
A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. It is the intent and purpose of the legislature
2 to establish a qualified tax exempt savings program to encourage
3 and assist individuals and families to save private funds to
4 support individuals with disabilities pursuant to section 529 of
5 the Internal Revenue Code of 1986, as amended, or successor
6 legislation, and any regulations promulgated thereunder. It is
7 the further intent of the legislature that the program
8 established by this Act be and remain in conformance with the
9 Stephen Beck, Jr., Achieving a Better Life Experience Act of
10 2014, Public Law No. 113-295.

11 SECTION 2. The Hawaii Revised Statutes is amended by
12 adding a new chapter to be appropriately designated and to read
13 as follows:

14 **"CHAPTER**

15 **HAWAII ABLE SAVINGS PROGRAM**

16 **§ -1 Definitions.** As used in this chapter, unless the
17 context otherwise requires:



1 "Account" or "ABLE savings account" means an individual
2 savings account established in accordance with this chapter.

3 "Account owner" means the person who enters into a savings
4 agreement pursuant to this chapter. The account owner shall be
5 the designated beneficiary; provided that a trustee or guardian
6 may be appointed as an account owner for a designated
7 beneficiary who is a minor or lacks capacity to enter into an
8 agreement.

9 "Designated beneficiary" means a resident of the State
10 whose qualified disability expenses may be paid from the
11 account. The designated beneficiary shall be an eligible
12 individual at the time the account is established; provided that
13 the account owner may change the designated beneficiary.

14 "Director" means the director of finance.

15 "Eligible individual" means an individual who is entitled
16 to benefits based on blindness or disability under title 42
17 United States Code section 401 et seq. or title 42 United States
18 Code section 1381 et seq., as amended, and for whom blindness or
19 disability occurred before the date on which the individual
20 attained the age of twenty-six, or an individual who filed for



1 the taxable year, a disability certification with and to the
2 satisfaction of the secretary.

3 "Financial organization" means an organization authorized
4 to do business in the State that is:

- 5 (1) Licensed or chartered by the insurance commissioner;
- 6 (2) Licensed or chartered by the commissioner of financial
7 institutions;
- 8 (3) Chartered by an agency of the federal government; or
- 9 (4) Subject to the jurisdiction and regulation of the
10 federal Securities and Exchange Commission.

11 "Management contract" means the contract executed by the
12 director of finance and a financial organization selected to act
13 as a depository and manager of the program.

14 "Member of the family" has the same meaning defined in
15 section 529A of the Internal Revenue Code of 1986, as amended.

16 "Nonqualified withdrawal" means a withdrawal from an
17 account that is not:

- 18 (1) A qualified withdrawal; or
- 19 (2) A rollover distribution.

20 "Program" means the Hawaii ABLE savings program established
21 under this chapter.



1 "Program manager" means a financial organization selected
2 by the director of finance to act as a depository and manager of
3 the program.

4 "Qualified disability expense" means any qualified
5 disability expense included in section 529A of the Internal
6 Revenue Code of 1986, as amended.

7 "Qualified withdrawal" means a withdrawal from an account
8 to pay the qualified disability expenses of the designated
9 beneficiary of the account.

10 "Rollover distribution" means a rollover distribution as
11 defined in section 529A of the Internal Revenue Code of 1986, as
12 amended.

13 "Savings agreement" means an agreement between the program
14 manager or the director of finance and the account owner.

15 "Secretary" means the secretary of the United States
16 Department of the Treasury.

17 **§ -2 Hawaii ABLE savings program; establishment.** The
18 director of finance shall establish the Hawaii ABLE savings
19 program to provide for individual savings accounts that empower
20 individuals with a disability and their families to save private
21 funds to support the individual with a disability.



1 **§ -3 Functions and powers of the director of finance.**

2 (a) The director shall implement and administer the program
3 under the terms and conditions established by this chapter and
4 in conformity with federal law including the Stephen Beck, Jr.,
5 Achieving a Better Life Experience Act of 2014, P.L. 113-295, as
6 it may be amended. The director shall have the authority and
7 responsibility to:

- 8 (1) Develop and implement the program in a manner
9 consistent with this chapter;
- 10 (2) Engage the services of consultants on a contract basis
11 for rendering professional and technical assistance
12 and advice;
- 13 (3) Seek rulings and other guidance from the secretary and
14 the Internal Revenue Service relating to the program;
- 15 (4) Make any changes to the program required for the
16 participants in the program to obtain the federal
17 income tax benefits or treatment provided by section
18 529A of the Internal Revenue Code of 1986, as amended;
- 19 (5) Charge, impose, and collect administrative fees and
20 service charges in connection with any agreement,
21 contract, or transaction relating to the program;



- 1 (6) Develop marketing plans and promotional material;
- 2 (7) Establish the methods by which the funds held in
- 3 accounts shall be dispersed;
- 4 (8) Establish the method by which funds shall be allocated
- 5 to pay for administrative costs;
- 6 (9) Conduct an annual evaluation of the program and
- 7 prepare an annual report of the evaluation to be
- 8 submitted to the governor and the legislature;
- 9 (10) Notify the secretary when an account has been opened
- 10 for a designated beneficiary and submit other reports
- 11 concerning the program required by the secretary;
- 12 (11) Do all things necessary and proper to carry out the
- 13 purposes of this chapter; and
- 14 (12) Adopt rules pursuant to chapter 91 as necessary for
- 15 the purposes of this chapter.
- 16 (b) The director may enter into agreements with other
- 17 states to either allow residents of the State to participate in
- 18 a comparable program operated by another state or allow
- 19 residents of other states to participate in the Hawaii ABLE
- 20 savings program.



