

HOUSE BILL No. 4542

May 5, 2015, Introduced by Reps. Forlini, Jenkins, Irwin, Victory, Poleski, Lucido,
Howrylak, Derek Miller, Liberati, Lane, LaVoy, Geiss, Hooker and Courser and referred
to the Committee on Financial Services.

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
8 this state and who enters into a Michigan ABLE savings program

1 agreement and establishes an ABLE savings account. The account
2 owner shall be the designated beneficiary of the account unless the
3 designated beneficiary is a minor or lacks capacity to enter into
4 an agreement, then a trustee or guardian may open an account on
5 behalf of the minor and serve as the account owner.

6 (d) "Department" means the department of treasury.

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

15 (f) "Disability certification" means that term as defined in
16 section 529A of the internal revenue code.

17 (g) "Eligible individual" means that term as defined in
18 section 529A of the internal revenue code.

19 (h) "Internal revenue code" means the United States internal
20 revenue code of 1986 in effect on January 1, 2015 or at the option
21 of the taxpayer, in effect for the current year.

22 (i) "Management contract" means the contract executed between
23 the treasurer and a program manager.

24 (j) "Member of the family" means a family member as defined in
25 section 529A of the internal revenue code.

26 (k) "Michigan ABLE savings program agreement" means the
27 agreement between the program and an account owner that establishes

1 an ABLE savings account.

2 (l) "Program" means the Michigan ABLE savings program
3 established pursuant to this act.

4 (m) "Program manager" means 1 or more entities selected by the
5 treasurer to act as a manager of the program.

6 (n) "Qualified disability expenses" means that term as defined
7 in section 529A of the internal revenue code.

8 (o) "Qualified withdrawal" means a distribution that is not
9 subject to a penalty or an excise tax under section 529A of the
10 internal revenue code, a penalty under this act, or taxation under
11 the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, and
12 that meets any of the following:

13 (i) A withdrawal from an account to pay the qualified
14 disability expenses of the designated beneficiary incurred after
15 the account is established.

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

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

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

21 (p) "Savings plan" or "plan" means a plan that provides
22 different investment strategies and allows account distributions
23 for qualified disability expenses.

24 (q) "Treasurer" means the state treasurer.

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

1 (2) The treasurer shall solicit proposals from entities to be
2 a program manager to provide the services described in subsection
3 (5).

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

7 (4) The state treasurer shall administer the Michigan ABLE
8 savings program and shall be the trustee for the funds of the
9 Michigan ABLE savings program.

10 (5) The treasurer may employ or contract with personnel and
11 contract for services necessary for the administration of each
12 savings plan under the program and the investment of the assets of
13 each savings plan under the program including, but not limited to,
14 managerial, professional, legal, clerical, technical, and
15 administrative personnel or services.

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

22 (a) Financial stability.

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

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

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

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

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

5 (g) The minimum initial deposit and minimum contributions that
6 the entity will require which, for the first year of the savings
7 plan, shall not be greater than \$25.00 for a cash contribution or
8 \$15.00 per pay period for payroll deduction plans.

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

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

13 (7) The treasurer shall enter into a contract with each
14 program manager which shall address the respective authority and
15 responsibility of the treasurer and the program manager to do all
16 of the following:

17 (a) Develop and implement the savings plan or plans offered
18 under the program.

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

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

23 (d) Determine the use of financial organizations as account
24 depositories and financial managers.

25 (e) Charge, impose, and collect annual administrative fees and
26 service in connection with any agreements, contracts, and
27 transactions relating to individual accounts, exclusive of initial

1 sales charges, which shall not exceed 2.0% of the average daily net
2 assets of the account.

3 (f) Develop marketing plans and promotional material.

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

6 (h) Provide criteria for terminating and not renewing the
7 management contract.

8 (i) Address the ability of the program manager to take any
9 action required to keep the savings plan or plans offered under the
10 program in compliance with requirements of this act and its
11 management contract and to manage the savings plan or plans offered
12 under the program to qualify as a qualified ABLE program under
13 section 529A of the internal revenue code.

14 (j) Keep adequate records of each account and provide the
15 treasurer with information that the treasurer requires related to
16 those records.

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

20 (l) Hold all accounts for the benefit of the account owner.

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

23 (n) Provide the treasurer with copies of all regulatory
24 filings and reports related to the savings plan or plans offered
25 under the program made during the term of the management contract
26 or while the program manager is holding any accounts, other than
27 confidential filings or reports except to the extent those filings

1 or reports are related to or are a part of the savings plan or
2 plans offered under the program. It is the responsibility of the
3 program manager to make available for review by the treasurer the
4 results of any periodic examination of the program manager by any
5 state or federal banking, insurance, or securities commission,
6 except to the extent that the report or reports are not required to
7 be disclosed under state or federal law.

8 (o) Ensure that any description of the savings plan or plans
9 offered under the program, whether in writing or through the use of
10 any media, is consistent with the marketing plan developed by the
11 program manager.

