

[First Reprint]
ASSEMBLY, No. 3956
STATE OF NEW JERSEY
216th LEGISLATURE
INTRODUCED DECEMBER 11, 2014

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SYNOPSIS

Authorizes establishment of tax-exempt Achieving a Better Life Experience accounts for persons with developmental disabilities.

CURRENT VERSION OF TEXT

As reported by the Assembly Human Services Committee on March 19, 2015, with amendments.

AN ACT concerning trust accounts for persons with developmental disabilities, amending P.L.1997, c.237, and supplementing Title 30 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 13 of P.L.1997, c.237 (C.54A:6-25) is amended to read as follows:

13. a. Gross income shall not include earnings on ¹[an education individual retirement] a Coverdell education savings¹ account, [or] a qualified State tuition program account, or a qualified ABLE account

until the earnings are distributed from the account, at which time they shall be includible in the gross income of the distributee except as provided in this section.

b. Gross income shall not include qualified distributions as defined in paragraph (3) of subsection c. of this section.

c. For purposes of this section:

(1) ¹["Education individual retirement account"] "Coverdell education savings account"¹ means ¹[an education retirement] a Coverdell education savings¹ account as defined pursuant to paragraph (1) of subsection (b) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.530.

(2) ¹[(a)]¹ "Qualified State tuition program account" means an account established pursuant to the "New Jersey Better Educational Savings Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.) ¹[, an account established pursuant to the "New Jersey Prepaid Higher Education Expense Program," P.L.2001, c.262 (C.18A:71B-64 et seq.)]¹ or an account established pursuant to any qualified State tuition program, as defined pursuant to subsection (b) of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 or a tuition credit or certificate purchased pursuant to any such program;

¹[(b) "Qualified ABLE account" means an account established pursuant to P.L. ____, c. ____ (C. ____). (pending before the Legislature as this bill) or an account established pursuant to any qualified State ABLE program established pursuant to subsection (f) of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529]¹.

(3) "Qualified distribution" means any of the following:

(a) a distribution from a qualified State tuition program account that is used for qualified higher education expenses as defined pursuant to paragraph (3) of subsection (e) of section 529 or a distribution from a qualified ABLE account that is used for

qualified disability expenses as defined pursuant to paragraph ¹[(3) of subsection (f) of section 529] (5) of subsection (e) of section 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 ¹or 529A¹;

(b) a rollover from one account to another account as described in clause (i) of subparagraph (C) of paragraph (3) of subsection (c) of section 529, ¹[paragraph (4) of subsection (f) of section 529] clause (i) of subparagraph (C) of paragraph (1) of subsection (e) of section 529A¹, or paragraph (5) of subsection (d) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 ¹, 529A¹ or 530; ¹or¹

(c) a change in designated beneficiaries of an account as described in clause (ii) of subparagraph (C) of paragraph (3) of subsection (c) of section 529, ¹[paragraph (4) of subsection (f) of section 529] clause (ii) of subparagraph (C) of paragraph (1) of subsection (e) of section 529A¹, or paragraph (6) of subsection (d) of section 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529 ¹, 529A¹ or 530 ¹[;] .

(4) "Qualified ABLE account" means an account established pursuant to P.L. ____, c. ____ (C. ____). (pending before the Legislature as this bill) or an account established pursuant to any qualified State ABLE Program established pursuant to section 529A of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529A.¹

d. The portion of a distribution from ¹[an education individual retirement] a Coverdell education savings¹ account, a qualified ABLE account, or a qualified State tuition program account that is attributable

to earnings shall be determined in accordance with the principles of section 72 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.72, as applied for purposes of sections 529 ¹, 529A,¹ and 530 of the federal Internal Revenue Code of 1986, 26 U.S.C. ss.529 ¹, 529A,¹ and 530.