1 (c) The director may implement the program through use of
2 financial organizations as account depositories and managers.
3 The director may solicit proposals from financial organizations
4 to act as depositories and managers of the program. Financial
5 organizations that submit proposals shall describe the
6 investment instruments which will be held in accounts. The
7 director may select more than one financial organization and
8 investment instrument for the program. The director shall
9 select as program depositories and managers the financial
10 organization or organizations, from among the bidding financial
11 organizations, that demonstrate the most advantageous
12 combination, both to potential program participants and the
13 State, of the following factors:

- 14 (1) Financial stability and integrity of the financial
15 organization;
- 16 (2) The safety of the investment instrument being offered;
- 17 (3) The ability of the financial organization to satisfy
18 recordkeeping and reporting requirements;
- 19 (4) The financial organization's plan for promoting the
20 program and the investment the organization is willing
21 to make to promote the program;



- 1 (5) The fees, if any, proposed to be charged to the
- 2 account owners;
- 3 (6) The minimum initial deposit and minimum contributions
- 4 that the financial organization will require;
- 5 (7) The ability of the financial organization to accept
- 6 electronic withdrawals, including payroll deduction
- 7 plans; and
- 8 (8) Other benefits to the State or its residents included
- 9 in the proposal, including fees payable to the State
- 10 to cover expenses of operation of the program.
- 11 (d) The director may enter into contracts and agreements
- 12 with a financial organization or organizations necessary to
- 13 implement this chapter.

14 **§ -4 Management contract; terms.** (a) A management
 15 contract shall include, at a minimum, terms requiring the
 16 financial organization to:

- 17 (1) Take any action required to keep the program in
- 18 compliance with the requirements of this chapter and
- 19 take any action not contrary to the management
- 20 contract to qualify as a qualified ABLE program as



- 1 defined in section 529A of the Internal Revenue Code
2 of 1986, as amended;
- 3 (2) Keep accurate records of each account, keep each
4 account segregated from other accounts and provide the
5 director with the information necessary to prepare the
6 statements required by section -5;
- 7 (3) Compile and total information contained in statements
8 required to be prepared under section -5 and
9 provide the compilations to the director;
- 10 (4) If there is more than one program manager, provide the
11 director with the information necessary to determine
12 compliance with section -5;
- 13 (5) Provide the director with access to the books and
14 records of the program manager to the extent needed to
15 determine compliance with the contract, this chapter,
16 and section 529A of the Internal Revenue Code of 1986,
17 as amended;
- 18 (6) Hold all accounts for the benefit of the account owner
19 or owners;



- 1 (7) Be audited at least annually by a firm of certified
2 public accountants selected by the program manager and
3 provide the results of the audit to the director;
- 4 (8) Provide the director with copies of all regulatory
5 filings and reports made by the financial organization
6 during the term of the management contract or while
7 the financial organization is holding any accounts,
8 other than confidential filings or reports that will
9 not become part of the program. The program manager
10 shall make available for review by the director the
11 results of any periodic examination of the program
12 manager by any state or federal banking, insurance, or
13 securities commission, except to the extent that the
14 report or reports may not be disclosed under law; and
- 15 (9) Ensure that any description of the program, whether in
16 writing or through the use of any media, is consistent
17 with a marketing plan developed pursuant to this
18 chapter.
- 19 (b) The director of finance may:
- 20 (1) Enter into contracts as the director deems necessary
21 and proper for the implementation of the program;



- 1 (2) Require that an audit be conducted of the operations
2 and financial position of the program manager at any
3 time if the director has any reason to be concerned
4 about the financial position, the recordkeeping
5 practices, or the status of accounts of the program
6 manager; and
- 7 (3) Terminate or not renew a management agreement. If the
8 director terminates or does not renew a management
9 agreement, the director shall take custody of accounts
10 held by the program manager and shall seek to promptly
11 transfer the accounts to another financial
12 organization that is selected as a program manager and
13 into investment instruments as similar to the original
14 instruments as possible.

15 (c) The department of budget and finance, department of
16 human services, department of health, and executive office on
17 aging are authorized to exchange data regarding eligible
18 individuals to carry out the purposes of this chapter.

