

HOUSE BILL No. 2490

AN ACT concerning persons with disabilities; relating to income taxation, ABLE savings accounts; authorizing the state treasurer to determine account owners and designated beneficiaries; adopting the federal definition for an eligible individual; adding persons who may open an account; requiring additional compliance with the federal internal revenue code; amending K.S.A. 75-651, 75-652, 75-653 and 75-655 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 75-651 is hereby amended to read as follows: 75-651. There is hereby established an enabling savings program ~~and such program~~ that shall be known and may be cited as the Kansas ABLE savings program. The purpose of the Kansas ABLE savings program is to authorize the establishment of savings accounts empowering individuals with a disability and their families to save private funds to support the individual with a disability, *obtain federal and state income tax benefits of a qualified ABLE program as defined in section 529A of the federal internal revenue code of 1986* and to provide guidelines for the maintenance of such accounts.

Sec. 2. K.S.A. 75-652 is hereby amended to read as follows: 75-652. As used in this act:

(a) "Account" or "ABLE savings account" means an individual savings account established in accordance with the provisions of this act.

(b) "Account owner" means the person who enters into an ABLE savings agreement pursuant to the provisions of this act. The account owner ~~must~~ shall also be the designated beneficiary. A conservator ~~or~~, guardian ~~or a person authorized by the treasurer through procedures established by the treasurer may be appointed as an account owner for act on behalf of a designated beneficiary who is a minor or lacks capacity to enter into an agreement of an account in accordance with procedures established by the treasurer.~~

(c) "Conservator" means a person appointed by the court pursuant to K.S.A. 59-3050 et seq., and amendments thereto.

(d) "Designated beneficiary" means a Kansas resident ~~or a person authorized by the treasurer pursuant to K.S.A. 75-653, and amendments thereto~~, whose qualified disability expenses may be paid from the account. The designated beneficiary must be an eligible individual at the time the account is established. ~~The account owner may change the designated beneficiary.~~

(e) "Eligible individual" means ~~an individual who is entitled to benefits based on blindness or disability under 42 U.S.C. § 401 et seq. or 42 U.S.C. § 1381 et seq., as amended, and such blindness or disability occurred before the date on which the individual attained age 26, or an individual who filed a disability certification, to the satisfaction of the secretary, with the secretary for such taxable year the same as defined in section 529A of the federal internal revenue code of 1986, as amended.~~

(f) "Financial organization" means an organization authorized to do business in the state of Kansas and is:

- (1) Licensed or chartered by the commissioner of insurance;
- (2) licensed or chartered by the state bank commissioner;
- (3) chartered by an agency of the federal government; or
- (4) subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.

(g) "Guardian" means a person appointed by the court pursuant to K.S.A. 59-3050 et seq., and amendments thereto.

(h) "Management contract" means the contract executed by the treasurer and a financial organization selected to act as a depository and manager of the program.

(i) "Member of the family" ~~has the meaning ascribed thereto means the same as defined~~ in section 529A of the federal internal revenue code of 1986, as amended.

(j) "Nonqualified withdrawal" means a withdrawal from an account which is not:

- (1) A qualified withdrawal; or
 - (2) a rollover distribution.
- (k) "Program" means the Kansas ABLE savings program established pursuant to this act.

(l) "Program manager" means a financial organization selected by the treasurer to act as a depository and manager of the program.

(m) "Qualified disability expense" means ~~any qualified disability expense included~~ *the same as defined* in section 529A of the federal internal revenue code of 1986, as amended.

(n) "Qualified withdrawal" means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(o) "Rollover distribution" means a rollover distribution as defined in section 529A of the federal internal revenue code of 1986, as amended.

(p) "Savings agreement" means an agreement between the program manager or the treasurer and the account owner.

(q) "Secretary" means the secretary of the United States treasury.

(r) "Treasurer" means the state treasurer.

