

## HOUSE BILL NO. HB0105

ABLE Act.

Sponsored by: Representative(s) Throne, Berger, Freeman,  
Harvey, Kirkbride, Laursen, Northrup,  
Petroff and Schwartz and Senator(s)  
Christensen, Coe, Craft and Peterson

A BILL

for

1 AN ACT relating to welfare; creating the achieving a better  
2 life experience program for individuals with disabilities;  
3 specifying program requirements; establishing a trust;  
4 specifying the state treasurer as trustee; providing for  
5 general powers of the trustee; providing rulemaking  
6 authority; excluding the program from benefit eligibility  
7 determinations as specified; providing limitations;  
8 providing for appointment of financial institutions as  
9 managers of the program; providing duties of managers of  
10 the program; providing definitions; requiring a report; and  
11 providing for an effective date.

12

13 *Be It Enacted by the Legislature of the State of Wyoming:*

14

1           **Section 1.** W.S. 42-9-101 through 42-9-111 are created  
2 to read:

3

4

## CHAPTER 9

5

## ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM

6

7

**42-9-101. Short title.**

8

9 This chapter shall be known and may be cited as the  
10 "Wyoming ABLE Program Act".

11

12

**42-9-102. Legislative declaration.**

13

14 The legislature hereby declares that participation in an  
15 ABLE program will assist individuals and families in saving  
16 money for the purpose of supporting individuals with  
17 disabilities to maintain health, independence and quality  
18 of life.

19

20

**42-9-103. Definitions.**

21

22

(a) As used in this chapter:

23

1           (i) "ABLE" means achieving a better life  
2 experience;

3

4           (ii) "Account" means an individual trust account  
5 or savings account established as prescribed in this  
6 chapter;

7

8           (iii) "Designated beneficiary" means an eligible  
9 individual who is the owner of the account;

10

11           (iv) "Eligible individual" means an eligible  
12 individual as defined in section 529A of the Internal  
13 Revenue Code;

14

15           (v) "Financial institution" means as defined in  
16 W.S. 21-16-810(a)(vi);

17

18           (vi) "Program" means an ABLE program which may  
19 be established under this chapter;

20

21           (vii) "Qualified disability expenses" means  
22 qualified disability expenses as defined under section 529A  
23 of the Internal Revenue Code;

1

2 (viii) "Treasurer" means the state treasurer  
3 acting in the capacity as administrator of the program;

4

5 (ix) "Trust" means the ABLE trust of any program  
6 established under this chapter;

7

8 (x) "Trustee" means the state treasurer acting  
9 in his capacity as trustee of the trust.

10

11 **42-9-104. Wyoming ABLE program trust.**

12

13 (a) If a program is established pursuant to this  
14 chapter the treasurer shall establish a trust to be  
15 operated as an instrumentality of the state.

16

17 (b) The treasurer shall be the sole trustee of the  
18 trust.

19

20 (c) The assets of the trust shall be held in trust  
21 for designated beneficiaries. Property rights shall not  
22 exist in the trust in favor of the state of Wyoming.

23

1           **42-9-105. General powers of treasurer.**

2

3           (a) This chapter shall be administered through the  
4 office of the state treasurer acting in accordance with  
5 this chapter.

6

7           (b) The treasurer may:

8

9                   (i) Establish a program as provided in this  
10 chapter. Any program established shall be developed,  
11 implemented and maintained in a manner consistent with this  
12 chapter and section 529A of the Internal Revenue Code to  
13 obtain the benefits provided thereunder for the program and  
14 its participants;

15

16                   (ii) Retain professional services, if necessary,  
17 including accountants, auditors, consultants and other  
18 experts;

19

20                   (iii) Make and enter into any and all contracts,  
21 agreements or arrangements necessary to implement this  
22 chapter;

23

1           (iv) Retain, employ and contract for the  
2 services of financial institutions and research, technical  
3 and other services necessary to implement this chapter;

4  
5           (v) Seek rulings and other guidance from the  
6 United States department of the treasury, the internal  
7 revenue service and the United States securities and  
8 exchange commission relating to the program;

9  
10          (vi) Make changes to the program required to  
11 obtain and maintain:

12  
13           (A) Program status as a qualified ABLE  
14 program under section 529A of the Internal Revenue Code;

15  
16           (B) Any exemptions under federal and state  
17 security laws.

