

**SUBSTITUTE FOR  
HOUSE BILL NO. 4542**

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

1 this state, or a resident of a contracting state, and who enters  
2 into a Michigan ABLE savings program agreement and establishes an  
3 ABLE savings account. The account owner shall be the designated  
4 beneficiary of the account unless the designated beneficiary is a  
5 minor or lacks capacity to enter into an agreement, in which case a  
6 designated representative may open an account on behalf of the  
7 minor or incapacitated individual and serve as the account owner.

8 (d) "Contracting state" means a state without a qualified ABLE  
9 program that has entered into a contract with this state to provide  
10 its residents access to the Michigan ABLE program.

11 (e) "Department" means the department of treasury.

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

20 (g) "Designated representative" means an individual who is  
21 authorized to act on behalf of the designated beneficiary. A  
22 designated representative includes, but is not limited to, a  
23 guardian, trustee, executor, administrator, receiver, conservator,  
24 or any other person acting in any fiduciary capacity to the  
25 designated beneficiary. Designated beneficiary may also include an  
26 individual who is granted financial power of attorney for the  
27 designated beneficiary.

1 (h) "Disability certification" means that term as defined in  
2 section 529A of the internal revenue code.

3 (i) "Eligible individual" means that term as defined in  
4 section 529A of the internal revenue code.

5 (j) "Internal revenue code" means the United States internal  
6 revenue code of 1986 in effect on January 1, 2015 or at the option  
7 of the taxpayer, in effect for the current year.

8 (k) "Management contract" means the contract executed between  
9 the treasurer and a program manager.

10 (l) "Member of the family" means a family member as defined in  
11 section 529A of the internal revenue code.

12 (m) "Michigan ABLE savings program agreement" means the  
13 agreement between the program and an account owner that establishes  
14 an ABLE savings account.

15 (n) "Program" means the Michigan ABLE savings program  
16 established pursuant to this act.

17 (o) "Program manager" means 1 or more entities selected by the  
18 treasurer to act as a manager of the program.

19 (p) "Qualified disability expenses" means that term as defined  
20 in section 529A of the internal revenue code.

21 (q) "Qualified withdrawal" means a distribution that is not  
22 subject to a penalty or an excise tax under section 529A of the  
23 internal revenue code, a penalty under this act, or taxation under  
24 the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, and  
25 that meets any of the following:

26 (i) A withdrawal from an account to pay the qualified  
27 disability expenses of the designated beneficiary incurred after

1 the account is established.

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

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

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

7 (r) "Savings plan" or "plan" means a plan that provides  
8 different investment strategies and allows account distributions  
9 for qualified disability expenses.

10 (s) "Treasurer" means the state treasurer.

11 Sec. 3. (1) The Michigan ABLE savings program is established  
12 in the department of treasury. The program shall consist of more  
13 than 1 program manager and shall provide multiple savings plans.

14 (2) The treasurer shall solicit proposals from entities to be  
15 a program manager to provide the services described in subsection  
16 (5).

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

20 (4) The state treasurer shall administer the Michigan ABLE  
21 savings program and shall be the trustee for the funds of the  
22 Michigan ABLE savings program.

23 (5) The treasurer may employ or contract with personnel and  
24 contract for services necessary for the administration of each  
25 savings plan under the program and the investment of the assets of  
26 each savings plan under the program including, but not limited to,  
27 managerial, professional, legal, clerical, technical, and

1 administrative personnel or services.

2 (6) When selecting program managers, the treasurer shall give  
3 preference to proposals from single entities that propose to  
4 provide all of the functions described in subsection (5) and that  
5 demonstrate the most advantageous combination, to both potential  
6 participants and this state, of the following factors and the  
7 management contract shall address these factors:

8 (a) Financial stability.

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

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

12 (d) The ability of an entity to satisfy the record-keeping and  
13 reporting requirements of this act.

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

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

18 (g) The minimum initial deposit and minimum contributions that  
19 the entity will require which, for the first year of the savings  
20 plan, shall not be greater than \$25.00 for a cash contribution or  
21 \$15.00 per pay period for payroll deduction plans.

22 (h) The ability of an entity to accept electronic withdrawals,  
23 including payroll deduction plans.

24 (i) The willingness of an entity to offer a program of broker-  
25 sold products available through financial advisors.

26 (j) The ability of an entity to provide financial literacy  
27 materials, as described by the department, to all account owners.

1 (k) The ability of an entity to provide a higher level of  
2 customer service to support the unique needs of designated  
3 beneficiaries.

4 (7) The treasurer shall enter into a contract with each  
5 program manager which shall address the respective authority and  
6 responsibility of the treasurer and the program manager to do all  
7 of the following:

8 (a) Develop and implement the savings plan or plans offered  
9 under the program.

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

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

14 (d) Determine the use of financial organizations as account  
15 depositories and financial managers.

