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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 726 Session of  
2015

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INTRODUCED BY TARTAGLIONE, DINNIMAN, TEPLITZ, VULAKOVICH,  
FONTANA AND BARTOLOTTA, APRIL 23, 2015

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REFERRED TO FINANCE, APRIL 23, 2015

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AN ACT

1 Providing for a savings account program to pay for future  
2 disability expenses of beneficiaries and for powers and  
3 duties of the Treasury Department; and establishing the ABLE  
4 Account Program Bureau in the State Treasury and the ABLE  
5 Account Investment Program Fund.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the ABLE Account  
10 Program Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall  
13 have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 "ABLE Account Program Contract." An Achieving a Better Life  
16 Experience (ABLE) Account Investment Program Contract entered  
17 into by an account owner and the department to provide for  
18 savings to meet the future qualified disability expenses of a  
19 beneficiary.

1 "Account owner." A person, including a natural person,  
2 corporation, association, partnership or other legal entity, who  
3 enters into an ABLE Account Program Contract.

4 "Beneficiary." A person who meets the eligibility criteria  
5 established by this act and by the department and on whose  
6 behalf an account owner enters into an ABLE Account Program  
7 Contract.

8 "Board." The ABLE Account Program Advisory Board.

9 "Bureau." The ABLE Account Program Bureau.

10 "Department." The Treasury Department of the Commonwealth.

11 "Fund." The ABLE Account Investment Program Fund.

12 "Lawful investment." Any of those investments described in  
13 either 24 Pa.C.S. § 8521 (relating to management of fund and  
14 accounts) or 71 Pa.C.S. § 5931 (relating to management of fund  
15 and accounts).

16 "Qualified disability expenses." Expenses, as defined by  
17 section 529A of the Internal Revenue Code of 1986 (Public Law  
18 99-514, 26 U.S.C. § 529A).

19 "Value of the account." For an ABLE Account Investment  
20 Program Contract, an amount determined by subtracting expenses,  
21 fees and taxes, if any, from the value of the fund and then  
22 prorating the remaining net value by shares.

23 Section 3. ABLE Account Program Bureau.

24 (a) Establishment.--The State Treasurer is directed to  
25 establish the ABLE Account Program Bureau within the Treasury  
26 Department for the purpose of establishing and administering a  
27 disability expense savings investment program.

28 (b) Investment program.--The investment program shall  
29 provide for monetary contributions pursuant to an ABLE Account  
30 Program Investment Contract for the future payment of qualified

1 disability expenses. The investment program shall have no  
2 guarantee.

3 Section 4. ABLE Account Program Advisory Board.

4 (a) Establishment.--There is created an ABLE Account Program  
5 Advisory Board.

6 (b) Composition.--The board shall be composed of the  
7 following:

8 (1) The State Treasurer and the Secretary of the  
9 Department of Human Services, both of whom shall be ex  
10 officio members.

11 (2) Two members appointed by the President pro tempore  
12 of the Senate, of which one shall be recommended by the  
13 Majority Leader of the Senate and one must be recommended by  
14 the Minority Leader of the Senate. Both appointees must have  
15 knowledge, skill and expertise in financial affairs.

16 (3) Two shall be appointed by the Speaker of the House  
17 of Representatives, of which one shall be recommended by the  
18 Majority Leader of the House of Representatives and one must  
19 be recommended by the Minority Leader of the House of  
20 Representatives. Both appointees must have knowledge, skill  
21 and expertise in financial affairs.

22 (4) Four members shall be appointed by the Governor, of  
23 which at least two appointees must have knowledge, skill and  
24 expertise in issues relating to individuals with  
25 disabilities.

26 (c) Terms.--Board members shall be appointed for terms of  
27 four years. A vacancy on the board shall be appointed in the  
28 same manner as the member who vacated the board.

29 (d) Organizational meeting.--The Secretary of the Department  
30 of Human Services shall call the organizational meeting of the

1 board, at which time a chairperson shall be selected from among  
2 the members. If a vacancy in the office of chairperson occurs,  
3 such vacancy shall be filled by a selection from among the  
4 members. Meetings of the board shall be held at least quarterly  
5 or at the call of the chairperson.

6 (e) Duties.--The board shall:

7 (1) Consider, study and review the work of the bureau.

8 (2) Advise the department as the department requests and  
9 make recommendations on its own initiative for the  
10 improvement of the ABLE account program.

11 (3) Report annually to the Governor and to the General  
12 Assembly, and make such interim reports as are deemed  
13 advisable.

