

ACT 206

H.B. NO. 119

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. It is the intent and purpose of the legislature to establish a qualified tax exempt savings program to encourage and assist individuals and families to save private funds to support individuals with disabilities pursuant to section 529A of the Internal Revenue Code of 1986, as amended, or successor legislation, and any regulations promulgated thereunder. It is the further intent of the legislature that the program established by this Act be and remain in conformance with the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014, Division B of Public Law No. 113-295.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII ABLE SAVINGS PROGRAM**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Account” or “ABLE savings account” means an individual savings account established in accordance with this chapter.

“Account owner” means the person who enters into a savings agreement pursuant to this chapter.

“Designated beneficiary” means a resident of the State whose qualified disability expenses may be paid from the account.

“Director” means the director of finance.

“Eligible individual” means an individual who is entitled to benefits based on blindness or disability under title 42 United States Code section 401 et seq.

or title 42 United States Code section 1381 et seq., as amended, and for whom blindness or disability occurred before the date on which the individual attained the age of twenty-six, or an individual who filed for the taxable year, a disability certification with and to the satisfaction of the secretary.

“Financial organization” means an organization authorized to do business in the State that is:

- (1) Licensed or chartered by the insurance commissioner;
- (2) Licensed or chartered by the commissioner of financial institutions;
- (3) Chartered by an agency of the federal government; or
- (4) Subject to the jurisdiction and regulation of the federal Securities and Exchange Commission.

“Management contract” means the contract executed by the director of finance and a financial organization selected to act as a depository and manager of the program.

“Member of the family” has the same meaning defined in section 529A of the Internal Revenue Code of 1986, as amended.

“Nonqualified withdrawal” means a withdrawal from an account that is not:

- (1) A qualified withdrawal; or
- (2) A rollover distribution.

“Program” means the Hawaii ABLE savings program established under this chapter.

“Program manager” means a financial organization selected by the director of finance to act as a depository and manager of the program.

“Qualified disability expense” means any qualified disability expense included in section 529A of the Internal Revenue Code of 1986, as amended.

“Qualified withdrawal” means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

“Rollover distribution” means a rollover distribution as defined in section 529A of the Internal Revenue Code of 1986, as amended.

“Savings agreement” means an agreement between the program manager or the director of finance and the account owner.

“Secretary” means the secretary of the United States Department of the Treasury.

§ -2 **Hawaii ABLE savings program; establishment.** The director of finance shall establish the Hawaii ABLE savings program to provide for individual savings accounts that empower individuals with a disability and their families to save private funds to support the individual with a disability.

§ -3 **Functions and powers of the director of finance.** (a) The director shall implement and administer the program under the terms and conditions established by this chapter and in conformity with federal law including the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014, Division B of P.L. 113-295, as it may be amended. The director shall have the authority and responsibility to:

- (1) Develop and implement the program in a manner consistent with this chapter;
- (2) Engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;
- (3) Seek rulings and other guidance from the secretary and the Internal Revenue Service relating to the program;
- (4) Make any changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment

provided by section 529A of the Internal Revenue Code of 1986, as amended;

- (5) Charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program;
- (6) Develop marketing plans and promotional material;
- (7) Establish the methods by which the funds held in accounts shall be dispersed;
- (8) Establish the method by which funds shall be allocated to pay for administrative costs;
- (9) Conduct an annual evaluation of the program and prepare an annual report of the evaluation to be submitted to the governor and the legislature;
- (10) Notify the secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the secretary;
- (11) Do all things necessary and proper to carry out the purposes of this chapter; and
- (12) Adopt rules pursuant to chapter 91 as necessary for the purposes of this chapter.

(b) The director may enter into agreements with other states to either allow residents of the State to participate in a comparable program operated by another state or allow residents of other states to participate in the Hawaii ABLE savings program.

(c) The director may implement the program through use of financial organizations as account depositories and managers. The director may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations that submit proposals shall describe the investment instruments which will be held in accounts. The director may select more than one financial organization and investment instrument for the program. The director shall select as program depositories and managers the financial organization or organizations, from among the bidding financial organizations, that demonstrate the most advantageous combination, both to potential program participants and the State, of the following factors:

- (1) Financial stability and integrity of the financial organization;
- (2) The safety of the investment instrument being offered;
- (3) The ability of the financial organization to satisfy recordkeeping and reporting requirements;
- (4) The financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;
- (5) The fees, if any, proposed to be charged to the account owners;
- (6) The minimum initial deposit and minimum contributions that the financial organization will require;
- (7) The ability of the financial organization to accept electronic withdrawals, including payroll deduction plans; and
- (8) Other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses of operation of the program.

(d) The director may enter into contracts and agreements with a financial organization or organizations necessary to implement this chapter.

§ -4 Management contract; terms. (a) A management contract shall include, at a minimum, terms requiring the financial organization to:

- (1) Take any action required to keep the program in compliance with the requirements of this chapter and take any action not contrary to the management contract to qualify as a qualified ABLE program as defined in section 529A of the Internal Revenue Code of 1986, as amended;
- (2) Keep accurate records of each account, keep each account segregated from other accounts and provide the director with the information necessary to prepare the statements required by section -5;
- (3) Compile and total information contained in statements required to be prepared under section -5 and provide the compilations to the director;
- (4) If there is more than one program manager, provide the director with the information necessary to determine compliance with section -5;
- (5) Provide the director with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this chapter, and section 529A of the Internal Revenue Code of 1986, as amended;
- (6) Hold all accounts for the benefit of the account owner or owners;
- (7) Be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of the audit to the director;
- (8) Provide the director with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the director the results of any periodic examination of the program manager by any state or federal banking, insurance, or securities commission, except to the extent that the report or reports may not be disclosed under law; and
- (9) Ensure that any description of the program, whether in writing or through the use of any media, is consistent with a marketing plan developed pursuant to this chapter.
 - (b) The director of finance may:
 - (1) Enter into contracts as the director deems necessary and proper for the implementation of the program;
 - (2) Require that an audit be conducted of the operations and financial position of the program manager at any time if the director has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program manager; and
 - (3) Terminate or not renew a management agreement. If the director terminates or does not renew a management agreement, the director shall take custody of accounts held by the program manager and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager and into investment instruments as similar to the original instruments as possible.
 - (c) The department of budget and finance, department of human services, department of health, and executive office on aging are authorized to exchange data regarding eligible individuals to carry out the purposes of this chapter.

