



GOV. MSG. NO. 1307

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 2, 2015

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 2, 2015, the following bill was signed into law:

HB119 HD2 SD1 CD1

RELATING TO HEALTH
ACT 206 (15)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

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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 529A
5 of 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, Division B of 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.

5 "Designated beneficiary" means a resident of the State
6 whose qualified disability expenses may be paid from the
7 account.

8 "Director" means the director of finance.

9 "Eligible individual" means an individual who is entitled
10 to benefits based on blindness or disability under title 42
11 United States Code section 401 et seq. or title 42 United States
12 Code section 1381 et seq., as amended, and for whom blindness or
13 disability occurred before the date on which the individual
14 attained the age of twenty-six, or an individual who filed for
15 the taxable year, a disability certification with and to the
16 satisfaction of the secretary.

17 "Financial organization" means an organization authorized
18 to do business in the State that is:

- 19 (1) Licensed or chartered by the insurance commissioner;
20 (2) Licensed or chartered by the commissioner of financial
21 institutions;



- 1 (3) Chartered by an agency of the federal government; or
2 (4) Subject to the jurisdiction and regulation of the
3 federal Securities and Exchange Commission.

4 "Management contract" means the contract executed by the
5 director of finance and a financial organization selected to act
6 as a depository and manager of the program.

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

9 "Nonqualified withdrawal" means a withdrawal from an
10 account that is not:

- 11 (1) A qualified withdrawal; or
12 (2) A rollover distribution.

13 "Program" means the Hawaii ABLE savings program established
14 under this chapter.

15 "Program manager" means a financial organization selected
16 by the director of finance to act as a depository and manager of
17 the program.

18 "Qualified disability expense" means any qualified
19 disability expense included in section 529A of the Internal
20 Revenue Code of 1986, as amended.



1 "Qualified withdrawal" means a withdrawal from an account
2 to pay the qualified disability expenses of the designated
3 beneficiary of the account.

4 "Rollover distribution" means a rollover distribution as
5 defined in section 529A of the Internal Revenue Code of 1986, as
6 amended.

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

9 "Secretary" means the secretary of the United States
10 Department of the Treasury.

11 **§ -2 Hawaii ABLE savings program; establishment.** The
12 director of finance shall establish the Hawaii ABLE savings
13 program to provide for individual savings accounts that empower
14 individuals with a disability and their families to save private
15 funds to support the individual with a disability.

16 **§ -3 Functions and powers of the director of finance.**

17 (a) The director shall implement and administer the program
18 under the terms and conditions established by this chapter and
19 in conformity with federal law including the Stephen Beck, Jr.,
20 Achieving a Better Life Experience Act of 2014, Division B of



1 P.L. 113-295, as it may be amended. The director shall have the
2 authority and responsibility to:

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



- 1 (9) Conduct an annual evaluation of the program and
2 prepare an annual report of the evaluation to be
3 submitted to the governor and the legislature;
- 4 (10) Notify the secretary when an account has been opened
5 for a designated beneficiary and submit other reports
6 concerning the program required by the secretary;
- 7 (11) Do all things necessary and proper to carry out the
8 purposes of this chapter; and
- 9 (12) Adopt rules pursuant to chapter 91 as necessary for
10 the purposes of this chapter.
- 11 (b) The director may enter into agreements with other
12 states to either allow residents of the State to participate in
13 a comparable program operated by another state or allow
14 residents of other states to participate in the Hawaii ABLE
15 savings program.
- 16 (c) The director may implement the program through use of
17 financial organizations as account depositories and managers.
18 The director may solicit proposals from financial organizations
19 to act as depositories and managers of the program. Financial
20 organizations that submit proposals shall describe the
21 investment instruments which will be held in accounts. The



1 director may select more than one financial organization and
2 investment instrument for the program. The director shall
3 select as program depositories and managers the financial
4 organization or organizations, from among the bidding financial
5 organizations, that demonstrate the most advantageous
6 combination, both to potential program participants and the
7 State, of the following factors:

- 8 (1) Financial stability and integrity of the financial
9 organization;
- 10 (2) The safety of the investment instrument being offered;
- 11 (3) The ability of the financial organization to satisfy
12 recordkeeping and reporting requirements;
- 13 (4) The financial organization's plan for promoting the
14 program and the investment the organization is willing
15 to make to promote the program;
- 16 (5) The fees, if any, proposed to be charged to the
17 account owners;
- 18 (6) The minimum initial deposit and minimum contributions
19 that the financial organization will require;

1 (7) The ability of the financial organization to accept
2 electronic withdrawals, including payroll deduction
3 plans; and

4 (8) Other benefits to the State or its residents included
5 in the proposal, including fees payable to the State
6 to cover expenses of operation of the program.

7 (d) The director may enter into contracts and agreements
8 with a financial organization or organizations necessary to
9 implement this chapter.