14 (f) Employees.--The department shall provide the board with  
15 experts, stenographers and assistants as necessary to carry out  
16 the work of the board. The board may enlist voluntary assistance  
17 from citizens, research organizations and other agencies.

18 Section 5. Powers of department.

19 In addition to the powers granted by other provisions of this  
20 act, the department shall have the powers necessary to carry out  
21 this act, including, but not limited to:

22 (1) Administering the ABLE account program and the fund.

23 (2) Entering into ABLE Account Program Contracts with  
24 account owners.

25 (3) Paying directly to an account owner, a beneficiary  
26 or a third party authorized by the account owner, upon the  
27 receipt of appropriate documentation, the funds due pursuant  
28 to an ABLE Account Program Contract.

29 (4) Contracting for goods and services, and engaging and  
30 employing personnel, including, but not limited to, the

1 services of private consultants, actuaries, managers, legal  
2 counsel and auditors for rendering professional, managerial  
3 and technical assistance and advice.

4 (5) Charging and collecting administrative fees and  
5 charges in connection with any transaction, including  
6 continued participation in ABLE account programs.

7 (6) Terminating ABLE accounts and making refunds.

8 (7) Contracting for insurance, letters of credit and  
9 collateral agreements.

10 (8) Restricting the number of participants in the ABLE  
11 account program.

12 (9) Adjusting the terms of ABLE Account Program  
13 Contracts.

14 (10) Soliciting answers from the appropriate Federal  
15 agencies regarding the application of security or other  
16 Federal laws to the program.

17 (11) Limiting the times and dates during which ABLE  
18 Account Program Contracts may be entered into.

19 (12) Considering means whereby an account owner may have  
20 contributions deducted from salary.

21 (13) Promulgating regulations.

22 (14) Notwithstanding any other provision of this act,  
23 administering the ABLE account program in such manner as to  
24 ensure and maintain its status as "qualified ABLE program" as  
25 defined in section 529A of the Internal Revenue Code of 1986  
26 (Public Law 99-514, 26 U.S.C. § 529A).

27 Section 6. ABLE account program fund.

28 (a) Establishment.--The ABLE Account Investment Program Fund  
29 is established in the State Treasury. The money in the fund  
30 shall be invested in accordance with this act.

1 (b) Appropriation.--All money in the fund is appropriated on  
2 a continuing basis to the department to carry out the provisions  
3 of this act.

4 (c) Administration.--The assets of the fund shall be  
5 preserved, invested and expended pursuant to this act.

6 (d) Composition.--The fund shall consist of:

7 (1) All contributions made by account owners pursuant to  
8 an ABLE Account Program Contract and all interest, earnings  
9 and additions thereto.

10 (2) Any other money, public or private, appropriated or  
11 made available to the department for the fund from any source  
12 and all interest, earnings and additions thereto.

13 (e) Operating and administrative costs.--The department  
14 shall prepare and, through the Governor, submit annually to the  
15 General Assembly a budget covering the operating and  
16 administrative expenses of the bureau and the board. Upon  
17 approval by the General Assembly in an appropriation bill,  
18 expenses as incurred by the bureau and the board shall be paid  
19 from the fees, charges and investment earnings of the fund.

20 (f) Limitation.--Notwithstanding any other provision of law,  
21 the department and the board shall not pledge the credit or  
22 taxing powers of the Commonwealth. Any obligation or debt under  
23 this act shall not be deemed an obligation or debt of the  
24 Commonwealth, nor shall the Commonwealth be liable to pay  
25 principal and interest on obligations or to offset any loss of  
26 principal and interest earnings on investments made by the  
27 department or recommended by the board under this act.

28 (g) Statement of limitation.--ABLE Account Program Contracts  
29 issued by the department with an account owner shall contain a  
30 plain language statement explaining the limitation contained in

1 this subsection.

2 Section 7. Investment policies and guidelines for the fund.

3 (a) General rule.--The investment policies shall provide for  
4 an appropriate balance of risk, liquidity and return  
5 commensurate with the management of a prudent investor.

6 (b) Authority to invest.--The department, its investment  
7 managers, program managers and trustees shall have the authority  
8 to invest and reinvest the fund in all lawful investments.

9 (c) Investment manager and trustee.--The department may  
10 contract with one or more persons or other legal entities to  
11 serve as investment managers, program managers and trustees to  
12 the department on behalf of the ABLE account program. The  
13 investment managers, program managers and trustees shall work  
14 with the department to create an investment program or programs,  
15 to develop investment portfolios and to supervise investments  
16 and the investment programs selected.