Sec. 3. K.S.A. 75-653 is hereby amended to read as follows: 75-653. (a) The treasurer shall implement and administer the program under the terms and conditions established by this act. In furtherance of such implementation and administration, the treasurer shall have the authority and responsibility to:

(1) Develop and implement the program in a manner consistent with the provisions of this act;

(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 federal internal revenue service relating to the program;

(4) make changes to the program required for the participants in the program to obtain the federal *and state* income tax benefits or treatment provided by section 529A of the federal 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 promotion 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) do all things necessary and proper to carry out the purposes of this act;

(10) promulgate rules and regulations necessary to effectuate the provisions of this act;

(11) make an annual evaluation of the ABLE savings program and prepare an annual report of such evaluation to be provided to the governor, the senate and the house of representatives; and

(12) notify the secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the secretary.

(b) The treasurer may enter into agreements with other states to either allow Kansas residents to participate in a plan operated by another state or to allow residents of other states to participate in the Kansas ABLE program.

Sec. 4. K.S.A. 75-655 is hereby amended to read as follows: 75-655. (a) Any ABLE savings accounts established pursuant to the provisions of this act shall be opened by:

(1) ~~A designated beneficiary or a conservator or guardian of a designated beneficiary who lacks capacity to enter into a contract and;~~
or

(2) *a person on behalf of a designated beneficiary in accordance with section 529A of the federal internal revenue code of 1986, as amended, any rules and regulations promulgated by the secretary or procedures established by the treasurer.*

(b) Each beneficiary may have only one account.

(c) The treasurer may establish a nonrefundable application fee. An application for such account shall be in the form prescribed by the treasurer and contain the:

(1) Name, address and social security number of the account owner; *and*

(2) ~~name, address and social security number of the designated beneficiary, if the account owner is the beneficiary's conservator or guardian;~~

~~(3)~~ certification relating to no excess contributions; and
~~(4)~~ additional information *and certifications* as the treasurer may require.

~~(b)~~(d) Any person may make contributions to an ABLÉ savings account after the account is opened, subject to the limitations imposed by *in accordance with* section 529A of the federal internal revenue code of 1986, as amended, or any rules and regulations promulgated by the secretary pursuant to this act or procedures established by the treasurer.

~~(e)~~(e) Contributions to ABLÉ savings accounts only may be made in cash. The treasurer or program manager shall reject or promptly withdraw contributions:

(1) In excess of the limits established pursuant to subsection (b); or

(2) the total contributions if the:

(A) Value of the account is equal to or greater than the account maximum established by the treasurer. Such account maximum must be equal to the account maximum for postsecondary education savings accounts established pursuant to K.S.A. 75-640 et seq., and amendments thereto; or

(B) designated beneficiary is not an eligible individual in the current calendar year.

~~(f)~~(f) (1) An account owner may:

(A) 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 *section 529A of the internal revenue code of 1986, as amended, and* procedures established by the treasurer; and

(B) transfer all or a portion of an account to another ABLÉ savings account, the designated beneficiary of which is a member of the family as defined in *in accordance with* section 529A of the federal internal revenue code of 1986, as amended, *and procedures established by the treasurer.*

(2) No account owner may 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.

~~(g)~~(g) (1) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, such distribution shall be reported to the federal internal revenue service and each account owner, the designated beneficiary or the distributee to the extent required by state or federal law.

(2) Statements shall be provided to each account owner at least four times each year within 30 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 such period, distributions made during such period and any other information that the treasurer shall require to be reported to the account owner.

(3) Statements and information relating to accounts shall be prepared and filed to the extent required by this act and any other state or federal law.

~~(h)~~(h) (1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be imposed upon the account owner for the maintenance of an account.

(2) Moneys in an ABLÉ savings account shall be exempt from attachment, execution or garnishment as provided by K.S.A. 60-2308, and amendments thereto.

~~(i)~~(i) Except as otherwise provided by federal law, the proceeds from an account may be transferred upon the death of a designated beneficiary to: (1) The estate of a designated beneficiary; or (2) an account for another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary. The state of Kansas, or any agency or instrumentality thereof, shall not seek payment under section 529A of the internal revenue code of 1986, as amended, from the account, or its proceeds, for benefits provided to a designated beneficiary, unless otherwise required by section 1917(b) of the federal social security act, 42 U.S.C. § 1396p(b).

Sec. 5. K.S.A. 75-651, 75-652, 75-653 and 75-655 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE

President of the Senate.

Secretary of the Senate.

APPROVED

Governor.