

1-1 By: Perry S.B. No. 1664
1-2 (In the Senate - Filed March 13, 2015; March 17, 2015, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 8, 2015, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 8, 2015, sent to printer.)

1-6 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-7 | | | | |
| 1-8 | X | | | |
| 1-9 | X | | | |
| 1-10 | X | | | |
| 1-11 | X | | | |
| 1-12 | X | | | |
| 1-13 | X | | | |
| 1-14 | X | | | |
| 1-15 | X | | | |
| 1-16 | X | | | |

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the establishment of the Texas Achieving a Better Life
1-20 Experience (ABLE) Program; authorizing the imposition of fees.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 54.602(b), Education Code, is amended to
1-23 read as follows:

1-24 (b) The board shall administer the prepaid higher education
1-25 tuition program established under this subchapter, ~~and~~ the higher
1-26 education savings plan established under Subchapter G, and the
1-27 Texas Achieving a Better Life Experience Program created under
1-28 Chapter 162, Human Resources Code.

1-29 SECTION 2. The heading to Section 54.634, Education Code,
1-30 is amended to read as follows:

1-31 Sec. 54.634. ESTABLISHMENT OF TRUST FUND; COLLEGE SAVINGS
1-32 PLAN ACCOUNT; TEXAS ABLE SAVINGS PLAN ACCOUNT.

1-33 SECTION 3. Section 54.634, Education Code, is amended by
1-34 adding Subsection (e) to read as follows:

1-35 (e) The Texas ABLE savings plan account is created within
1-36 the Texas tomorrow constitutional trust fund and is financed
1-37 through administrative fees and service charges as authorized by
1-38 Section 162.004, Human Resources Code.

1-39 SECTION 4. Title 11, Human Resources Code, is amended by
1-40 adding Chapter 162 to read as follows:

1-41 CHAPTER 162. TEXAS ACHIEVING A BETTER
1-42 LIFE EXPERIENCE (ABLE) PROGRAM

1-43 Sec. 162.001. PURPOSES OF PROGRAM. The purposes of this
1-44 chapter are as follows:

1-45 (1) to encourage and assist individuals and families
1-46 in saving private funds for the purpose of supporting individuals
1-47 with disabilities to maintain health, independence, and quality of
1-48 life; and

1-49 (2) to provide secure funding for qualified disability
1-50 expenses on behalf of designated beneficiaries with disabilities
1-51 that will supplement, but not supplant, benefits provided through
1-52 private insurance, the Medicaid program under Title XIX of the
1-53 Social Security Act, the supplemental security income program under
1-54 Title XVI of the Social Security Act, the beneficiary's employment,
1-55 and other sources.

1-56 Sec. 162.002. DEFINITIONS. In this chapter:

1-57 (1) "ABLE account" has the meaning assigned by Section
1-58 529A, Internal Revenue Code.

1-59 (2) "ABLE program" or "program" means the Texas
1-60 Achieving a Better Life Experience Program created under this
1-61 chapter.