(cf: P.L.2001, c.262, s.21)

2. (New section) As used in P.L. , c. (C.) (pending before the Legislature as this bill):

¹“ABLE Program” or “program” means the “New Jersey Achieving a Better Life Experience (ABLE) Program” established pursuant to P.L. , c. (C.).(pending before the Legislature as this bill);¹

"Account" means an individual ABLE account established ¹[in accordance with this act] by an eligible individual, which is owned by the individual and maintained under the ABLE Program established pursuant to P.L. , c. (C.).(pending before the Legislature as this bill)¹;

"Contributor" means the person or organization contributing to and maintaining an account and having the right to withdraw funds from the account before the account is disbursed to or for the benefit of the designated beneficiary;

"Designated beneficiary" means: ¹[the] an eligible¹ individual ¹[designated at the time the account is opened as the individual whose qualified disability expenses are expected to be paid from the account and the replacement beneficiary if the change in designated beneficiary would not result in a distribution that is included in federal gross income under section 529] who establishes and owns an ABLE account consistent with the provisions of P.L. , c. (C.).(pending before the Legislature as this bill) and section 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. ¹[s.529] s.529A¹;

"Division" means the Division of Developmental Disabilities in the Department of Human Services;

¹“Eligible Individual” means an eligible individual as defined in or for the purposes of section 529A of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529A;¹

"Investment Manager" means the Division of Investment in the Department of the Treasury or the private entities authorized to do business in this State that may be designated by the division to invest the funds of the trust pursuant to the terms of ¹[this act] P.L. , c. (C.).(pending before the Legislature as this bill)¹;

"Member of the family" means a member of the family as defined in or for purposes of section ¹[529] 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. ¹[s.529] 529A¹;

"Nonqualified withdrawal" means a withdrawal from an account other than: (1) a qualified withdrawal; (2) a withdrawal made as the result of the death or disability of the designated beneficiary of an account; ¹or¹ (3) ¹[a withdrawal made on account of a scholarship (or allowance or payment described in subparagraph (B) or (C) of paragraph (1) of subsection (d) of section 135 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.135) received by the designated beneficiary, but only to the extent of the amount of that scholarship, allowance or payment; or (4)]¹ a rollover or change in designated beneficiary which

would not result in a distribution includible in federal gross income under section ¹[529] 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. ¹[s.529] 529A¹;

¹["Program" means the "New Jersey Achieving a Better Life Experience (ABLE) Program" established pursuant to P.L. , c. (C.) (pending before the Legislature as this bill);]¹

"Qualified disability expenses" means expenses described in paragraph ¹[(3) of subsection (f) of section 529] (5) of subsection (e) of section 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. ¹[s.529] s.529A¹, made for the benefit of an individual with a disability who is a designated beneficiary. A "qualified disability expense" shall be related to the beneficiary's disability and shall supplement, but not supplant, impair, or diminish, any benefits or assistance of any ¹[Federal] federal¹, State, or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving;

"Qualified withdrawal" means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account. A qualified withdrawal may be made by an agent of the beneficiary who has power of attorney or by the beneficiary's legal guardian;

"Trust" means the "New Jersey Achieving a Better Life Experience Trust (ABLE Trust)" established pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

3. (New section) Pursuant to the ABLE ¹[program] Program¹ established by ¹[this act] P.L. , c. (C.)(pending before the Legislature as this bill)¹, there is created within the Division of Developmental Disabilities in the Department of Human Services the New Jersey Achieving a Better Life Experience (ABLE) Trust. The ABLE ¹[program] Program¹ shall provide a mechanism through which the division, as trustee, holds accounts established and maintained in the ABLE Trust pursuant to the provisions of this act to finance the cost of qualified disability expenses.