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

21 (f) Develop marketing plans and promotional material.

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

24 (h) Provide criteria for terminating and not renewing the  
25 management contract.

26 (i) Address the ability of the program manager to take any  
27 action required to keep the savings plan or plans offered under the

1 program in compliance with requirements of this act and its  
2 management contract and to manage the savings plan or plans offered  
3 under the program to qualify as a qualified ABLE program under  
4 section 529A of the internal revenue code.

5 (j) Keep adequate records of each account and provide the  
6 treasurer with information that the treasurer requires related to  
7 those records.

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

11 (l) Hold all accounts for the benefit of the designated  
12 beneficiary.

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

15 (n) Provide the treasurer with copies of all regulatory  
16 filings and reports related to the savings plan or plans offered  
17 under the program made during the term of the management contract  
18 or while the program manager is holding any accounts, other than  
19 confidential filings or reports except to the extent those filings  
20 or reports are related to or are a part of the savings plan or  
21 plans offered under the program. It is the responsibility of the  
22 program manager to make available for review by the treasurer the  
23 results of any periodic examination of the program manager by any  
24 state or federal banking, insurance, or securities commission,  
25 except to the extent that the report or reports are not required to  
26 be disclosed under state or federal law.

27 (o) Ensure that any description of the savings plan or plans

1 offered under the program, whether in writing or through the use of  
2 any media, is consistent with the marketing plan developed by the  
3 program manager.

4 (p) Offer a program of broker-sold products available through  
5 financial advisors.

6 (q) Take any other necessary and proper activities to carry  
7 out the purposes of this act.

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

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

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

14 Sec. 6. The treasurer may enter into contracts that it  
15 considers necessary and proper for the implementation of this  
16 program.

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

19 (2) Any individual who is a resident of this state or a  
20 resident of a contracting state may open an ABLE savings account to  
21 save money to pay the qualified disability expenses of the  
22 designated beneficiary. Each account opened under this act shall  
23 have only 1 designated beneficiary. Only 1 account shall be opened  
24 for any 1 designated beneficiary.

25 (3) To open an ABLE savings account, the individual or  
26 designated representative of a designated beneficiary shall enter  
27 into a Michigan ABLE savings program agreement with the program.



1 The program shall not require a designated representative to obtain  
2 court approval before opening and funding an ABLE savings account  
3 under this act. The Michigan ABLE savings program agreement shall  
4 be in the form prescribed by a program manager and approved by the  
5 treasurer and contain all of the following:

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

8 (b) A designated beneficiary. The name, address, and social  
9 security number of the designated beneficiary, if the account owner  
10 is the designated beneficiary's designated representative.

11 (c) Any other information that the treasurer or program  
12 manager considers necessary.

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

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

20 (6) Except as otherwise provided under section 17(2), the  
21 amount in an ABLE savings account shall be used exclusively for the  
22 designated beneficiary and shall be considered a spendthrift  
23 account.

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

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

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

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

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

10 Sec. 8. (1) Changes in account owners or designated  
11 beneficiaries are permitted as follows:

12 (a) An account owner may change the designated beneficiary of  
13 an account to another eligible individual who is a member of the  
14 family of the previously designated beneficiary.

15 (b) An account owner may transfer all or a portion of an  
16 account to another ABLE savings account with another designated  
17 beneficiary as long as the new designated beneficiary of the  
18 account to which the transfer is made is a member of the family of  
19 the previous designated beneficiary.

20 (c) An account owner may designate another individual as a  
21 successor owner of the account in the event of the death of the  
22 account owner. The successor owner must meet the definition of an  
23 account owner under this act.

24 (2) Changes in designated beneficiaries and transfers under  
25 this section are not permitted to the extent that the change or  
26 transfer would constitute excess contributions or unauthorized  
27 investment choices.

1           Sec. 9. (1) An account owner shall not, directly or  
2 indirectly, direct the investment of any contributions to an  
3 account or the earnings on an account more than 2 times in any  
4 calendar year. An account owner may select among different  
5 investment strategies designed by a program manager to the extent  
6 allowed under section 529A of the internal revenue code.

7           (2) The program may allow employees of the program, or the  
8 employees of a contractor hired by the program to perform  
9 administrative services, to make contributions to an account.

10           (3) An interest in an account shall not be used by an account  
11 owner or a designated beneficiary as security for a loan. Any  
12 pledge of an interest in an account has no force or effect.

13           Sec. 10. (1) The maximum account balance limit for an ABLE  
14 account shall not exceed the maximum amount allowed for an  
15 education savings account pursuant to section 10 of the Michigan  
16 education savings program act, 2000 PA 161, MCL 390.1471 to  
17 390.1486.

18           (2) The program shall notify an account owner if the annual  
19 contributions to an ABLE savings account get within \$1,000.00 of  
20 the contributions limits established under section 7(4). The  
21 program shall provide an account owner with written notification at  
22 least 5 business days before rejecting a contribution as provided  
23 in subsection (3).