18  
19          (vii) Select the financial institution or  
20 financial institutions to act as the recipient of  
21 contributions, serve as managers of the program and invest  
22 the contributions to the accounts.

23

1 (c) The treasurer shall:

2

3 (i) Adopt rules and regulations as necessary to  
4 administer this chapter and to ensure any program  
5 established pursuant to this chapter is in compliance with  
6 section 529A of the Internal Revenue Code;

7

8 (ii) Maintain, invest and reinvest the funds  
9 credited to the trust in accordance with the investment  
10 restrictions established by the treasurer and the standard  
11 of care described in the Wyoming Uniform Prudent Investor  
12 Act; and

13

14 (iii) Interpret, in rules, policies, guidelines  
15 and procedures, the provisions of this chapter broadly in  
16 light of its purpose and objectives.

17

18 **42-9-106. Financial institutions.**

19

20 (a) The treasurer may implement the program through  
21 the use of one (1) or more financial institutions to act as  
22 managers of the program.

23

1           (b) If a program is established pursuant to this  
2 chapter the treasurer shall solicit proposals from  
3 financial institutions to act as the recipients of  
4 contributions and managers of the program.

5  
6           (c) If a program is established pursuant to this  
7 chapter the treasurer shall select as the managers of the  
8 program the financial institution or financial institutions  
9 from among bidding financial institutions that demonstrate  
10 the most advantageous combination, to potential program  
11 participants, of the following factors:

12

13                   (i) Financial stability and integrity;

14

15                   (ii) The ability of the financial institutions,  
16 directly or through a subcontract, to satisfy record  
17 keeping and reporting requirements;

18

19                   (iii) The financial institution's plan for  
20 promoting the program and the investment it is willing to  
21 make to promote the program;

22



1           (iv) The commercially reasonable fees, if any,  
2 proposed to be charged to persons for maintaining accounts;

3

4           (v) The minimum initial cash contribution and  
5 minimum contributions that the financial institution will  
6 require, and the willingness of the financial institution  
7 to accept contributions through payroll deduction plans or  
8 systematic deposit plans; and

9

10           (vi) Any other benefits to the state or its  
11 residents included in the proposal, including an account  
12 opening fee payable to the treasurer by the owner of the  
13 account.

14

15           (d) The treasurer may select more than one (1)  
16 financial institution for the program if the internal  
17 revenue service has provided guidance or the treasurer has  
18 received a legal opinion to the effect that giving a  
19 contributor a choice of two (2) or more financial  
20 institutions will not cause the plan to fail to qualify for  
21 favorable tax treatment under section 529A of the Internal  
22 Revenue Code, and the treasurer concludes that the choice  
23 of two (2) or more financial institutions is in the best

1 interest of program participants and will not interfere  
2 with the promotion of the program.

3

4 (e) A program manager shall:

5

6 (i) Take all actions required to keep the  
7 program in compliance with the requirements of this chapter  
8 and manage the program so that it is treated as a qualified  
9 ABLE program under section 529A of the Internal Revenue  
10 Code;

11

12 (ii) Keep adequate records of each account, keep  
13 each account segregated from every other account and  
14 provide the treasurer with the information necessary to  
15 prepare the reports required by section 529A of the  
16 Internal Revenue Code or file the reports on behalf of the  
17 treasurer;

18

19 (iii) Provide representatives of the treasurer,  
20 including other contractors or other state agencies, access  
21 to the books and records of the program manager to the  
22 extent needed to determine compliance with the contract;  
23 and

1

2 (iv) Hold all accounts in trust for the benefit  
3 of the designated beneficiary.