2-1 (3) "Benefits" means the payment of qualified
2-2 disability expenses on behalf of a designated beneficiary from an
2-3 ABLE account.
2-4 (4) "Board" means the Prepaid Higher Education Tuition
2-5 Board established under Section 54.602, Education Code.
2-6 (5) "Designated beneficiary" and "eligible
2-7 individual" have the meanings assigned by Section 529A, Internal
2-8 Revenue Code.
2-9 (6) "Financial institution" means a bank, trust
2-10 company, an insurance company, or a registered investment company.
2-11 (7) "Internal Revenue Code" means the Internal Revenue
2-12 Code of 1986.
2-13 (8) "Participant" means a person who has entered into
2-14 a participation agreement under this chapter.
2-15 (9) "Participation agreement" means an agreement
2-16 between a participant and the board under this chapter that
2-17 conforms to the requirements prescribed by this chapter.
2-18 (10) "Qualified disability expenses" has the meaning
2-19 assigned by Section 529A, Internal Revenue Code.
2-20 (11) "Texas ABLE savings plan account" means the Texas
2-21 ABLE savings plan account created under Section 54.634(e),
2-22 Education Code.
2-23 Sec. 162.003. CREATION; ADMINISTRATION. (a) The Texas
2-24 Achieving a Better Life Experience (ABLE) Program is created under
2-25 this chapter.
2-26 (b) The board shall administer the ABLE program.
2-27 Sec. 162.004. POWERS AND DUTIES OF BOARD. (a) To
2-28 establish and administer the ABLE program, the board shall:
2-29 (1) develop and implement the program;
2-30 (2) adopt reasonable rules and establish policies and
2-31 procedures to implement this chapter to:
2-32 (A) permit the program to qualify as a qualified
2-33 ABLE program under Section 529A, Internal Revenue Code; and
2-34 (B) ensure the program's compliance with all
2-35 applicable laws;
2-36 (3) either directly or through a contractual
2-37 arrangement with a financial institution for investment services,
2-38 develop and implement educational programs and related
2-39 informational materials for participants and their families,
2-40 including special programs and materials to inform individuals with
2-41 disabilities regarding methods for financing the qualified
2-42 disability expenses of individuals with disabilities to enable
2-43 those individuals to maintain health, independence, and quality of
2-44 life;
2-45 (4) enter into agreements with any financial
2-46 institution or any state or federal agency or entity as required to
2-47 administer the program under this chapter;
2-48 (5) enter into participation agreements with
2-49 participants;
2-50 (6) solicit and accept any gifts, grants, legislative
2-51 appropriations, and other funds from the state, any unit of
2-52 federal, state, or local government, or any other person, firm,
2-53 partnership, or corporation for deposit to the Texas ABLE savings
2-54 plan account;
2-55 (7) invest participant funds in appropriate
2-56 investment instruments;
2-57 (8) appoint members to an advisory committee who are
2-58 stakeholders from the disability community;
2-59 (9) make provision for the payment of costs of
2-60 administering the program; and
2-61 (10) procure insurance, guarantees, or other
2-62 protections against any loss in connection with the assets or
2-63 activities of the program.
2-64 (b) The board has all powers necessary or proper to carry
2-65 out its duties under this chapter and to effectuate the purposes of
2-66 this chapter, including the power to:
2-67 (1) enter into contracts and other necessary
2-68 instruments;
2-69 (2) enter into agreements or other transactions with

3-1 the United States, state agencies, and other entities as necessary;
 3-2 (3) appear on its own behalf before governmental
 3-3 agencies;
 3-4 (4) contract for necessary goods and services,
 3-5 including specifying in the contract duties to be performed by the
 3-6 provider of a good or service that are a part of or are in addition
 3-7 to the person's primary duties under the contract;
 3-8 (5) engage the services of private consultants,
 3-9 actuaries, trustees, records administrators, managers, legal
 3-10 counsel, and auditors for administrative or technical assistance;
 3-11 (6) participate in any government program;
 3-12 (7) impose charges and fees;
 3-13 (8) contract with a person to market the program;
 3-14 (9) make reports;
 3-15 (10) purchase liability insurance covering the board
 3-16 and employees and agents of the board; and
 3-17 (11) establish other policies, procedures, and
 3-18 eligibility criteria to implement this chapter.

3-19 Sec. 162.005. INVESTMENT OF FUNDS. (a) All money paid by a
 3-20 participant in connection with a participation agreement shall be:

3-21 (1) deposited into an individual ABLE account held on
 3-22 behalf of that participant in the Texas ABLE savings plan account;
 3-23 and

3-24 (2) promptly invested by the board.

3-25 (b) For new contracts entered into after December 1, 2015,
 3-26 board members shall study investment plans of other states and
 3-27 contract with or negotiate to provide benefit options that are the
 3-28 same as or similar to other states' qualified plans for the purpose
 3-29 of offering additional options for participants.

3-30 (c) The board may delegate to duly appointed investment
 3-31 counselors authority to act on behalf of the board in the investment
 3-32 and reinvestment of all or part of the funds and may also delegate
 3-33 to those counselors the authority to act on behalf of the board in
 3-34 the holding, purchasing, selling, assigning, transferring, or
 3-35 disposing of any or all of the securities and investments in which
 3-36 the funds in the Texas ABLE savings plan account have been invested,
 3-37 as well as the proceeds from the investment of those funds. The
 3-38 investment counselors must be registered as investment advisors
 3-39 with the United States Securities and Exchange Commission.

