AN ACT
relating to the establishment of the Texas Achieving a Better Life Experience (ABLE) Program; authorizing the imposition of fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Section 54.602(b), Education Code, is amended to read as follows:
(b) The board shall administer the following programs:
(1) the prepaid higher education tuition program established under this subchapter; [and]
(2) the higher education savings plan established under Subchapter G;
(3) the prepaid tuition unit undergraduate education program established under Subchapter H;
(4) the Texas Save and Match Program established under Subchapter I; and
(5) the Texas Achieving a Better Life Experience Program established under Subchapter J.

SECTION 2. Chapter 54, Education Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. TEXAS ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM

Sec. 54.901. PURPOSES OF PROGRAM. The purposes of this subchapter are as follows:
(1) to encourage and assist individuals and families
in saving funds for the purpose of supporting individuals with
disabilities to maintain health, independence, and quality of life;
and
(2) to provide secure funding for qualified disability
expenses on behalf of designated beneficiaries with disabilities
that will supplement, but not supplant, benefits provided through
private insurance, the Medicaid program under Title XIX of the
Social Security Act, the supplemental security income program under
Title XVI of the Social Security Act, the beneficiary's employment,
and other sources.

Sec. 54.902. DEFINITIONS. In this subchapter:
(1) "ABLE account" has the meaning assigned by Section
529A, Internal Revenue Code.
(2) "ABLE program" or "program" means the Texas
Achieving a Better Life Experience Program created under this
subchapter.
(3) "Board" means the Prepaid Higher Education Tuition
Board established under Section 54.602.
(4) "Designated beneficiary" means a resident of this
state with a disability who is an eligible individual and named as
the designated beneficiary of an ABLE account.
(5) "Eligible individual" means a person who has
certified to the board that the person is eligible to participate in
the ABLE program.
(6) "Financial institution" means a bank, a trust
company, a depository trust company, an insurance company, a
broker-dealer, a registered investment company or investment
manager, the Texas Safekeeping Trust Company, or another similar
financial institution authorized to transact business in this
state.

(7) "Internal Revenue Code" means the Internal Revenue

(8) "Participant" means a designated beneficiary or
the parent or custodian or other fiduciary of the beneficiary who
has entered into a participation agreement under this subchapter.

(9) "Participation agreement" means an agreement
between a participant and the board under this subchapter that
conforms to the requirements prescribed by this subchapter.

(10) "Qualified disability expenses" means any
expenses related to the eligible individual's blindness or
disability that are made for the benefit of an eligible individual
who is the designated beneficiary, and includes expenses for
education, housing, transportation, employment training and
support, assistive technology and personal support services,
health, prevention and wellness, financial management and
administrative services, legal fees, oversight and monitoring, a
funeral and burial, and other expenses approved under federal
regulations adopted under Section 529A, Internal Revenue Code.

(11) "TexasABLE savings plan account" means the Texas
ABLE savings plan account created under Section 54.903.

Sec. 54.903. CREATION OF PROGRAM AND ACCOUNT;
ADMINISTRATION. (a) The Texas Achieving a Better Life Experience
(ABLE) Program is created under this subchapter. The TexasABLE
savings plan account is established as a trust fund outside of the
state treasury.

(b) The board shall administer the ABLE program.

(c) The board, the office of the comptroller, and any
manager or other contractor that contracts with the board to
provide services under this subchapter are not covered entities for
purposes of Chapter 181, Health and Safety Code.

Sec. 54.904. POWERS AND DUTIES OF BOARD. (a) To establish
and administer the ABLE program, the board shall:

(1) develop and implement the program;

(2) adopt rules and establish policies and procedures
to implement this subchapter to:

(A) permit the program to qualify as a qualified
ABLE program under Section 529A, Internal Revenue Code;

(B) make changes to the program as necessary for
the participants in the program to obtain or maintain federal
income tax benefits or treatment provided by Section 529A, Internal
Revenue Code, and exemptions under federal securities laws; and

(C) make changes to the program as necessary to
ensure the program’s compliance with all other applicable laws and
regulations;

(3) either directly or through a contractual
arrangement for investment or plan manager services with a
financial institution or plan manager or another qualified entity,
develop and provide information for participants and their families
necessary to establish and maintain an ABLE account;

(4) enter into agreements with any financial
institution or any state or federal agency or contractor or other
entity as required to administer the program under this subchapter;

(5) enter into participation agreements with participants;

(6) solicit and accept any gifts, grants, legislative appropriations, and other funds from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation;

(7) invest participant funds in appropriate investment instruments; and

(8) make provision for the payment of costs of administering the program.