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

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

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

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

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

22 Sec. 6. The treasurer may enter into contracts that it
23 considers necessary and proper for the implementation of this
24 program.

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

27 (2) Any individual who is a resident of this state may open an

1 ABLE savings account to save money to pay the qualified disability
2 expenses of the designated beneficiary. An account owner shall open
3 only 1 account for any 1 designated beneficiary. Each account
4 opened under this act shall have only 1 designated beneficiary.

5 (3) To open an ABLE savings account, the individual or a
6 trustee or guardian of a designated beneficiary who lacks capacity
7 to enter into a contract shall enter into a Michigan ABLE savings
8 program agreement with the program. The Michigan ABLE savings
9 program agreement shall be in the form prescribed by a program
10 manager and approved by the treasurer and contain all of the
11 following:

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

14 (b) A designated beneficiary. The name, address, and social
15 security number of the designated beneficiary, if the account owner
16 is the beneficiary's trustee or guardian.

17 (c) Any other information that the treasurer or program
18 manager considers necessary.

19 (4) Any person may make contributions to an account after the
20 account is opened, subject to the limitations imposed by section
21 529A of the internal revenue code or any rules and regulations
22 promulgated by the treasurer pursuant to this act.

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

26 (6) An account owner may withdraw all or part of the balance
27 from an account on 60 days' notice, or a shorter period as

1 authorized in the Michigan ABLE savings program agreement.

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

6 (a) In the form of a check payable to the designated
7 beneficiary or account holder.

8 (b) In the form of an electronic funds transfer to an account
9 specified by the designated beneficiary or account holder.

10 (c) Directly to a provider of goods and services that are
11 qualified disability expenses, if purchased for a designated
12 beneficiary.

13 (8) For a distribution made after December 31, 2015 that is
14 not a qualified withdrawal, if an excise tax or penalty is imposed
15 under section 529A of the internal revenue code, a penalty shall
16 not be imposed under this subsection for that distribution. If a
17 distribution that is not a qualified withdrawal is made after
18 December 31, 2015 and an excise tax or penalty is not imposed under
19 section 529A of the internal revenue code on that distribution, a
20 program manager shall withhold an amount equal to 10% of the
21 accumulated earnings attributable to that distribution amount as a
22 penalty and pay that amount to the department for deposit into the
23 general fund. The penalty under this subsection may be increased or
24 decreased if the treasurer and the program manager determine that
25 it is necessary to increase or decrease the penalty to comply with
26 section 529A of the internal revenue code.

27 (9) Each savings plan under the program shall provide separate

1 accounting for each designated beneficiary.

2 Sec. 8. (1) If the account owner is a trustee or guardian of
3 the designated beneficiary, then that account owner may designate
4 another individual as a successor owner of the account in the event
5 of his or her death.

6 (2) An account owner may change the designated beneficiary of
7 an account to another eligible individual as long as that eligible
8 individual is a member of the family of the previously designated
9 beneficiary as provided in the management contract or as otherwise
10 provided in this act.

11 (3) An account owner may transfer ownership of all or a
12 portion of an account to an individual who is eligible to be an
13 account owner under this act.

14 (4) An account owner may transfer all or a portion of an
15 account to another ABLE savings account. The designated beneficiary
16 of the account to which the transfer is made must be a member of
17 the family.

18 (5) An account owner may transfer all or a portion of an
19 account to an account in an ABLE program under section 529A of the
20 internal revenue code, other than the program under this act, once
21 every 12 months, without a change in designated beneficiary.

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

26 Sec. 9. (1) Except as otherwise provided in this section, an
27 account owner or a designated beneficiary of any account shall not

1 direct the investment of any contributions to an account or the
2 earnings on an account.

3 (2) An account owner may select among different investment
4 strategies designed by a program manager in all of the following
5 circumstances to the extent allowed under section 529A of the
6 internal revenue code:

7 (a) At the time any contribution is made to an account with
8 respect to the amount of that contribution.

9 (b) Once each calendar year with respect to the accumulated
10 account balance.

11 (c) When an account owner makes a change in designated
12 beneficiary of an account.

13 (3) The program may allow employees of the program, or the
14 employees of a contractor hired by the program to perform
15 administrative services, to make contributions to an account.

16 (4) An interest in an account shall not be used by an account
17 owner or a designated beneficiary as security for a loan. Any
18 pledge of an interest in an account has no force or effect.

19 Sec. 10. (1) The maximum account balance limit for an ABLE
20 account shall not exceed a maximum of \$500,000.00.

21 (2) The program shall reject a contribution to any account for
22 a designated beneficiary if, at the time of the contribution, the
23 total balance of the account for that designated beneficiary has
24 reached the maximum account balance limit under subsection (1) or
25 the contribution is in excess of the limits established pursuant to
26 section 7(4). An account may continue to accrue earnings if the
27 total balance of the account for that beneficiary has reached the

1 maximum account balance limit and shall not be considered to have
2 exceeded the maximum account balance limit under subsection (1).

