

By: Perry, et al.
(Burkett)

S.B. No. 1664

Substitute the following for S.B. No. 1664:

By: Raymond

C.S.S.B. No. 1664

A BILL TO BE ENTITLED

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

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 54.602(b), Education Code, is amended to
6 read as follows:

7 (b) The board shall administer the following programs:

8 (1) the prepaid higher education tuition program
9 established under this subchapter; ~~and~~

10 (2) the higher education savings plan established
11 under Subchapter G;

12 (3) the prepaid tuition unit undergraduate education
13 program established under Subchapter H;

14 (4) the Texas Save and Match Program established under
15 Subchapter I; and

16 (5) the Texas Achieving a Better Life Experience
17 Program established under Subchapter J.

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

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

21 PROGRAM

22 Sec. 54.901. PURPOSES OF PROGRAM. The purposes of this
23 subchapter are as follows:

24 (1) to encourage and assist individuals and families

1 in saving funds for the purpose of supporting individuals with
2 disabilities to maintain health, independence, and quality of life;
3 and

4 (2) to provide secure funding for qualified disability
5 expenses on behalf of designated beneficiaries with disabilities
6 that will supplement, but not supplant, benefits provided through
7 private insurance, the Medicaid program under Title XIX of the
8 Social Security Act, the supplemental security income program under
9 Title XVI of the Social Security Act, the beneficiary's employment,
10 and other sources.

11 Sec. 54.902. DEFINITIONS. In this subchapter:

12 (1) "ABLE account" has the meaning assigned by Section
13 529A, Internal Revenue Code.

14 (2) "ABLE program" or "program" means the Texas
15 Achieving a Better Life Experience Program created under this
16 subchapter.

17 (3) "Board" means the Prepaid Higher Education Tuition
18 Board established under Section 54.602.

19 (4) "Designated beneficiary" means a resident of this
20 state with a disability who is an eligible individual and named as
21 the designated beneficiary of an ABLE account.

22 (5) "Eligible individual" means a person who has
23 certified to the board that the person is eligible to participate in
24 the ABLE program.

25 (6) "Financial institution" means a bank, a trust
26 company, a depository trust company, an insurance company, a
27 broker-dealer, a registered investment company or investment

1 manager, the Texas Safekeeping Trust Company, or another similar
2 financial institution authorized to transact business in this
3 state.

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

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

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

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

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

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

1 state treasury.

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

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

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

9 (1) develop and implement the program;

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

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

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

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

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

26 (4) enter into agreements with any financial
27 institution or any state or federal agency or contractor or other

1 entity as required to administer the program under this subchapter;

2 (5) enter into participation agreements with
3 participants;

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

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

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

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

15 (1) sue and be sued;

16 (2) enter into contracts and other necessary
17 instruments;

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

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

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

26 (6) contract with another state that administers a
27 qualified ABLE program as authorized by Section 529A, Internal

1 Revenue Code, to provide residents of this state with access to a
2 qualified ABLÉ program;

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

7 (8) participate in any government program;

8 (9) impose fees and charges;

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

11 (11) make reports;

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

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

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

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

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

27 (1) deposited into an individual ABLÉ account held on

1 behalf of that participant in the Texas ABLE savings plan account;
2 and

3 (2) promptly invested by the board.

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

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

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

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

26 (f) In the board's discretion, the board may contract with
27 one or more financial institutions to serve as plan manager and to

1 invest the money in ABLE accounts.

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

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

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

18 Sec. 54.906. 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 subchapter and in accordance
21 with the participation agreements entered into under this
22 subchapter.

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

26 Sec. 54.9065. EXCLUSION OF ABLE ACCOUNT ASSETS FROM CERTAIN
27 BENEFIT ELIGIBILITY DETERMINATIONS. Notwithstanding any other

1 provision of state law that requires consideration of the financial
2 circumstances of an applicant for assistance or a benefit provided
3 under that law, the agency making the determination of eligibility
4 for the assistance or benefit may not consider the amount in the
5 applicant's ABLE account, including earnings on that amount, and
6 any distribution for qualified disability expenses in determining
7 the applicant's eligibility to receive and the amount of the
8 assistance or benefit with respect to the period during which the
9 individual maintains the ABLE account.

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

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

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

21 (1) the requirements and applicable restrictions for:
22 (A) opening an ABLE account;
23 (B) making contributions to an ABLE account; and
24 (C) directly or indirectly, directing the
25 investment of the contributions or balance of the ABLE account;

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

1 participant;

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

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

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

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

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

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

25 Sec. 54.9085. ENCUMBRANCE OR TRANSFER OF ACCOUNT
26 PROHIBITED. (a) An ABLE account may not be assigned for the benefit
27 of creditors, used as security or collateral for any loan, or

1 otherwise subject to alienation, sale, transfer, assignment,
2 pledge, encumbrance, or charge.

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

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

8 (1) make distributions to designated beneficiaries;

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

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

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

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

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

22 (b) If the designated beneficiary of the account is a minor
23 or has a custodian or other fiduciary appointed for the purpose of
24 managing the minor's financial affairs, the parent or custodian or
25 other fiduciary of the beneficiary may serve as the participant if
26 that form of ownership is permitted or not prohibited by Section
27 529A, Internal Revenue Code.

1 (c) A designated beneficiary may own only one ABLE account,
2 and each ABLE account may have only one owner, except as otherwise
3 permitted by Section 529A, Internal Revenue Code.

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

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

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

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

12 (4) any other information the board may require.

13 Sec. 54.912. 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 Sec. 54.913. REPORTS. (a) The board shall comply with the
19 reporting requirements in Section 529A, Internal Revenue Code.

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

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

26 (d) The board shall prepare any other reports required by
27 state or federal rules and regulations.

1 Sec. 54.914. CONFIDENTIALITY OF RECORDS. (a) Except as
2 otherwise provided by this section, all information relating to the
3 program is public and subject to disclosure under Chapter 552,
4 Government Code.

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

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

11 or

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

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

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

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

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

1 or

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

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

9 Sec. 54.916. TERMINATION OR MODIFICATION OF PROGRAM. (a)
10 If the comptroller determines that the ABLE program is not
11 financially feasible, the comptroller shall notify the governor and
12 the legislature and recommend that the board not administer an ABLE
13 program or that the program be modified or terminated.

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

18 (c) If the ABLE program is terminated, the balance of each
19 ABLE account shall be paid to the participant, to the extent
20 possible.

21 Sec. 54.917. ABLE PROGRAM ADVISORY COMMITTEE. (a) The ABLE
22 program advisory committee is established to review rules and
23 procedures related to the ABLE program, to provide guidance,
24 suggest changes, and make recommendations for the administration of
25 the program, and to provide assistance as needed to the board and
26 comptroller during the creation of the program.

27 (b) The comptroller shall appoint the members of the

1 advisory committee, including:

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

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

6 (3) representatives of disability advocacy
7 organizations; and

8 (4) representatives of the financial community.

9 (c) The comptroller shall appoint a presiding officer.

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

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

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

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

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

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

1 implementation of the ABLE program.

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

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