(b) The board has all powers necessary or proper to carry out its duties under this subchapter and to effectuate the purposes of this subchapter, including the power to:

(1) sue and be sued;

(2) enter into contracts and other necessary instruments;

(3) enter into agreements or other transactions with the United States, state agencies, and other entities as necessary;

(4) appear on its own behalf before governmental agencies;

(5) contract for necessary goods and services, including specifying in the contract duties to be performed by the provider of a good or service that are a part of or are in addition to the person's primary duties under the contract;

(6) contract with another state that administers a qualified ABLE program as authorized by Section 529A, Internal
Revenue Code, to provide residents of this state with access to a qualified ABLE program;

(7) engage the services of private consultants, trustees, records administrators, managers, legal counsel, auditors, and other appropriate parties or organizations for administrative or technical assistance;

(8) participate in any government program;

(9) impose fees and charges;

(10) develop marketing plans or promotional materials or contract with a consultant to market the program;

(11) make reports;

(12) purchase liability insurance covering the board and employees and agents of the board;

(13) make changes to the program as necessary for the participants in the program to obtain or maintain federal income tax benefits or treatment provided by Section 529A, Internal Revenue Code, and exemptions under federal securities laws; and

(14) establish other policies, procedures, and eligibility criteria to implement this subchapter.

Sec. 54.9045. COLLECTION OF FEES. The board shall collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program in amounts not exceeding the amount necessary to recover the cost of establishing and maintaining the program.

Sec. 54.905. INVESTMENT OF FUNDS. (a) All money paid by a participant in connection with a participation agreement shall be:

(1) deposited into an individual ABLE account held on
behalf of that participant in the Texas ABLE savings plan account; and

(2) promptly invested by the board.

(b) The board at least annually shall establish and review the asset allocation and selection of the underlying investments of the ABLE program.

c) The board may delegate to duly appointed financial institutions authority to act on behalf of the board in the investment and reinvestment of all or part of the funds and may also delegate to those financial institutions the authority to act on behalf of the board in the holding, purchasing, selling, assigning, transferring, or disposing of any or all of the securities and investments in which the funds in the Texas ABLE savings plan account have been invested, as well as the proceeds from the investment of those funds.

d) In delegating investment authority to financial institutions, the board may authorize the pooling of funds from the ABLE accounts with other funds administered by the board to maximize returns for participants. If funds from the ABLE accounts are pooled with other funds administered by the board, the board shall track, monitor, report, and record separately all investment activity related to the ABLE accounts, including any earnings and fees associated with each individual ABLE account.

e) The board may select one or more financial institutions to serve as custodian of all or part of the program's assets.

(f) In the board's discretion, the board may contract with one or more financial institutions to serve as plan manager and to
invest the money in ABLE accounts.

(g) A contract between the board and a financial institution to act as plan manager under this subchapter may be for a term of up to five years and may be renewable.

(h) In exercising or delegating investment powers and authority, members of the board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. A member of the board is not liable for any action taken or omitted with respect to the exercise of, or delegation of, those powers and authority if the member discharged the duties of the member's position in good faith and with the degree of diligence, care, and skill that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(i) In administering this subchapter, the board is subject to the board's ethics policy adopted under Section 54.6085.

Sec. 54.906. TREATMENT OF ASSETS. (a) The assets of the ABLE program shall at all times be preserved, invested, and spent only for the purposes provided by this subchapter and in accordance with the participation agreements entered into under this subchapter.

(b) Except as provided by Section 529A, Internal Revenue Code, the state does not have a property right in the assets of the ABLE program.