4

5 (f) If a contract executed by the treasurer and a  
6 financial institution pursuant to this section is not  
7 renewed, all of the following conditions apply at the end  
8 of the term of the contract that is not renewed, so long as  
9 applying these conditions does not disqualify the program  
10 as a qualified ABLE program under section 529A of the  
11 Internal Revenue Code:

12

13 (i) Accounts previously established at the  
14 financial institution shall not be terminated;

15

16 (ii) Additional contributions may be made to the  
17 accounts;

18

19 (iii) No new accounts may be placed with that  
20 financial institution; and

21

22 (iv) The accounts may be transferred to the  
23 successor financial institution on terms mutually

1 acceptable to the original and successor financial  
2 institutions.

3

4 (g) The treasurer may terminate a contract with a  
5 financial institution at any time in accordance with terms  
6 of the contract or if the treasurer determines that the  
7 financial institution is in material breach of the contract  
8 and the breach has not been cured in accordance with the  
9 terms of the contract. If a contract is terminated pursuant  
10 to this subsection, the treasurer shall take custody of  
11 accounts held at that financial institution and shall seek  
12 to promptly transfer the accounts to another financial  
13 institution that is selected as a program manager or  
14 transfer the accounts to another ABLE program established  
15 pursuant to section 529A of the Internal Revenue Code.

16

17 **42-9-107. Program requirements.**

18

19 (a) If a program is established pursuant to this  
20 chapter, the program shall be operated through the use of  
21 accounts. Opening of accounts, the contents of account  
22 applications, contributions to accounts and distributions  
23 shall be governed by rule and regulation of the treasurer.

1 Contributions to accounts shall be made in cash only unless  
2 otherwise permitted pursuant to section 529A of the  
3 Internal Revenue Code.

4

5 (b) An owner of the account may change the designated  
6 beneficiary of an account or direct the transfer or  
7 rollover of all or a portion of an account to another  
8 account in accordance with the provisions of section 529A  
9 of the Internal Revenue Code and the rules and regulations  
10 of the treasurer.

11

12 (c) A designated beneficiary is limited to one (1)  
13 account. Separate records and accounting shall be  
14 maintained for each designated beneficiary.

15

16 (d) A designated beneficiary shall not use an  
17 interest in an account as security for a loan. Any pledge  
18 of an interest in an account is of no force and effect.

19

20 (e) If there is any distribution from an account to  
21 any person or for the benefit of any person during a  
22 calendar year, the distribution shall be reported to the

1 internal revenue service and the designated beneficiary to  
2 the extent required by federal law.

3

4 (f) The financial institution shall provide  
5 statements to designated beneficiaries at least once each  
6 year.

7

8 (g) Statements and information returns relating to  
9 accounts shall be prepared and filed to the extent required  
10 by federal or state tax law.

11

12 **42-9-108. Medicaid recovery of accounts.**

13

14 Upon the death of a designated beneficiary, funds in an  
15 account established as prescribed in section 529A of the  
16 Internal Revenue Code may be claimed by the Medicaid  
17 program of the state or the Medicaid program of another  
18 state in accordance with the provisions of section 529A of  
19 the Internal Revenue Code and the rules and regulations of  
20 the treasurer.

21

22 **42-9-109. Exclusion from benefit eligibility**  
23 **determinations.**

1

2 (a) Notwithstanding any other provision of law, in  
3 determining an applicant's financial eligibility to receive  
4 public assistance or in determining the amount of public  
5 assistance an applicant is eligible to receive under a  
6 state or local funded program, an agency administering the  
7 program shall not consider the following as it relates to  
8 the applicant's ABLE account:

9

10 (i) Amounts in the account, including earnings  
11 on the account;

12

13 (ii) Contributions to the account;

14

15 (iii) Distributions from the account for  
16 qualified disability expenses.

