

BILL ANALYSIS

Senate Research Center

S.B. 1664
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recently, the United States Congress passed the Achieving a Better Life Experience (ABLE) Act, which amends Section 529 of the Internal Revenue Service Code of 1986 to create the opportunity for people with disabilities to have tax-free savings accounts (ABLE account).

The federal ABLE Act passed with bipartisan support from Congress. In fact, 34 of the co-sponsors were Texas representatives.

This account allows individuals with disabilities to have a savings account, in their own name, to cover qualified expenses such as education, housing, transportation, employment training and support, health care, assistive technology and personal support services, funeral and burial and other expenses, which will be ultimately delineated by the United States Treasury.

The federal legislation also contains Medicaid fraud protection against abuse and a Medicaid pay-back provision when the beneficiary passes away.

Eligible individuals with disabilities (with an age of onset the age 26 or younger) will be able to save their earned income and plan for the future without the fear of losing their eligibility for Medicaid.

While ABLE allows individuals to save their own money, families and friends will also be able to financially support their loved ones with gift donations. However, the total aggregate amount deposited into an individual account must be less than \$14,000 for each calendar year with a maximum account limit of \$100,000 (including interest and dividend earnings). All contributions to the account made by any person would not be tax deductible.

Historically, people with disabilities have had limited options for saving money. ABLE accounts will allow people with disabilities to now live more independent, self-directed, and meaningful lives.

Although Congress passed the ABLE Act, states must pass legislation to enact ABLE Accounts.

S.B. 1664 instructs the comptroller of public accounts of the State of Texas (comptroller) to create ABLE accounts at the state level. Additionally, the bill provides for consumer protection, provides for the creation of a stakeholder board made up of the disability community, and gives flexibility to the comptroller to create rules around future federal regulations.

As proposed, S.B. 1664 amends current law relating to the establishment of the Texas Achieving a Better Life Experience (ABLE) Program and authorizes the imposition of fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Prepaid Higher Education Tuition Board in SECTION 4 (162.004, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 54.602(b), Education Code, as follows:

(b) Requires the Prepaid Higher Education Tuition Board to administer the prepaid higher education tuition program established under this subchapter, the higher education savings plan established under Subchapter G (Higher Education Savings Plan), and the Texas Achieving a Better Life Experience Program created under Chapter 162, Human Resources Code.

SECTION 2. Amends the heading to Section 54.634, Education Code, to read as follows:

Sec. 54.634. ESTABLISHMENT OF TRUST FUND; COLLEGE SAVINGS PLAN ACCOUNT; TEXAS ABLE SAVINGS PLAN ACCOUNT.

SECTION 3. Amends Section 54.634, Education Code, by adding Subsection (e), as follows:

(e) Provides that the Texas ABLE savings plan account is created within the Texas tomorrow constitutional trust fund and is financed through administrative fees and service charges as authorized by Section 162.004, Human Resources Code.

SECTION 4. Amends Title 11, Human Resources Code, as follows:

CHAPTER 162. TEXAS ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM

Sec. 162.001. PURPOSES OF PROGRAM. Provides that the purposes of this chapter are as follows:

(1) to encourage and assist individuals and families in saving private 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. 162.002. DEFINITIONS. Defines, in this chapter: "ABLE account," "ABLE program" or "program," "benefits," "board," "designated beneficiary" and "eligible individual," "financial institution," "Internal Revenue Code," "participant," "participation agreement," "qualified disability expenses," and "Texas ABLE savings plan account."

Sec. 162.003. CREATION; ADMINISTRATION. (a) Provides that the Texas Achieving a Better Life Experience (ABLE) Program is created under this chapter.

(b) Requires the Prepaid Higher Education Tuition Board (board) to administer the ABLE program.

Sec. 162.004. POWERS AND DUTIES OF BOARD. (a) Provides that, to establish and administer the ABLE program, the board is required to:

(1) develop and implement the program;

(2) adopt reasonable rules and establish policies and procedures to implement this chapter to permit the program to qualify as a qualified ABLE program under Section 529A, Internal Revenue Code, and ensure the program's compliance with all applicable laws;

(3) either directly or through a contractual arrangement with a financial institution for investment services, develop and implement educational programs and related informational materials for participants and their

families, including special programs and materials to inform individuals with disabilities regarding methods for financing the qualified disability expenses of individuals with disabilities to enable those individuals to maintain health, independence, and quality of life;

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

(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 for deposit to the Texas ABLE savings plan account;

(7) invest participant funds in appropriate investment instruments;

(8) appoint members to an advisory committee who are stakeholders from the disability community;

(9) make provision for the payment of costs of administering the program; and

(10) procure insurance, guarantees, or other protections against any loss in connection with the assets or activities of the program.