Sec. 54.9065. EXCLUSION OF ABLE ACCOUNT ASSETS FROM CERTAIN BENEFIT ELIGIBILITY DETERMINATIONS. Notwithstanding any other
provision of state law that requires consideration of the financial
circumstances of an applicant for assistance or a benefit provided
under that law, the agency making the determination of eligibility
for the assistance or benefit may not consider the amount in the
applicant's ABLE account, including earnings on that amount, and
any distribution for qualified disability expenses in determining
the applicant's eligibility to receive and the amount of the
assistance or benefit with respect to the period during which the
individual maintains the ABLE account.

Sec. 54.907. EXEMPTION FROM SECURITIES LAWS. An ABLE
account is not a security within the meaning of the term as defined
by Section 4, The Securities Act (Article 581-4, Vernon's Texas
Civil Statutes), and is exempt from the provisions of The
Securities Act (Article 581-1 et seq., Vernon's Texas Civil
Statutes).

Sec. 54.908. PARTICIPATION AGREEMENTS. (a) Under the ABLE
program, the board may enter into participation agreements with
participants on behalf of designated beneficiaries.

(b) A participation agreement may include the following
terms:

(1) the requirements and applicable restrictions for:

(A) opening an ABLE account;

(B) making contributions to an ABLE account; and

(C) directly or indirectly, directing the
investment of the contributions or balance of the ABLE account;

(2) the eligibility requirements for a participant to
enter into a participation agreement and the rights of that
participant;

(3) the administrative fee and other fees and charges applicable to an ABLE account;

(4) the terms and conditions under which an ABLE account or participation agreement may be modified, transferred, or terminated;

(5) the method of disposition of abandoned ABLE accounts; and

(6) any other terms and conditions the board considers necessary or appropriate, including those necessary to conform the ABLE account to the requirements of Section 529A, Internal Revenue Code, or other applicable federal law.

(c) The participation agreement may be amended throughout the term of the agreement, including to allow a participant to increase or decrease the level of participation and to change the designated beneficiary or other matters authorized by this section and Section 529A, Internal Revenue Code.

(d) If the board finds a participant has made a material misrepresentation in the application for a participation agreement or in any communication regarding the ABLE program, the board may liquidate the participant's ABLE account. If the board liquidates an ABLE account under this subsection, the participant is entitled to a refund, subject to any charges or fees provided by the participation agreement and the Internal Revenue Code.

Sec. 54.9085. ENCUMBRANCE OR TRANSFER OF ACCOUNT PROHIBITED. (a) An ABLE account may not be assigned for the benefit of creditors, used as security or collateral for any loan,
or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge.

(b) Notwithstanding Subsection (a), the state is a permissible creditor upon the death of a designated beneficiary for the purposes set forth in Section 529A, Internal Revenue Code.

Sec. 54.909. USE OF FUND ASSETS. The assets of the program may only be used to:

(1) make distributions to designated beneficiaries;

(2) pay the costs of program administration and operations;

(3) make refunds for cancellations, excess contributions, liquidation under Section 54.908(d), and death, in accordance with a computation method determined by the board;

(4) roll over funds to another ABLE account to the extent authorized by Section 529A, Internal Revenue Code; and

(5) make distributions to the state as authorized by Section 529A, Internal Revenue Code.

Sec. 54.910. DESIGNATED BENEFICIARY. (a) The participant is the designated beneficiary and the owner of the ABLE account except as described by Subsection (b) and as otherwise permitted by Section 529A, Internal Revenue Code.

(b) If the designated beneficiary of the account is a minor or has a custodian or other fiduciary appointed for the purpose of managing the minor's financial affairs, the parent or custodian or other fiduciary of the beneficiary may serve as the participant if that form of ownership is permitted or not prohibited by Section 529A, Internal Revenue Code.
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(c) A designated beneficiary may own only one ABLE account, and each ABLE account may have only one owner, except as otherwise permitted by Section 529A, Internal Revenue Code.

Sec. 54.911. VERIFICATION UNDER OATH. The board may require a participant to verify under oath:

(1) the participant's certification as an eligible individual;

(2) the participant's selection to change a designated beneficiary;

(3) the participant's selection to cancel a participation agreement; and

(4) any other information the board may require.

Sec. 54.912. CANCELLATION. (a) A participant may cancel a participation agreement at will.

(b) Each participation agreement must provide that the agreement may be canceled on the terms and conditions and on payment of applicable fees and costs as provided by rule.

