

By: Burkett

H.B. No. 3766

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, trust
3 company, an insurance 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.

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

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

13 (11) "Texas ABLE savings plan account" means the Texas
14 ABLE savings plan account created under Section 54.634(e),
15 Education Code.

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

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

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

22 (1) develop and implement the program;

23 (2) adopt reasonable rules and establish policies and
24 procedures to implement this chapter to:

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

27 (B) ensure the program's compliance with all

1 applicable laws;

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

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

14 (5) enter into participation agreements with
15 participants;

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

21 (7) invest participant funds in appropriate
22 investment instruments;

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

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

27 (10) procure insurance, guarantees, or other

1 protections against any loss in connection with the assets or
2 activities of the program.

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

6 (1) enter into contracts and other necessary
7 instruments;

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

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

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

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

19 (6) participate in any government program;

20 (7) impose charges and fees;

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

22 (9) make reports;

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

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

27 Sec. 162.005. INVESTMENT OF FUNDS. (a) All money paid by a

1 participant in connection with a participation agreement shall be:

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

4 and

5 (2) promptly invested by the board.

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

11 (c) The board may delegate to duly appointed investment
12 counselors authority to act on behalf of the board in the
13 investment and reinvestment of all or part of the funds and may also
14 delegate to those counselors the authority to act on behalf of the
15 board in the holding, purchasing, selling, assigning,
16 transferring, or disposing of any or all of the securities and
17 investments in which the funds in the Texas ABLE savings plan
18 account have been invested, as well as the proceeds from the
19 investment of those funds. The investment counselors must be
20 registered as investment advisors with the United States Securities
21 and Exchange Commission.

22 (d) In exercising or delegating its investment powers and
23 authority, members of the board shall exercise ordinary business
24 care and prudence under the facts and circumstances prevailing at
25 the time of the action or decision. A member of the board is not
26 liable for any action taken or omitted with respect to the exercise
27 of, or delegation of, those powers and authority if the member

1 discharged the duties of the member's position in good faith and
2 with the degree of diligence, care, and skill that a prudent person
3 acting in a like capacity and familiar with those matters would use
4 in the conduct of an enterprise of a like character and with like
5 aims.

6 (e) A company or firm in which a member of the board has a
7 substantial interest may not handle an investment transaction
8 authorized by the board. A member of the board may not profit
9 directly or indirectly from an investment transaction authorized by
10 the board.

11 (f) A member of the board or an employee or agent of the ABLE
12 program may not receive any gain or profit from any funds or
13 transactions of the ABLE program. A member's, employee's, or
14 agent's acceptance of any gratuity or compensation for the purpose
15 of influencing an action taken with respect to the investment or
16 management of the funds of the ABLE program is grounds for removal
17 or termination of the member, employee, or agent, as applicable.

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

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

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

27 (b) A participation agreement must:

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

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

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

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

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

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

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

17 (2) a total contribution limit for ABLE accounts
18 established under the ABLE program with respect to a designated
19 beneficiary.

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

25 Sec. 162.008. QUALIFIED DISABILITY EXPENSES.
26 Contributions to an ABLE account and the earnings on those
27 contributions may be used, as provided in the participation

1 agreement, to pay the qualified disability expenses of a
2 designated beneficiary.

3 Sec. 162.009. DESIGNATED BENEFICIARY. (a) The participant
4 is the designated beneficiary of the ABLE account except as
5 described by Subsection (b) and as otherwise permitted by Section
6 529A, Internal Revenue Code.

7 (b) If the designated beneficiary of the account is a minor
8 or has a custodian or other fiduciary appointed for the purpose of
9 managing the minor's financial affairs, the parent or custodian or
10 other fiduciary of the beneficiary may serve as the participant if
11 that form of ownership is permitted or not prohibited by Section
12 529A, Internal Revenue Code.

13 Sec. 162.010. CANCELLATION. (a) A participant may cancel a
14 participation agreement at will.

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

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