17

18 (b) Subsection (a) of this section applies only to  
19 applicants who are:

20

21 (i) The account owner or designated beneficiary  
22 of the account;

23

1           (ii) An individual whose eligibility for the  
2 public assistance is conditioned on the account's account  
3 owner or designated beneficiary disclosing the account  
4 owner's or designated beneficiary's income or other  
5 financial information to the agency administering the  
6 program.

7

8           **42-9-110. Limitations.**

9

10           (a) Nothing in this chapter shall be construed to:

11

12           (i) Prevent the treasurer from complying with  
13 his duty to conform the program to federal requirements for  
14 a qualified ABLE program under section 529A of the Internal  
15 Revenue Code; or

16

17           (ii) Guarantee that amounts saved pursuant to  
18 the program will be sufficient to cover the qualified  
19 disability expenses of a designated beneficiary.

20

21           (b) Nothing in this chapter establishes any  
22 obligation of the trust, the state or any agency or  
23 instrumentality of the state to guarantee for the benefit



1 of any designated beneficiary or contributor to an account  
2 any of the following:

3

4 (i) The return of any amounts contributed to an  
5 account;

6

7 (ii) The rate of interest or other return on any  
8 account;

9

10 (iii) The payment of interest or other return on  
11 any account; or

12

13 (iv) The cost of qualified disability expenses.

14

15 (c) Under rules adopted by the treasurer, every  
16 contract, application, deposit slip or other similar  
17 document that may be used in connection with a contribution  
18 to an account shall clearly indicate that the account is  
19 not insured by the state and neither the principal  
20 deposited nor the investment return is guaranteed by the  
21 state.

22

23 **42-9-111. Limitations on liability.**

1

2 (a) Neither the program, the trust, the trustee, the  
3 treasurer nor the state shall be liable for any loss  
4 incurred by any designated beneficiary as a result of  
5 participating in the program.

6

7 (b) The treasurer, the trustee and officials and  
8 employees of the treasurer are entitled to immunity from  
9 liability, defense and indemnification under the Wyoming  
10 Governmental Claims Act.

11

12 **Section 2.** W.S. 4-10-912 is amended to read:

13

14 **4-10-912. Application to Wyoming family college**  
15 **savings program trust and Wyoming ABLE program trust.**

16

17 This act does not apply to the Wyoming family college  
18 savings program trust created by W.S. 21-16-811(a) or the  
19 Wyoming ABLE program trust created by W.S. 42-9-104(a),  
20 except that this article shall continue to apply as  
21 required under W.S. 21-16-813(c)(iii) and 42-9-105(c)(ii).

22

23 **Section 3.**

1

2           (a) The office of the state treasurer, in  
3 consultation with the Wyoming governor's council on  
4 developmental disabilities and the University of Wyoming  
5 institute for disabilities, shall report to the governor  
6 and the joint labor, health and social services interim  
7 committee on or before October 1, 2016 on the achieving a  
8 better life experience program authorized pursuant to  
9 section 1 of this act. The report shall include:

10

11           (i) A recommendation of the appropriate lead  
12 agency for the program;

13

14           (ii) An analysis of the appropriate  
15 instrumentality to invest the program account funds,  
16 including the relative cost-benefit of using a state  
17 sponsored program or privately run program;

18

19           (iii) A determination of the staffing and  
20 funding needs of the program;

21

22           (iv) A proposed implementation plan for a state  
23 sponsored program, including an implementation date for the

1 program and communication with the public about investing  
2 in the program accounts;

3

4 (v) Any other issues considered useful in the  
5 planning and implementation of the program in the state.

6

7 (b) The joint labor, health and social services  
8 interim committee shall consider the recommendations of the  
9 office of the state treasurer and shall develop legislation  
10 it deems appropriate for consideration by the legislature  
11 in the 2017 general session.

12

13 **Section 4.** This act is effective July 1, 2016.

14

15

(END)