3 Sec. 11. (1) Each program manager shall report distributions
4 from an account to any individual or for the benefit of any
5 individual during a tax year to the internal revenue service and
6 the account owner or, to the extent required by federal law or
7 regulation, to the distributee.

8 (2) Each program manager shall provide statements that
9 identify the individual contributions made during the tax year, the
10 total contributions made to the account for the tax year, the value
11 of the account at the end of the tax year, distributions made
12 during the tax year, and any other information that the treasurer
13 requires to each account owner on or before the January 31
14 following the end of each calendar year.

15 Sec. 12. Each program manager shall disclose the following
16 information in writing to each account owner of an ABLE savings
17 account and any other person who requests information about an ABLE
18 savings account:

19 (a) The terms and conditions for establishing an ABLE savings
20 account.

21 (b) Restrictions on the substitutions of designated
22 beneficiaries and transfer of account funds.

23 (c) The person entitled to terminate a Michigan ABLE savings
24 program agreement.

25 (d) The period of time during which a designated beneficiary
26 may receive benefits under the Michigan ABLE savings program
27 agreement.

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

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

7 (g) Investment history and potential growth of account funds
8 and a projection of the impact of the growth of the account funds
9 on the maximum amount allowable in an account.

10 (h) All other rights and obligations under Michigan ABLE
11 savings program agreements and any other terms, conditions, and
12 provisions of a contract or an agreement entered into under this
13 act.

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

16 (a) Give any designated beneficiary any rights or legal
17 interest with respect to an account unless the designated
18 beneficiary is the account owner.

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

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

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

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

27 (2) The contracts, applications, deposit slips, and other

1 similar documents used in connection with a contribution to an
2 account shall clearly indicate that the account is not insured by
3 this state and that the money deposited into and investment return
4 earned on an account are not guaranteed by this state.

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

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

11 (b) The total amount contributed to all accounts during the
12 year.

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

15 (d) Any information that the program manager or treasurer may
16 require regarding the taxation of amounts contributed to or
17 withdrawn from accounts.

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

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

24 Sec. 17. (1) Notwithstanding any other provision of law that
25 requires consideration of 1 or more financial circumstances of an
26 individual, for the purpose of determining eligibility to receive,
27 or the amount of, any assistance or benefit authorized by that

1 provision to be provided to or for the benefit of an individual,
2 any amount and interest earned on an ABLE savings account for the
3 individual, any contributions to the ABLE savings account of the
4 individual, and any distribution for qualified disability expenses
5 shall be disregarded as provided in section 10g of the social
6 welfare act, 1939 PA 280, MCL 400.10g, with respect to any period
7 during which the individual maintains, makes contributions to, or
8 receives distributions from his or her ABLE savings account, except
9 that, in the case of the supplemental security income program under
10 title XVI of the social security act, 42 USC 1381 to 1383f, a
11 distribution for housing expenses shall not be disregarded and any
12 amount and interest earned on that account shall be considered a
13 resource of the designated beneficiary to the extent that the
14 amount exceeds \$100,000.00.

15 (2) The benefits of an individual under the supplemental
16 security income program under title XVI of the social security act,
17 42 USC 1381 to 1383f, shall not be terminated, but shall be
18 suspended, for excess resources of the individual attributable to
19 the amount in his or her ABLE savings account that is not
20 disregarded under subsection (1). An individual who would be
21 receiving payment of supplemental security income benefits but for
22 the application of this subsection shall be treated for purposes of
23 title XIX of the social security act, 42 USC 1396 to 1396w-5, as if
24 the individual continued to be receiving payment of those benefits.

25 (3) Subject to any outstanding payments due for qualified
26 disability expenses, upon the death of the designated
27 beneficiary, all amounts remaining in his or her ABLE savings

1 account not in excess of the amount equal to the total medical
2 assistance paid for the designated beneficiary after the
3 establishment of the account, net of any premiums paid from the
4 account or paid by or on behalf of the beneficiary to a Medicaid
5 buy-in program under any state medical assistance plan administered
6 by the state under the social welfare act, 1939 PA 280, MCL 400.1
7 to 400.119b, shall be distributed to this state upon filing of a
8 claim for payment by the state as provided in section 112g of the
9 social welfare act, 1939 PA 280, MCL 400.112g. For purposes of this
10 paragraph, the state shall be a creditor of an ABLE account and not
11 a beneficiary. Section 7(8) does not apply to a distribution under
12 this subsection.

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

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

18 (a) Senate Bill No. ____ or House Bill No. 4543 (request no.
19 01151'15 a **).

20 (b) Senate Bill No. ____ or House Bill No. 4544 (request no.
21 01151'15 b *).

22 (c) Senate Bill No. ____ or House Bill No. 4541 (request no.
23 01151'15 c *).