribution would cause
24 either the aggregate or annual account balance of the account
25 to exceed the limits imposed by Section 529A of the Internal
26 Revenue Code.

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

3 Notice of any proposed amendments to the rules and
4 regulations shall be provided to all owners or their designated
5 representatives prior to adoption. Amendments to rules and
6 regulations shall apply only to contributions made after the
7 adoption of the amendment. Amendments to this Section
8 automatically amend the participation agreement. Any
9 amendments to the operating procedures and policies of the plan
10 shall automatically amend the participation agreement after
11 adoption by the State Treasurer.

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

25 Plan assets are not subject to claims by creditors of the
26 State and are not subject to appropriation by the State.

1 Payments from the Illinois ABLE account plan shall be made
2 under this Section.

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

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

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

26 (e) The account owner or the designated representative of

1 the account owner may request that a qualified distribution be
2 made for the benefit of the account owner. Qualified
3 distributions shall be made for qualified disability expenses
4 allowed pursuant to Section 529A of the Internal Revenue Code.
5 Qualified distributions must be withdrawn proportionally from
6 contributions and earnings in an account owner's account on the
7 date of distribution as provided in Section 529A of the
8 Internal Revenue Code. Upon the death of a beneficiary, the
9 amount remaining in the beneficiary's account must be
10 distributed pursuant to subsection (f) of Section 529A of the
11 Internal Revenue Code.

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

19 (Source: P.A. 99-145, eff. 1-1-16.)

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