§ -5 **Hawaii ABLE savings accounts; terms and conditions.** (a) An ABLE savings account established pursuant to this chapter shall be opened by

a designated beneficiary or by a trustee or guardian of a designated beneficiary who lacks capacity to enter into a contract; provided that the designated beneficiary shall be an eligible individual at the time the account is established. Each beneficiary may hold only one account. The director may establish a nonrefundable application fee and an annual fee for each account. An application for an account shall be in the form specified by the director and shall contain:

- (1) The name, address, and social security number of the account owner;
- (2) The name, address, and social security number of the designated beneficiary, if the account owner is the beneficiary's trustee or guardian;
- (3) Certification relating to no excess contributions; and
- (4) Additional information as the director may require.

(b) Any person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by section 529A of the Internal Revenue Code of 1986, as amended, or any rules and regulations adopted by the secretary and applicable to this chapter.

(c) Contributions to an ABLE savings account may be made only in cash. The director or program manager shall reject or promptly withdraw contributions:

- (1) If the contribution is in excess of the limits established pursuant to subsection (b);
- (2) If total contributions cause the value of the account to be equal to or greater than the account maximum established by the director. The account maximum must be equal to the account maximum for postsecondary education savings accounts established pursuant to chapter 256; or
- (3) If the designated beneficiary is not an eligible individual in the current calendar year.

(d) An account owner may:

- (1) Change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary in accordance with procedures established by the director; and
- (2) Transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in section 529A of the Internal Revenue Code of 1986, as amended.

No account owner shall use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.

(e) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, the distribution shall be reported to the Internal Revenue Service and to the account owner, designated beneficiary, or distributee to the extent required by state or federal law.

(f) Statements shall be provided to each account owner at least four times each year within thirty days after the end of the three-month period to which a statement relates. The statement shall identify the contributions made during the preceding three-month period, the total contributions made to the account through the end of the period, the value of the account at the end of the period, distributions made during the period, and any other information that the director requires to be reported to the account owner. Statements and information relating to accounts shall be prepared and filed to the extent required by this chapter and any other state or federal law.

(g) The program shall provide a separate accounting for each designated beneficiary.

§ -6 **Account funds.** Moneys in an ABLE savings account:

- (1) Shall be exempt from attachment, execution, or garnishment as provided by section 651-124; and
- (2) May be claimed by the medicaid plan subject to limitations imposed by the secretary.

§ -7 **Accounts not guaranteed by the State.** (a) Nothing in this chapter shall create or be construed to create any obligation of the director, the State, or any agency or instrumentality of the State to guarantee for the benefit of any account owner or designated beneficiary with respect to the:

- (1) Return of principal;
 - (2) Rate of interest or other return on any account; or
 - (3) Payment of interest or other return on any account.
- (b) The director shall adopt rules to provide that every contract, application, or other similar document that may be used in connection with opening an account clearly indicates that the account is not insured by the State and that the principal deposited and the investment return are not guaranteed by the State.

§ -8 **Hawaii ABLE savings program trust fund.** (a) There is established the Hawaii ABLE savings program trust fund within the treasury of the State. The fund shall consist of moneys received from an ABLE savings program manager, any governmental or private grants, and any general fund appropriations for the program.

(b) The fund shall be used if the director elects to accept deposits from contributors, rather than have deposits sent directly to the program manager. The fund shall consist of any moneys deposited by contributors in accordance with this chapter which are not deposited directly with the program manager.

(c) All interest derived from the deposit and investment of moneys in the savings program trust fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the savings program trust fund shall remain in the savings program trust fund and shall not be credited or transferred to the general fund or any other funds.

(d) All expenses incurred by the director in developing and administering the ABLE savings program shall be payable from the Hawaii ABLE savings program trust fund.”

SECTION 3. Section 651-124, Hawaii Revised Statutes, is amended to read as follows:

“§651-124 **Pension money exempt.** The right of a debtor to a pension, annuity, retirement or disability allowance, death benefit, any optional benefit, or any other right accrued or accruing under any retirement plan or arrangement described in section 401(a), 401(k), 403(a), 403(b), 408, 408A, 409 (as in effect prior to January 1, 1984), 414(d), or 414(e) of the Internal Revenue Code of 1986, as amended, or any fund created by the plan or arrangement, or any ABLE savings account established pursuant to chapter, shall be exempt from attachment, execution, seizure, the operation of bankruptcy or insolvency laws under 11 United States Code section 522(b), or under any legal process whatever. However, this section shall not apply to:

- (1) A “qualified domestic relations order” as defined in section 206(d) of the Employee Retirement Security Act of 1974, as amended, or in section 414(p) of the Internal Revenue Code of 1986, as amended; and

- (2) Contributions made to a plan or arrangement within the three years before the date a debtor files for bankruptcy, whether voluntary or involuntary, or within three years before the date a civil action is initiated against the debtor, except for contributions to a retirement plan established by state statute if the effect would be to eliminate a state employee's retirement service credit."

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2015.

(Approved July 2, 2015.)