

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 or entity
17 selected by the State Treasurer to administer the daily
18 operations of the ABLE account plan and provide marketing,
19 recordkeeping, investment management, and other services for
20 the plan.

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

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

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

7 "Designated representative" means a person or entity who
8 is authorized to act on behalf of a "designated beneficiary".
9 A designated beneficiary is authorized to act on his or her own
10 behalf unless the designated beneficiary is a minor or the
11 designated beneficiary has been adjudicated to have a
12 disability so that a guardian has been appointed. A designated
13 representative acts in a fiduciary capacity to the designated
14 beneficiary. A person or entity seeking to open an ABLE
15 account on behalf of a designated beneficiary must provide
16 certification, subject to penalties of perjury, of the basis
17 for the person's or entity's authority to act as a designated
18 representative and that there is no other person or entity
19 with higher priority to establish the ABLE account under
20 Section 529A of the Internal Revenue Code and federal
21 regulations. ~~The State Treasurer shall recognize the following~~
22 ~~as a designated representative without appointment by a court:~~

23 ~~(1) The designated beneficiary's guardian of the~~
24 ~~person, plenary guardian of the estate, limited guardian~~
25 ~~of financial or contractual matters, or any other~~
26 ~~State appointed guardian. A guardian acting in this~~

1 ~~capacity shall not be required to seek court approval for~~
2 ~~any ABLE account activity.~~

3 ~~(2) The agent named by the designated beneficiary in a~~
4 ~~property power of attorney recognized as a statutory short~~
5 ~~form power of attorney for property.~~

6 ~~(3) Such individual or entity that the designated~~
7 ~~beneficiary so designates in writing, in a manner to be~~
8 ~~established by the State Treasurer.~~

9 ~~(4) Such other individual or entity designated by the~~
10 ~~State Treasurer pursuant to its rules.~~

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

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

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

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

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

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

26 (b) Establishment of the ABLE Program. The "Achieving a

1 Better Life Experience" or "ABLE" account program is hereby
2 created and shall be administered by the State Treasurer. The
3 purpose of the ABLE program is to encourage and assist
4 individuals and families in saving private funds for the
5 purpose of supporting individuals with disabilities to
6 maintain health, independence, and quality of life, and to
7 provide secure funding for disability-related expenses on
8 behalf of designated beneficiaries with disabilities that will
9 supplement, but not supplant, benefits provided through
10 private insurance, federal and State medical and disability
11 insurance, the beneficiary's employment, and other sources.
12 Under the plan, a person may make contributions to an ABLE
13 account to meet the qualified disability expenses of the
14 designated beneficiary of the account. The plan must be
15 operated as an accounts-type plan that permits persons to save
16 for qualified disability expenses incurred by or on behalf of
17 an eligible individual.

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

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

1 Annual contributions to an ABLE account on behalf of a
2 beneficiary are subject to the requirements of subsection (b)
3 of Section 529A of the Internal Revenue Code. No person may
4 make a contribution to an ABLE account if such a contribution
5 would result in the aggregate account balance of an ABLE
6 account exceeding the account balance limit authorized under
7 Section 529A of the Internal Revenue Code. The Treasurer shall
8 review the contribution limit at least annually. A separate
9 account must be maintained for each beneficiary for whom
10 contributions are made, and no more than one account shall be
11 established per beneficiary. If an ABLE account is established
12 for a designated beneficiary, no account subsequently
13 established for such beneficiary shall be treated as an ABLE
14 account. The preceding sentence shall not apply in the case of
15 an ABLE account established for purposes of a rollover as
16 permitted under Sections 529 and 529A of the Internal Revenue
17 Code.

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

1 marketing the plan. The State Treasurer may enter into
2 agreements with other states to either allow Illinois
3 residents to participate in a plan operated by another state
4 or to allow residents of other states to participate in the
5 Illinois ABLE plan. The State Treasurer may require any
6 certifications that he or she deems necessary to implement the
7 program, including oaths or affirmations made under penalties
8 of perjury.

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

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

1 be deposited into the Administrative Fund.