3-40 (d) In exercising or delegating its investment powers and
 3-41 authority, members of the board shall exercise ordinary business
 3-42 care and prudence under the facts and circumstances prevailing at
 3-43 the time of the action or decision. A member of the board is not
 3-44 liable for any action taken or omitted with respect to the exercise
 3-45 of, or delegation of, those powers and authority if the member
 3-46 discharged the duties of the member's position in good faith and
 3-47 with the degree of diligence, care, and skill that a prudent person
 3-48 acting in a like capacity and familiar with those matters would use
 3-49 in the conduct of an enterprise of a like character and with like
 3-50 aims.

3-51 (e) A company or firm in which a member of the board has a
 3-52 substantial interest may not handle an investment transaction
 3-53 authorized by the board. A member of the board may not profit
 3-54 directly or indirectly from an investment transaction authorized by
 3-55 the board.

3-56 (f) A member of the board or an employee or agent of the ABLE
 3-57 program may not receive any gain or profit from any funds or
 3-58 transactions of the ABLE program. A member's, employee's, or
 3-59 agent's acceptance of any gratuity or compensation for the purpose
 3-60 of influencing an action taken with respect to the investment or
 3-61 management of the funds of the ABLE program is grounds for removal
 3-62 or termination of the member, employee, or agent, as applicable.

3-63 Sec. 162.006. TREATMENT OF ASSETS. (a) The assets of the
 3-64 ABLE program shall at all times be preserved, invested, and spent
 3-65 only for the purposes provided by this chapter and in accordance
 3-66 with the participation agreements entered into under this chapter.

3-67 (b) The state does not have a property right in the assets of
 3-68 the ABLE program.

3-69 Sec. 162.007. PARTICIPATION AGREEMENTS. (a) Under the

4-1 ABLE program, the board may enter into participation agreements
4-2 with participants on behalf of designated beneficiaries.

4-3 (b) A participation agreement must:
4-4 (1) stipulate the terms and conditions of the ABLE
4-5 program in which the participant makes contributions;
4-6 (2) specify the method for calculating the return on
4-7 the contribution made by the participant;
4-8 (3) clearly and prominently disclose to participants
4-9 the risk associated with depositing funds with the board;
4-10 (4) be organized and presented in a way and with
4-11 language that is easily understandable by the general public; and
4-12 (5) clearly and prominently disclose to participants
4-13 the existence of any load charge or similar charge assessed against
4-14 the ABLE accounts of the participants for administration or
4-15 services.

4-16 (c) Consistent with Section 529A, Internal Revenue Code,
4-17 the board shall establish:
4-18 (1) the maximum annual amount that a participant may
4-19 contribute with respect to a designated beneficiary; and
4-20 (2) a total contribution limit for ABLE accounts
4-21 established under the ABLE program with respect to a designated
4-22 beneficiary.

4-23 (d) The board may establish other requirements that the
4-24 board considers appropriate to provide adequate safeguards to
4-25 prevent contributions on behalf of a designated beneficiary from
4-26 exceeding the amount that is necessary to provide for the qualified
4-27 disability expenses of the beneficiary.

4-28 Sec. 162.008. QUALIFIED DISABILITY EXPENSES.
4-29 Contributions to an ABLE account and the earnings on those
4-30 contributions may be used, as provided in the participation
4-31 agreement, to pay the qualified disability expenses of a designated
4-32 beneficiary.

4-33 Sec. 162.009. DESIGNATED BENEFICIARY. (a) The
4-34 participant is the designated beneficiary of the ABLE account
4-35 except as described by Subsection (b) and as otherwise permitted by
4-36 Section 529A, Internal Revenue Code.

4-37 (b) If the designated beneficiary of the account is a minor
4-38 or has a custodian or other fiduciary appointed for the purpose of
4-39 managing the minor's financial affairs, the parent or custodian or
4-40 other fiduciary of the beneficiary may serve as the participant if
4-41 that form of ownership is permitted or not prohibited by Section
4-42 529A, Internal Revenue Code.

4-43 Sec. 162.010. CANCELLATION. (a) A participant may cancel
4-44 a participation agreement at will.

4-45 (b) Each participation agreement must provide that the
4-46 agreement may be canceled on the terms and conditions and on payment
4-47 of applicable fees and costs as provided by rule.

4-48 SECTION 5. This Act takes effect December 1, 2015.

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