19 **§ -5 Hawaii ABLE savings accounts; terms and conditions.**

20 (a) An ABLE savings account established pursuant to this
21 chapter shall be opened by a designated beneficiary or by a



1 trustee or guardian of a designated beneficiary who lacks
2 capacity to enter into a contract. Each beneficiary may hold
3 only one account. The director may establish a nonrefundable
4 application fee and an annual fee for each account. An
5 application for an account shall be in the form specified by the
6 director and shall contain:

7 (1) The name, address, and social security number of the
8 account owner;

9 (2) The name, address, and social security number of the
10 designated beneficiary, if the account owner is the
11 beneficiary's trustee or guardian;

12 (3) Certification relating to no excess contributions; and

13 (4) Additional information as the director may require.

14 (b) Any person may make contributions to an ABLE savings
15 account after the account is opened, subject to the limitations
16 imposed by section 529A of the Internal Revenue Code of 1986, as
17 amended, or any rules and regulations adopted by the secretary
18 and applicable to this chapter.

19 (c) Contributions to an ABLE savings account may be made
20 only in cash. The director or program manager shall reject or
21 promptly withdraw contributions:



- 1 (1) If the contribution is in excess of the limits
2 established pursuant to subsection (b);
- 3 (2) If total contributions cause the value of the account
4 to be equal to or greater than the account maximum
5 established by the director. The account maximum must
6 be equal to the account maximum for postsecondary
7 education savings accounts established pursuant to
8 chapter 256; or
- 9 (3) If the designated beneficiary is not an eligible
10 individual in the current calendar year.
- 11 (d) An account owner may:
- 12 (1) Change the designated beneficiary of an account to an
13 individual who is a member of the family of the prior
14 designated beneficiary in accordance with procedures
15 established by the director; and
- 16 (2) Transfer all or a portion of an account to another
17 ABLE savings account, the designated beneficiary of
18 which is a member of the family as defined in section
19 529A of the Internal Revenue Code of 1986, as amended.



1 No account owner shall use an interest in an account as security
2 for a loan. Any pledge of an interest in an account shall be of
3 no force and effect.

4 (e) If there is any distribution from an account to any
5 individual or for the benefit of any individual during a
6 calendar year, the distribution shall be reported to the
7 Internal Revenue Service and to the account owner, designated
8 beneficiary, or distributee to the extent required by state or
9 federal law.

10 (f) Statements shall be provided to each account owner at
11 least four times each year within thirty days after the end of
12 the three-month period to which a statement relates. The
13 statement shall identify the contributions made during the
14 preceding three-month period, the total contributions made to
15 the account through the end of the period, the value of the
16 account at the end of the period, distributions made during the
17 period, and any other information that the director requires to
18 be reported to the account owner. Statements and information
19 relating to accounts shall be prepared and filed to the extent
20 required by this chapter and any other state or federal law.



1 (g) The program shall provide a separate accounting for
2 each designated beneficiary.

3 **§ -6 Account funds.** Moneys in an ABLE savings account:

4 (1) Shall be exempt from attachment, execution, or
5 garnishment as provided by section 651-124; and

6 (2) May be claimed by the medicaid plan subject to
7 limitations imposed by the secretary.

8 **§ -7 Accounts not guaranteed by the State.** (a) Nothing
9 in this chapter shall create or be construed to create any
10 obligation of the director, the State, or any agency or
11 instrumentality of the State to guarantee for the benefit of any
12 account owner or designated beneficiary with respect to the:

13 (1) Return of principal;

14 (2) Rate of interest or other return on any account; or

15 (3) Payment of interest or other return on any account.

16 (b) The director shall adopt rules to provide that every
17 contract, application, or other similar document that may be
18 used in connection with opening an account clearly indicates
19 that the account is not insured by the State and that the
20 principal deposited and the investment return are not guaranteed
21 by the State.



1 **§ -8 Hawaii ABLE savings program trust fund.** (a) There
2 is established the Hawaii ABLE savings program trust fund within
3 the treasury of the State. The fund shall consist of moneys
4 received from an ABLE savings program manager, any governmental
5 or private grants, and any general fund appropriations for the
6 program.

7 (b) The fund shall be used if the director elects to
8 accept deposits from contributors, rather than have deposits
9 sent directly to the program manager. The fund shall consist of
10 any moneys deposited by contributors in accordance with this
11 chapter which are not deposited directly with the program
12 manager.

13 (c) All interest derived from the deposit and investment
14 of moneys in the savings program trust fund shall be credited to
15 the fund. At the end of any fiscal year, all unexpended and
16 unencumbered moneys in the savings program trust fund shall
17 remain in the savings program trust fund and shall not be
18 credited or transferred to the general fund or any other funds.

19 (d) All expenses incurred by the director in developing
20 and administering the ABLE savings program shall be payable from
21 the Hawaii ABLE savings program trust fund."



1 SECTION 3. This Act, upon its approval, shall apply to
2 taxable years beginning after December 31, 2015.



Report Title:

Hawaii ABLE Savings Program; Individuals with a Disability and Families

Description:

Establishes the Hawaii ABLE Savings Program by authorizing the Director of Finance to establish savings accounts that empower individuals with a disability and their families to save private funds to support the individual with a disability. Creates the Hawaii ABLE Savings Program Trust Fund. (HB119 HD1)

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