24           (3) The program shall reject a contribution to any account for  
25 a designated beneficiary if, at the time of the contribution, the  
26 total balance of the account for that designated beneficiary has  
27 reached the maximum account balance limit under subsection (1) or

1 the contribution is in excess of the limits established pursuant to  
2 section 7(4). An account may continue to accrue earnings if the  
3 total balance of the account for that beneficiary has reached the  
4 maximum account balance limit and shall not be considered to have  
5 exceeded the maximum account balance limit under subsection (1).

6       Sec. 11. (1) Each program manager shall report distributions  
7 from an account to or for the benefit of the designated beneficiary  
8 during a tax year to the internal revenue service and the account  
9 owner.

10       (2) In accordance with section 529A(d) of the internal revenue  
11 code, each program manager shall submit a notice to the department  
12 upon the establishment of each ABLE savings account. The notice  
13 must contain the name and state of residence of the designated  
14 beneficiary and any other information required by the treasurer.  
15 Each program manager shall provide statements that identify the  
16 individual contributions made during the tax year, the total  
17 contributions made to the account for the tax year, the value of  
18 the account at the end of the tax year, distributions made during  
19 the tax year, and any other information that the treasurer requires  
20 to each account owner on or before the January 31 following the end  
21 of each calendar year.

22       (3) As required under section 529A(d), the department shall  
23 electronically submit on a monthly basis to the commissioner of  
24 social security, in a manner specified by the commissioner of  
25 social security, statements on relevant distributions and account  
26 balances from all ABLE savings accounts.

27       Sec. 12. Each program manager shall disclose the following

1 information in writing to each account owner of an ABLE savings  
2 account and any other person who requests information about an ABLE  
3 savings account:

4 (a) The terms and conditions for establishing an ABLE savings  
5 account.

6 (b) Restrictions on the substitutions of designated  
7 beneficiaries and transfer of account funds.

8 (c) The person entitled to terminate a Michigan ABLE savings  
9 program agreement.

10 (d) The period of time during which a designated beneficiary  
11 may receive benefits under the Michigan ABLE savings program  
12 agreement.

13 (e) The terms and conditions under which money may be wholly  
14 or partially withdrawn from an account or the program, including,  
15 but not limited to, any reasonable charges and fees and penalties  
16 that may be imposed for withdrawal.

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

19 (g) Investment history and potential growth of account funds  
20 and a projection of the impact of the growth of the account funds  
21 on the maximum amount allowable in an account.

22 (h) All other rights and obligations under Michigan ABLE  
23 savings program agreements and any other terms, conditions, and  
24 provisions of a contract or an agreement entered into under this  
25 act.

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

1 (a) Give any designated beneficiary any rights or legal  
2 interest with respect to an account unless the designated  
3 beneficiary is the account owner.

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

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

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

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

12 (2) The contracts, applications, deposit slips, and other  
13 similar documents used in connection with a contribution to an  
14 account shall clearly indicate that the account is not insured by  
15 this state and that the money deposited into and investment return  
16 earned on an account are not guaranteed by this state.

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

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

23 (b) The total amount contributed to all accounts during the  
24 year.

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

27 (d) Any information that the program manager or treasurer may

1 require regarding the taxation of amounts contributed to or  
2 withdrawn from accounts.

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

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

9       Sec. 17. (1) Notwithstanding any other provision of law  
10 regarding an assistance program offered by this state or any other  
11 state that requires consideration of 1 or more financial  
12 circumstances of an individual, for the purpose of determining  
13 eligibility to receive, or the amount of, any assistance or benefit  
14 authorized by that provision to be provided to or for the benefit  
15 of an individual, any amount and interest earned on an ABLE savings  
16 account for the individual, any contributions to the ABLE savings  
17 account of the individual, and any distribution for qualified  
18 disability expenses shall be disregarded as provided in section 10g  
19 of the social welfare act, 1939 PA 280, MCL 400.10g, with respect  
20 to any period during which the individual maintains, makes  
21 contributions to, or receives distributions from his or her ABLE  
22 savings account, except that, in the case of the supplemental  
23 security income program under title XVI of the social security act,  
24 42 USC 1381 to 1383f, a distribution for housing expenses shall not  
25 be disregarded and any amount and interest earned on that account  
26 shall be considered a resource of the designated beneficiary to the  
27 extent that the amount exceeds \$100,000.00.

1           (2) Upon the death of the designated beneficiary, the amount  
2 remaining in his or her ABLE savings account shall be distributed  
3 pursuant to section 529A(f) of the internal revenue code.

4           Enacting section 1. This act takes effect 90 days after the  
5 date it is enacted into law.

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

9           (a) House Bill No. 4541.

10          (b) House Bill No. 4543.

11          (c) House Bill No. 4544.