17 (d) Liability.--The department, through contract, may impose  
18 liability on investment managers, program managers and trustees  
19 for losses incurred by the fund or the account owners as a  
20 result of the investment managers', program managers' and  
21 trustees' negligent, fraudulent or imprudent selection or  
22 supervision of investments.

23 Section 8. ABLE Account Investment Program.

24 (a) Establishment.--The department shall establish an  
25 investment plan that defines the ABLE Account Investment Program  
26 structure and sets forth investment policies and guidelines. The  
27 department may obtain the services of investment managers,  
28 program managers and trustees as described in section 7(c) to  
29 assist in establishing and administering the plan.

30 (b) Rules and procedures.--The department, pursuant to an

1 ABLE Account Investment Program Contract, shall specify the  
2 following:

3 (1) The minimum and maximum amounts of contributions.

4 (2) The terms and conditions for transferring the ABLE  
5 Account Investment Program Contract to another account owner  
6 or substituting a beneficiary for the originally named  
7 beneficiary.

8 (3) The terms and conditions for withdrawing  
9 contributions or terminating the ABLE Account Investment  
10 Program Contract.

11 (4) The method and procedures for making payments  
12 pursuant to the ABLE Account Investment Program Contracts for  
13 the payment of beneficiaries' qualified disability expenses.

14 (5) All other rights and obligations of the account  
15 owner and the department.

16 Section 9. General provisions governing the ABLE account  
17 program.

18 (a) Levy, execution and security for loans.--An ABLE account  
19 or any legal interest therein shall not be subject to  
20 attachment, levy or execution by any creditor of an account  
21 owner or beneficiary and shall not be used as security for a  
22 loan.

23 (b) Period of participation.--Notwithstanding any of the  
24 provisions of this act, the following shall apply:

25 (1) Except as provided in paragraph (2), a minimum  
26 period of one year must elapse between the time a  
27 contribution is made pursuant to an ABLE Account Program  
28 Contract and the time that contribution and any increase in  
29 its value may be used for payment of qualified disability  
30 expenses under section 8.



1           (2) The board may prescribe an alternative minimum  
2       period of time which must elapse between a contribution and  
3       its use for payment of qualified disability expenses.

4       (c) Program eligibility.--Any amounts contributed pursuant  
5       to an ABLE Account Program Contract and any increase in the  
6       value thereof shall not be used in calculating personal asset  
7       contributions for determining eligibility and need for any  
8       program administered by any agency of the Commonwealth, except  
9       as otherwise may be provided by Federal law.

10       (d) Excess contributions.--The department shall institute  
11       adequate safeguards to prevent contributions to an account that  
12       are in excess of those necessary to provide for the qualified  
13       disability expenses of the beneficiary of that account, as  
14       specified in section 529A of the Internal Revenue Code of 1986  
15       (Public Law 99-514, 26 U.S.C. § 529A).

16       (e) Cash contributions.--A contribution made pursuant to an  
17       ABLE Account Program Contract may only be made in cash, which  
18       may, at the department's discretion, include checks, money  
19       orders, credit cards or other similar methods of payment.

20       (f) Limitation.--A beneficiary is limited to one ABLE  
21       account.

22       Section 10. ABLE Account Program Contracts.

23       Account owners making contributions for the use of  
24       beneficiaries shall enter into ABLE Account Program Contracts  
25       with the department. These contracts shall be in such form as is  
26       determined by the department.

27       Section 11. Eligible beneficiaries.

28       Notwithstanding any other eligibility criteria established by  
29       the board, the following shall apply:

30           (1) In order to be eligible as a beneficiary, a person

1 must be one of the following:

2 (i) A resident of this Commonwealth at the time the  
3 ABLE Account Program Contract is entered into on the  
4 person's behalf.

5 (ii) A nonresident if the ABLE Account Program  
6 Contract entered into on the person's behalf is entered  
7 into by a resident of this Commonwealth, including any  
8 legal entity with its principal place of business located  
9 within this Commonwealth.

10 (iii) A nonresident if the state of residence has  
11 contracted with the Commonwealth for the purposes of  
12 qualified ABLE accounts.

13 (2) The account owner must designate a beneficiary at  
14 the time the account owner enters into an ABLE Account  
15 Program Contract.

16 (3) The account owner may substitute for the current  
17 beneficiary only a member of the family of that beneficiary  
18 upon approval by the department. "Member of the family" is  
19 defined by section 529A of the Internal Revenue Code of 1986  
20 (Public Law 99-514, 26 U.S.C. § 529A).