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

6 (h) Privacy. Applications for accounts, designated
7 beneficiary data, account data, and data on beneficiaries of
8 accounts are confidential and exempt from disclosure under the
9 Freedom of Information Act.

10 (i) Investment Policy. The Treasurer shall prepare and
11 adopt a written statement of investment policy that includes a
12 risk management and oversight program which shall be reviewed
13 annually and posted on the Treasurer's website prior to
14 implementation. The risk management and oversight program
15 shall be designed to ensure that an effective risk management
16 system is in place to monitor the risk levels of the ABLE plan,
17 to ensure that the risks taken are prudent and properly
18 managed, to provide an integrated process for overall risk
19 management, and to assess investment returns as well as risk
20 to determine if the risks taken are adequately compensated
21 compared to applicable performance benchmarks and standards.
22 To enhance the safety and liquidity of ABLE accounts, to
23 ensure the diversification of the investment portfolio of
24 accounts, and in an effort to keep investment dollars in the
25 State, the State Treasurer may make a percentage of each
26 account available for investment in participating financial

1 institutions doing business in the State, except that the
2 accounts may be invested without limit in investment options
3 from open-ended investment companies registered under Section
4 80a of the federal Investment Company Act of 1940. The State
5 Treasurer may contract with one or more third parties for
6 investment management, recordkeeping, or other services in
7 connection with investing the accounts.

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

19 (k) Contributions. A person may make contributions to an
20 ABLE account on behalf of a beneficiary. Contributions to an
21 account made by persons other than the designated beneficiary
22 become the property of the designated beneficiary.
23 Contributions to an account shall be considered as a transfer
24 of assets for fair market value. A person does not acquire an
25 interest in an ABLE account by making contributions to an
26 account. A contribution to any account for a beneficiary must

1 be rejected if the contribution would cause either the
2 aggregate or annual account balance of the account to exceed
3 the limits imposed by Section 529A of the Internal Revenue
4 Code.

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

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

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

1 known as the Illinois ABLE plan trust fund, or in accounts with
2 a third-party provider selected pursuant to this Section.
3 Amounts contributed to ABLE accounts shall not be commingled
4 with State funds and the State shall have no claim to or
5 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 (n) Taxation. The assets of ABLE accounts and their income
13 and operation shall be exempt from all taxation by the State of
14 Illinois and any of its subdivisions to the extent exempt from
15 federal income taxation. The accrued earnings on investments
16 in an ABLE account once disbursed on behalf of a designated
17 beneficiary shall be similarly exempt from all taxation by the
18 State of Illinois and its subdivisions to the extent exempt
19 from federal income taxation, so long as they are used for
20 qualified 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
25 authorized by such provision to be provided to or for the
26 benefit of such individual, any amount, including earnings

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

7 (o) Distributions. The designated beneficiary or the
8 designated representative of the designated beneficiary may
9 make a qualified distribution for the benefit of the
10 designated beneficiary. Qualified distributions shall be made
11 for qualified disability expenses allowed pursuant to Section
12 529A of the Internal Revenue Code. Qualified distributions
13 must be withdrawn proportionally from contributions and
14 earnings in a designated beneficiary's account on the date of
15 distribution as provided in Section 529A of the Internal
16 Revenue Code. Unless prohibited by federal law, upon the death
17 of a designated beneficiary, proceeds from an account may be
18 transferred to the estate of a designated beneficiary, or to
19 an account for another eligible individual specified by the
20 designated beneficiary or the estate of the designated
21 beneficiary, or transferred pursuant to a payable on death
22 account agreement. A payable on death account agreement may be
23 executed by the designated beneficiary or a designated
24 representative who has been granted such power. Upon the death
25 of a designated beneficiary, prior to distribution of the
26 balance to the estate, account for another eligible

1 individual, or transfer pursuant to a payable on death account
2 agreement, the State Treasurer may require verification that
3 the funeral and burial expenses of the designated beneficiary
4 have been paid. An agency or instrumentality of the State may
5 not seek payment under subsection (f) of Section 529A of the
6 federal Internal Revenue Code from the account or its proceeds
7 for benefits provided to a designated beneficiary.

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

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

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