Sec. 54.913. REPORTS. (a) The board shall comply with the reporting requirements in Section 529A, Internal Revenue Code.

(b) The board shall report financial information related to the ABLE program in an annual financial report in accordance with the comptroller's requirements and guidelines for state agencies.

(c) The board shall include financial information for the ABLE program in the board's annual report posted on the board's website.

(d) The board shall prepare any other reports required by state or federal rules and regulations.
Sec. 54.914. CONFIDENTIALITY OF RECORDS. (a) Except as otherwise provided by this section, all information relating to the program is public and subject to disclosure under Chapter 552, Government Code.

(b) Information relating to a prospective or current participant or designated beneficiary or to a participation agreement, including any personally identifiable information, is confidential except that the board may disclose that information to:

(1) a participant regarding the participant's account;

or

(2) a state or federal agency as necessary to administer the program or as required by Section 529A, Internal Revenue Code, or other federal or state requirements.

Sec. 54.915. PROGRAM LIMITATIONS. (a) Nothing in this subchapter or in any participation agreement entered into under this subchapter may be construed to guarantee that amounts saved under the program will be sufficient to cover the qualified disability expenses of a designated beneficiary.

(b) Nothing in this subchapter or in any participation agreement entered into under this subchapter may be construed to create any obligation of the state, any agency or instrumentality of the state, or a plan manager to guarantee for the benefit of a participant:

(1) the return of any amount contributed to an account;

(2) the rate of interest or other return on an account;
or

(3) the payment of interest or other return on an account.

(c) The board by rule shall require that informational materials used in connection with a contribution to an ABLE account clearly indicate that the account is not insured by this state and that neither the principal deposited nor the investment return is guaranteed by the state.

Sec. 54.916. TERMINATION OR MODIFICATION OF PROGRAM.

(a) If the comptroller determines that the ABLE program is not financially feasible, the comptroller shall notify the governor and the legislature and recommend that the board not administer an ABLE program or that the program be modified or terminated. The program may be terminated only by the legislature.

(b) If the comptroller determines that the ABLE program is not financially feasible, the board may adjust the terms of participation agreements as necessary to ensure the financial feasibility of the program.

(c) If the legislature terminates the ABLE program, the balance of each ABLE account shall be paid to the participant, to the extent possible.

Sec. 54.917. ABLE PROGRAM ADVISORY COMMITTEE. (a) The ABLE program advisory committee is established to review rules and procedures related to the ABLE program, to provide guidance, suggest changes, and make recommendations for the administration of the program, and to provide assistance as needed to the board and comptroller during the creation of the program.
(b) The comptroller shall appoint at least five and not more than seven members to the advisory committee, including at least one member from each of the following groups:

(1) persons with a disability who qualify for the program;

(2) family members of a person with a disability who qualifies for the program;

(3) representatives of disability advocacy organizations; and

(4) representatives of the financial community.

(c) The comptroller shall appoint a presiding officer.

(d) The advisory committee shall meet quarterly or more frequently as the presiding officer determines is necessary to carry out the responsibilities of the committee.

(e) A member of the advisory committee is not entitled to compensation or reimbursement for travel expenses.

(f) Chapter 2110, Government Code, does not apply to this section.

(g) This section expires and the advisory committee is abolished December 1, 2019.

SECTION 3. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4. The Prepaid Higher Education Tuition Board may
begin enrollment in the ABLE program as soon as reasonably
practical to allow sufficient time for successful development and
implementation of the ABLE program.

SECTION 5. Not later than December 1, 2015, the comptroller
shall appoint the members of the ABLE program advisory committee as
required by Section 54.917, Education Code, as added by this Act.

SECTION 6. This Act takes effect immediately if it receives
a vote of two-thirds of all the members elected to each house, as
provided by Section 39, Article III, Texas Constitution. If this
Act does not receive the vote necessary for immediate effect, this
Act takes effect September 1, 2015.
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President of the Senate

I hereby certify that S.B. No. 1664 passed the Senate on April 15, 2015, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 28, 2015, by the following vote: Yeas 31, Nays 0.

Speaker of the House

Secretary of the Senate

I hereby certify that S.B. No. 1664 passed the House, with amendments, on May 24, 2015, by the following vote: Yeas 138, Nays 1, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor