

By: Lucio III

H.B. No. 3703

A BILL TO BE ENTITLED

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 prepaid higher education tuition program established under this subchapter, ~~and~~ the higher education savings plan established under Subchapter G, and the Texas Achieving a Better Life Experience Program created under Chapter 162, Human Resources Code.

SECTION 2. The heading to Section 54.634, Education Code, is amended to read as follows:

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

SECTION 3. Section 54.634, Education Code, is amended by adding Subsection (e) to read as follows:

(e) 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. Title 11, Human Resources Code, is amended by adding Chapter 162 to read as follows:

CHAPTER 162. TEXAS ACHIEVING A BETTER

LIFE EXPERIENCE (ABLE) PROGRAM

Sec. 162.001. PURPOSES OF PROGRAM. 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. In this chapter:

(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 chapter.

(3) "Benefits" means the payment of qualified disability expenses on behalf of a designated beneficiary from an ABLE account.

(4) "Board" means the Prepaid Higher Education Tuition Board established under Section 54.602, Education Code.

(5) "Designated beneficiary" and "eligible individual" have the meanings assigned by Section 529A, Internal

1 Revenue Code.

2 (6) "Financial institution" means a bank, an insurance
3 company, or a registered investment company.

4 (7) "Internal Revenue Code" means the Internal Revenue
5 Code of 1986.

6 (8) "Participant" means a person who has entered into
7 a participation agreement under this chapter for the advance
8 payment of qualified disability expenses on behalf of a designated
9 beneficiary.

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

13 (10) "Qualified disability expenses" has the meaning
14 assigned by Section 529A, Internal Revenue Code.

15 (11) "Texas ABLE savings plan account" means the Texas
16 ABLE savings plan account created under Section [54.634\(e\)](#),
17 Education Code.

18 Sec. 162.003. CREATION; ADMINISTRATION. (a) The Texas
19 Achieving a Better Life Experience (ABLE) Program is created under
20 this chapter.

21 (b) The board shall administer the ABLE program.

22 Sec. 162.004. POWERS AND DUTIES OF BOARD. (a) To establish
23 and administer the ABLE program, the board shall:

24 (1) develop and implement the program;

25 (2) adopt reasonable rules and establish policies and
26 procedures to implement this chapter to:

27 (A) permit the program to qualify as a qualified

1 ABLE program under Section 529A, Internal Revenue Code; and

2 (B) ensure the program's compliance with all
3 applicable laws;

4 (3) either directly or through a contractual
5 arrangement with a financial institution for investment services,
6 develop and implement educational programs and related
7 informational materials for participants and their families,
8 including special programs and materials to inform individuals with
9 disabilities regarding methods for financing the qualified
10 disability expenses of individuals with disabilities to enable
11 those individuals to maintain health, independence, and quality of
12 life;

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

16 (5) enter into participation agreements with
17 participants;

18 (6) solicit and accept any gifts, grants, legislative
19 appropriations, and other funds from the state, any unit of
20 federal, state, or local government, or any other person, firm,
21 partnership, or corporation for deposit to the Texas ABLE savings
22 plan account;

23 (7) invest participant funds in appropriate
24 investment instruments to achieve long-term total return through a
25 combination of capital appreciation and current income;

26 (8) make appropriate payments and distributions on
27 behalf of designated beneficiaries under participation agreements;

1 (9) make refunds to participants on the cancellation
2 of participation agreements in accordance with the provisions,
3 limitations, and restrictions provided by this chapter and the
4 rules adopted by the board under this chapter;

5 (10) make provision for the payment of costs of
6 administering the program; and

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

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

13 (1) sue and be sued;

14 (2) enter into contracts and other necessary
15 instruments;

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

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

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

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

27 (7) participate in any government program;

- (8) impose charges and fees;
- (9) contract with a person to market the program;
- (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) 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) For new contracts entered into after December 1, 2015, board members shall 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) The board may 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 may 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. The investment counselors must be registered as investment advisors with the United States Securities and Exchange Commission.

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

12 (e) A company or firm in which a member of the board has a
13 substantial interest may not handle an investment transaction
14 authorized by the board. A member of the board may not profit
15 directly or indirectly from an investment transaction authorized by
16 the board.

17 (f) A member of the board or an employee or agent of the ABLE
18 program may not receive any gain or profit from any funds or
19 transactions of the ABLE program. A member's, employee's, or
20 agent's acceptance of any gratuity or compensation for the purpose
21 of influencing an action taken with respect to the investment or
22 management of the funds of the ABLE program is grounds for removal
23 or termination of the member, employee, or agent, as applicable.

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

1 (b) The state does not have a property right in the assets of
2 the ABLE program.

3 Sec. 162.007. PARTICIPATION AGREEMENTS. (a) Under the
4 ABLE program, the board may enter into participation agreements
5 with participants on behalf of designated beneficiaries.

6 (b) A participation agreement must:

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

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

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

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

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

19 (c) Consistent with Section 529A, Internal Revenue Code,
20 the board shall establish:

21 (1) the maximum annual amount that a participant may
22 contribute with respect to a designated beneficiary; and

23 (2) a total contribution limit for ABLE accounts
24 established under the ABLE program with respect to a designated
25 beneficiary.

26 (d) The board may establish other requirements that the
27 board considers appropriate to provide adequate safeguards to

1 prevent contributions on behalf of a designated beneficiary from
2 exceeding the amount that is necessary to provide for the qualified
3 disability expenses of the beneficiary.

4 (e) Consistent with Section 529A, Internal Revenue Code,
5 the board shall establish the minimum period for which
6 contributions and earnings must be held by the ABLE program. Any
7 contributions or earnings that are withdrawn or distributed from an
8 ABLE account before the expiration of that minimum period are
9 subject to a penalty under Section 162.011.

10 Sec. 162.008. QUALIFIED DISABILITY EXPENSES.
11 Contributions to an ABLE account and the earnings on those
12 contributions may be used, as provided in the participation
13 agreement, to pay the qualified disability expenses of a designated
14 beneficiary.

15 Sec. 162.009. DESIGNATED BENEFICIARY. (a) The participant
16 is the designated beneficiary of the ABLE account except as
17 described by Subsection (b) and as otherwise permitted by Section
18 529A, Internal Revenue Code.

19 (b) If the designated beneficiary of the account is a minor
20 or has a custodian or other fiduciary appointed for the purpose of
21 managing the minor's financial affairs, the parent or custodian or
22 other fiduciary of the beneficiary may serve as the participant if
23 that form of ownership is permitted or not prohibited by Section
24 529A, Internal Revenue Code.

25 Sec. 162.010. CANCELLATION. (a) A participant may cancel a
26 participation agreement at will.

27 (b) Each participation agreement must provide that the

1 agreement may be canceled on the terms and conditions and on payment
2 of applicable fees and costs as provided by rule.

3 Sec. 162.011. PENALTIES. The board shall impose a penalty
4 equal to or greater than 10 percent of the earnings of an ABLE
5 account for any distribution that is not:

6 (1) used exclusively for qualified disability
7 expenses of a designated beneficiary;

8 (2) made because of death of a designated beneficiary;
9 or

10 (3) held in the fund for the minimum period
11 established by the board.

12 SECTION 5. This Act takes effect December 1, 2015.