4. (New section) The division shall administer the ABLE Trust. The division shall have the power to:

- a. serve as trustee of the trust;
- b. adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to carry out the provisions of ¹[this act] P.L. , c. (C.)(pending before the Legislature as this bill)¹;
- c. prescribe and provide appropriate forms for participation in the program;
- d. select an investment manager and any other contractors needed to manage and market the program;
- e. monitor the investment manager and any other contractors by audits and other reports;
- f. collect reasonable administrative fees in connection with any contract or transaction relating to the program;
- g. take all actions required so that the program is treated as a qualified State ABLE ¹[program] Program¹ under section ¹[529] 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. ¹[s.529] s.529A¹; and

h. perform any other acts which may be deemed necessary or appropriate to carry out the objectives and purposes of ¹[this act] P.L. __, c. __ (C. __) (pending before the Legislature as this bill)¹.

5. (New section) Neither the members of the division, nor any officer or employee of the division, shall be liable personally for the debts, liabilities, or obligations of the ABLE ¹[program] Program¹ established pursuant to ¹[this act] P.L. __, c. __ (C. __) (pending before the Legislature as this bill)¹.

6. (New section) a. The division shall select an investment manager or managers to invest the funds of the ABLE Trust or the funds in ABLE accounts. In making this selection, any investment manager shall be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and the division shall consider the impact of fees and costs imposed by the manager or managers on yield to contributors.

b. The division may select more than one investment manager and investment instrument for the program if it is in the best interest of contributors and will not interfere with the administration of the program.

c. The division may provide a contributor with a choice of investment managers or investment instruments or both for the program if both of the following conditions exist:

(1) the federal Internal Revenue Service has provided guidance that providing a contributor with a choice of investment managers or instruments under a State ABLE ¹[program] Program¹ will not cause the program to fail to qualify for favorable tax treatment under section ¹[529] 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. ¹[s.529] s.529A¹; and

(2) the division concludes that a choice of investment managers or of investment instruments is in the best interest of contributors and will not interfere with the administration of the program.

d. If the division terminates the designation of an investment manager to hold accounts, and accounts must be moved from that investment manager to another investment manager, the division shall select the investment manager and type of investment instrument to which the balance of the account is moved, unless the federal Internal Revenue Service provides guidance that allowing the contributor to select among several investment managers or investment instruments that have been selected by the division would not cause a program to cease to be a qualified State ABLE ¹[program] Program¹ for the purposes of ¹[subsection (f) of] ¹section ¹[529] 529A¹ of the federal Internal Revenue Code, 26 U.S.C. ¹[s.529] s.529A¹.

e. If the selection process provided for in this section results in an investment manager other than the Division of Investment, the division shall provide for the orderly transfer of accounts and shall ensure that all the rights of the contributors and designated beneficiaries participating in the program are protected.

7. (New section) a. The ABLE ¹[program] Program¹ shall be operated as a trust through the use of accounts for designated beneficiaries. An account may be opened by ¹[any person who desires to save to pay the qualified disability expenses of] ¹an eligible¹ individual by satisfying each of the following requirements:

(1) completing an application in the form prescribed by the division;

(2) ¹[paying the one-time application fee established by the division;

(3)]¹ making the minimum contribution required by the division for opening an account ¹, which in no case shall be an amount greater than the minimum contribution required by the division for opening an account under the NJBEST Program established pursuant to N.J.S.18A:71B-35 et seq.¹ ;

¹[(4) designating the account or accounts to be opened; and

(5) in the case of an account to which subsection a. of section 8 of P.L. , c. (C.) (pending before the Legislature as this bill) would apply,] and

(3)]¹ demonstrating to the satisfaction of the division that ¹[either the contributor, if an individual, or]¹ the designated beneficiary is a New Jersey resident. ¹[The requirement of New Jersey residency for either the contributor or the designated beneficiary would not apply to an account to which subsection b. of section 8 of P.L. , c. (C.) (pending before the Legislature as this bill) would apply unless otherwise determined by the division.]¹

b. ¹In no case shall a designated beneficiary establish, own, or maintain more than one ABLE account at one time. Unless otherwise permitted under section 529A of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529A, an account subsequently established for such beneficiary shall not be treated as an ABLE account.

c. (1)¹ Contributions to accounts shall be made only in cash, as defined by the division pursuant to regulations, in accordance with section ¹[529] 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. ¹[s.529] 529A.

(2) Except in the case of contributions under subparagraph (C) of paragraph (1) of subsection (c) of section 529A of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529A, no contribution may be accepted if it would result in aggregate contributions to the account exceeding the amount in effect under subsection (b) of section 2503 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.2503, for the calendar year in which the taxable year begins¹.

¹[c.] d.¹ Contributors may withdraw all or part of the balance from an account on sixty days' notice or a shorter period, as may be authorized by the division pursuant to regulations. The contributor shall provide written notice of the withdrawal to the trustee and to the designated beneficiary.

¹[d. A contributor may change the] e. (1) ¹The¹ designated beneficiary of an account ¹may be changed¹, provided that the new beneficiary qualifies as a designated beneficiary for the purposes of ¹[this act, or rollover all] P.L. , c. (C.)(pending before the Legislature as this bill) and such change meets the requirements of, and would not result in a distribution includible in gross income under, section 529A of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529A.

(2) All¹ or a portion of an account ¹may be rolled over¹ to another account, provided that the other account ¹[that meets the requirements of this act, if the change or] is a qualifying ABLE account that meets the requirements of P.L. , c. (C.)(pending before the Legislature as this bill) and such¹ rollover

would not result in a distribution includible in gross income under section ¹[529] 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. ¹[s.529, in accordance with procedures established by the division] 529A¹.

¹[e.] f.¹ Each account shall be maintained separately from each other account under the program.

¹[f.] g.¹ Separate records and accounting shall be maintained for ¹[each] the¹ account ¹[for] of¹ each designated beneficiary.

¹[g.] h. (1) A designated beneficiary may, directly or indirectly, direct the investment of any contributions to the program, or any earnings thereon, no more than two times in any calendar year.

⁽²⁾¹ A contributor to ¹[or designated beneficiary of any] an¹ account shall not direct the investment of any contributions to an account or the earnings from the account, except as permitted under section ¹[529] 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. ¹[s.529] 529A¹.

¹[h.] i.¹ A contributor or a designated beneficiary shall not use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

¹[i.] j.¹ The maximum individual¹ contribution and maximum aggregate contributions¹ for any designated beneficiary shall be determined by the division pursuant to regulations, in accordance with section ¹[529] 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. ¹[s.529] 529A¹.

¹[j.] k.¹ Statements, reports on distributions, notices of the establishment of accounts¹ and information returns relating to accounts shall be prepared, distributed, and filed ¹[to the extent required by] in accordance with subsection (d) of¹ section ¹[529] 529A¹ of the federal Internal Revenue Code of 1986, 26 U.S.C. ¹[s.529] s.529A¹, or regulations issued thereunder.

¹[k.] l.¹ The division may charge, impose, and collect reasonable administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program. These fees and charges may be imposed directly on contributors or may be taken as a percentage of the investment earnings on accounts.

¹[l.] m.¹ The State or any State agency, municipality, or other political subdivision may, by contract or collective bargaining agreement, agree with any employee to remit contributions to accounts through payroll deductions made by the appropriate officer or officers of the State, State agency, county, municipality, or political subdivision. The contributions shall be held and administered in accordance with ¹[this act] P.L. __, c. (C. __)(pending before the Legislature as this bill)¹.

¹[m.] A contributor, if an individual, may designate another person as a successor contributor in the event of the death of the original contributor. The person who opens the account, or any successor contributor, shall be considered the contributor as defined in section 2 of P.L. __, c. (C. __) (pending before the Legislature as this bill).]¹

n. Any person may make contributions to an account, consistent with subsection c. of this section and¹ the terms established by the division, after the account is opened.

o. Moneys paid into or out of an ABLE account by or on behalf of a contributor or designated beneficiary for the purposes of financing the cost of qualified disability expenses under ¹[this act] P.L. ____, c. ____(C. ____) (pending before the Legislature as this bill)¹ are exempt from all claims of creditors of the contributor or the designated beneficiary.

p. Subject to any outstanding payments due for qualified disability expenses, in the case that the designated beneficiary dies or ceases to be an individual with a disability, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program, shall be distributed to the State upon the State filing a claim for payment. For the purposes of this subsection, the State shall be a creditor of the ABLE account and not a beneficiary. ¹[Paragraph (3) of subsection (c) of 26 U.S.C. s.529 shall not apply to a distribution to the State pursuant to this subsection.]¹

8. (New section) a. If the investment manager is the Division of Investment in the Department of the Treasury, in order to assure the availability of principal of any amount contributed under ¹[this act] P.L. ____, c. ____(C. ____) (pending before the Legislature as this bill)¹, there shall be paid to the division for deposit in the trust, at the time of distribution, subject to appropriation, such sum, if any, as shall be certified by the Director of the Division of Developmental Disabilities in the Department of Human Services as necessary to provide that amount at the time of distribution. The director shall make and deliver to the Governor, or the Governor's designee, the certificate stating the sums, if any, required to make available in the trust the amount aforesaid, and the sums so certified shall be appropriated and paid to the division during the then current State fiscal year.

b. If the investment manager is a private entity, the investment of the principal and interest of any amount contributed under ¹[this act] P.L. ____, c. ____(C. ____) (pending before the Legislature as this bill)¹ shall be made in accordance with an investment plan approved by the State Investment Council in the Division of Investment.

9. (New section) Annually, the division shall determine a dollar amount of an ABLE account, which shall not be less than \$25,000, which shall not be considered in evaluating the financial needs of a designated beneficiary or be deemed a financial resource or a form of financial aid or assistance to a designated beneficiary, for purposes of determining the eligibility of the beneficiary for any scholarship, grant, or monetary assistance awarded by the State for the purposes of financing the education expenses of the beneficiary, including higher education expenses; nor shall the amount of any account as determined by the division provided for a designated beneficiary under ¹[this act] P.L. ____, c. ____(C. ____) (pending before the Legislature as this bill)¹ reduce the amount of any scholarship grant or monetary assistance which the beneficiary is entitled to be awarded by the State for the purposes of financing education expenses.

10. (New section) Notwithstanding any other provision of State law that requires consideration of one or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, any amount, including earnings thereon, in any ABLE account of such individual, and any distribution for qualified disability expenses shall be disregarded for such purpose with respect to any period during which such individual maintains, makes contributions to, or receives distributions from such ABLE account.

11. (New section) a. Nothing in ¹[this act] P.L.____, _____ c.____(C.____)(pending before the Legislature as this bill)¹ shall be construed to:

- (1) guarantee the availability or provision of disability-related services to a designated beneficiary;
- (2) establish State residency for a person merely because the person is a designated beneficiary; or
- (3) guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified disability expenses of a designated beneficiary.

b. Nothing in ¹[this act] P.L.____, c.____(C.____)(pending before the Legislature as this bill)¹ establishes any obligation of this State or any agency or instrumentality of this State to guarantee for the benefit of any contributor or designated beneficiary any of the following:

- (1) the rate of interest or other return on any account; or
- (2) the payment of interest or other return on any account.

c. Nothing in ¹[this act] P.L.____, c.____(C.____)(pending before the Legislature as this bill)¹ establishes any obligation or liability of this State or any agency or instrumentality of this State with respect to any federal or State tax liability of any contributor or designated beneficiary in this program.

d. Under regulations promulgated by the division, every contract and application that may be used in connection with a contribution to an account shall clearly indicate that the account is not insured by this State nor is the investment return guaranteed by this State.

12. This act shall take effect ¹[upon enactment of the federal “Achieving a Better Life Experience Act of 2013”] on the 45th day after the date of enactment¹ and section 1 shall apply to contributions made for taxable years beginning after the effective date.