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

1) enter into contracts and other necessary instruments;

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

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

(4) 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;

(5) engage the services of private consultants, actuaries, trustees, records administrators, managers, legal counsel, and auditors for administrative or technical assistance;

(6) participate in any government program;

(7) impose charges and fees;

(8) contract with a person to market the program;

(9) make reports;

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

(11) establish other policies, procedures, and eligibility criteria to implement this chapter.

Sec. 162.005. INVESTMENT OF FUNDS. (a) Requires that all money paid by a participant in connection with a participation agreement be deposited into an individual ABLE account held on behalf of that participant in the Texas ABLE savings plan account, and promptly invested by the board.

(b) Requires board members to, for new contracts entered into after December 1, 2015, study investment plans of other states and contract with or negotiate to provide benefit options that are the same as or similar to other states' qualified plans for the purpose of offering additional options for participants.

(c) Authorizes the board to delegate to duly appointed investment counselors authority to act on behalf of the board in the investment and reinvestment of all or part of the funds and to also delegate to those counselors 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. Requires the investment counselors to be registered as investment advisors with the United States Securities and Exchange Commission.

(d) Requires members of the board, in exercising or delegating its investment powers and authority, to exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. Provides that 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.

(e) Prohibits a company or firm in which a member of the board has a substantial interest from handling an investment transaction authorized by the board. Prohibits a member of the board from profiting directly or indirectly from an investment transaction authorized by the board.

(f) Prohibits a member of the board or an employee or agent of the ABLE program from receiving any gain or profit from any funds or transactions of the ABLE program. Provides that a member's, employee's, or agent's acceptance of any gratuity or compensation for the purpose of influencing an action taken with respect to the investment or management of the funds of the ABLE program is grounds for removal or termination of the member, employee, or agent, as applicable.

Sec. 162.006. TREATMENT OF ASSETS. (a) Requires that the assets of the ABLE program to at all times be preserved, invested, and spent only for the purposes provided by this chapter and in accordance with the participation agreements entered into under this chapter.

(b) Provides that the state does not have a property right in the assets of the ABLE program.

Sec. 162.007. PARTICIPATION AGREEMENTS. (a) Authorizes the board, under the ABLE program, to enter into participation agreements with participants on behalf of designated beneficiaries.

(b) Requires that a participation agreement:

(1) stipulate the terms and conditions of the ABLE program in which the participant makes contributions;

(2) specify the method for calculating the return on the contribution made by the participant;

(3) clearly and prominently disclose to participants the risk associated with depositing funds with the board;

(4) be organized and presented in a way and with language that is easily understandable by the general public; and

(5) clearly and prominently disclose to participants the existence of any load charge or similar charge assessed against the ABLE accounts of the participants for administration or services.

(c) Requires the board to, consistent with Section 529A, Internal Revenue Code, establish the maximum annual amount that a participant may contribute with respect to a designated beneficiary and a total contribution limit for ABLE accounts established under the ABLE program with respect to a designated beneficiary.

(d) Authorizes the board to establish other requirements that the board considers appropriate to provide adequate safeguards to prevent contributions on behalf of a designated beneficiary from exceeding the amount that is necessary to provide for the qualified disability expenses of the beneficiary.

Sec. 162.008. **QUALIFIED DISABILITY EXPENSES.** Authorizes contributions to an ABLE account and the earnings on those contributions to be used, as provided in the participation agreement, to pay the qualified disability expenses of a designated beneficiary.

Sec. 162.009. **DESIGNATED BENEFICIARY.** (a) Provides that the participant is the designated beneficiary of the ABLE account except as described by Subsection (b) and as otherwise permitted by Section 529A, Internal Revenue Code.

(b) Authorizes the beneficiary, 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 to serve as the participant if that form of ownership is permitted or not prohibited by Section 529A, Internal Revenue Code.

Sec. 162.010. **CANCELLATION.** (a) Authorizes a participant to cancel a participation agreement at will.

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

SECTION 5. Effective date: December 1, 2015.