21 Section 12. Termination and refund.

22 (a) Death.--Upon termination of an ABLE Account Program  
23 Contract, the account owner or the account owner's designee  
24 shall receive the value of the account if the account is  
25 terminated upon the death of the beneficiary.

26 (b) Refunds for reasons other than death.--

27 (1) Except as provided in paragraph (2), refunds for an  
28 ABLE Account Investment Program Contract for reasons other  
29 than that set forth in subsection (a) shall be:

30 (i) in the event the value of the account is less

1 than or equal to the sum of the contributions made  
2 pursuant to the ABLE Account Investment Program Contract,  
3 the value of the account; and

4 (ii) in the event the value of the account is more  
5 than the sum of the contributions made pursuant to the  
6 ABLE Account Investment Program Contract, the sum of the  
7 contributions plus 90% of the difference between the sum  
8 of the contributions and the value of the account.

9 (2) The board may alter the refund provisions set forth  
10 in paragraph (1) so long as such alterations are consistent  
11 with the requirements for "qualified ABLE programs" provided  
12 in section 529A of the Internal Revenue Code of 1986 (Public  
13 Law 99-514, 26 U.S.C. § 529A).

14 (c) Fees.--The department may impose a fee for  
15 administrative costs upon termination of the account and deduct  
16 the fee from the amount otherwise payable.

17 (d) Taxation of refunds.--In the event of a refund upon the  
18 termination of an ABLE Account Program Contract, to the extent  
19 the refund amount an account owner receives exceeds the sum of  
20 the contributions, it shall be subject to taxation as income  
21 under the laws of this Commonwealth.

22 (e) Change of beneficiary or type of ABLE account program.--  
23 The substitution of the beneficiary of an account under section  
24 11(3) shall not be deemed a termination of the account for  
25 purposes of this section.

26 Section 13. Safeguards and protections.

27 (a) Disclosure.--ABLE Account Program Contracts shall  
28 disclose the following information in writing to each account  
29 owner or prospective owner of an ABLE account:

30 (1) The terms and conditions for purchasing an ABLE

1 account.

2 (2) Any restrictions on the substitution of  
3 beneficiaries.

4 (3) The time period during which and the purposes for  
5 which a designated beneficiary may receive benefits under the  
6 program established in section 8.

7 (4) The terms and conditions under which money may be  
8 withdrawn from an account, the reasonable charges that may  
9 apply and the penalty for a nonqualified withdrawal.

10 (5) The probable tax consequences associated with  
11 contributions to and withdrawals from an ABLE account.

12 (6) All other rights and obligations pertaining to  
13 participation in the program.

14 (b) Construction.--Nothing in this act can be construed to:

15 (1) Give any designated beneficiary any rights or legal  
16 interest in an account unless the designated beneficiary is  
17 also the account owner.

18 (2) Establish State residency for an individual solely  
19 because that individual is a designated beneficiary of an  
20 account established under this act.

21 Section 14. Exemption from security laws.

22 ABLE Account Program Contracts are exempt from any statute  
23 regulating securities, including the act of December 5, 1972  
24 (P.L.1280, No.284), known as the Pennsylvania Securities Act of  
25 1972.

26 Section 15. State tax exemption.

27 (a) Property of fund.--The property of the fund and its  
28 income and operation shall be exempt from all taxation by the  
29 Commonwealth and its political subdivisions.

30 (b) Contributions.--The following shall be exempt from all

1 taxation by the Commonwealth and its political subdivisions:

2 (1) Contributions made pursuant to an ABLE Account  
3 Program Contract.

4 (2) An increase in the value of those contributions.

5 (3) The retention or transfer during life or as a result  
6 of death of any legal interest in an ABLE Account Program  
7 Contract.

8 (4) Payment of qualified disability expenses of  
9 beneficiaries made pursuant to ABLE Account Program  
10 Contracts.

11 Section 16. Federal taxation.

12 The department may take appropriate action in order to obtain  
13 a determination from the Internal Revenue Service or the Federal  
14 courts as to whether contributions made, pursuant to an ABLE  
15 Account Program Contract, the increase in value of such  
16 contributions and payment of qualified disability expenses  
17 pursuant to an ABLE Account Program Contract, shall be a  
18 transaction which will subject account owners or the income of  
19 the fund to Federal taxation and may respond to such  
20 determination in any manner permitted under this act.

21 Section 17. Effective date.

22 This act shall take effect in 60 days.