10 **§ -4 Management contract; terms.** (a) A management
11 contract shall include, at a minimum, terms requiring the
12 financial organization to:

13 (1) Take any action required to keep the program in
14 compliance with the requirements of this chapter and
15 take any action not contrary to the management
16 contract to qualify as a qualified ABLE program as
17 defined in section 529A of the Internal Revenue Code
18 of 1986, as amended;

19 (2) Keep accurate records of each account, keep each
20 account segregated from other accounts and provide the



- 1 director with the information necessary to prepare the
2 statements required by section -5;
- 3 (3) Compile and total information contained in statements
4 required to be prepared under section -5 and
5 provide the compilations to the director;
- 6 (4) If there is more than one program manager, provide the
7 director with the information necessary to determine
8 compliance with section -5;
- 9 (5) Provide the director with access to the books and
10 records of the program manager to the extent needed to
11 determine compliance with the contract, this chapter,
12 and section 529A of the Internal Revenue Code of 1986,
13 as amended;
- 14 (6) Hold all accounts for the benefit of the account owner
15 or owners;
- 16 (7) Be audited at least annually by a firm of certified
17 public accountants selected by the program manager and
18 provide the results of the audit to the director;
- 19 (8) Provide the director with copies of all regulatory
20 filings and reports made by the financial organization
21 during the term of the management contract or while



1 the financial organization is holding any accounts,
2 other than confidential filings or reports that will
3 not become part of the program. The program manager
4 shall make available for review by the director the
5 results of any periodic examination of the program
6 manager by any state or federal banking, insurance, or
7 securities commission, except to the extent that the
8 report or reports may not be disclosed under law; and
9 (9) Ensure that any description of the program, whether in
10 writing or through the use of any media, is consistent
11 with a marketing plan developed pursuant to this
12 chapter.

13 (b) The director of finance may:

14 (1) Enter into contracts as the director deems necessary
15 and proper for the implementation of the program;

16 (2) Require that an audit be conducted of the operations
17 and financial position of the program manager at any
18 time if the director has any reason to be concerned
19 about the financial position, the recordkeeping
20 practices, or the status of accounts of the program
21 manager; and



1 (3) Terminate or not renew a management agreement. If the
2 director terminates or does not renew a management
3 agreement, the director shall take custody of accounts
4 held by the program manager and shall seek to promptly
5 transfer the accounts to another financial
6 organization that is selected as a program manager and
7 into investment instruments as similar to the original
8 instruments as possible.

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

13 **§ -5 Hawaii ABLE savings accounts; terms and conditions.**

14 (a) An ABLE savings account established pursuant to this
15 chapter shall be opened by a designated beneficiary or by a
16 trustee or guardian of a designated beneficiary who lacks
17 capacity to enter into a contract; provided that the designated
18 beneficiary shall be an eligible individual at the time the
19 account is established. Each beneficiary may hold only one
20 account. The director may establish a nonrefundable application
21 fee and an annual fee for each account. An application for an



1 account shall be in the form specified by the director and shall
2 contain:

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

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

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

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

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

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

18 (1) If the contribution is in excess of the limits
19 established pursuant to subsection (b);

20 (2) If total contributions cause the value of the account
21 to be equal to or greater than the account maximum



1 established by the director. The account maximum must
2 be equal to the account maximum for postsecondary
3 education savings accounts established pursuant to
4 chapter 256; or

5 (3) If the designated beneficiary is not an eligible
6 individual in the current calendar year.

7 (d) An account owner may:

8 (1) Change the designated beneficiary of an account to an
9 individual who is a member of the family of the prior
10 designated beneficiary in accordance with procedures
11 established by the director; and

12 (2) Transfer all or a portion of an account to another
13 ABLE savings account, the designated beneficiary of
14 which is a member of the family as defined in section
15 529A of the Internal Revenue Code of 1986, as amended.

16 No account owner shall use an interest in an account as security
17 for a loan. Any pledge of an interest in an account shall be of
18 no force and effect.

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



1 Internal Revenue Service and to the account owner, designated
2 beneficiary, or distributee to the extent required by state or
3 federal law.

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

15 (g) The program shall provide a separate accounting for
16 each designated beneficiary.

17 **§ -6 Account funds.** Moneys in an ABLE savings account:

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

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



1 **§ -7 Accounts not guaranteed by the State.** (a) Nothing
2 in this chapter shall create or be construed to create any
3 obligation of the director, the State, or any agency or
4 instrumentality of the State to guarantee for the benefit of any
5 account owner or designated beneficiary with respect to the:

- 6 (1) Return of principal;
7 (2) Rate of interest or other return on any account; or
8 (3) Payment of interest or other return on any account.

9 (b) The director shall adopt rules to provide that every
10 contract, application, or other similar document that may be
11 used in connection with opening an account clearly indicates
12 that the account is not insured by the State and that the
13 principal deposited and the investment return are not guaranteed
14 by the State.

15 **§ -8 Hawaii ABLE savings program trust fund.** (a) There
16 is established the Hawaii ABLE savings program trust fund within
17 the treasury of the State. The fund shall consist of moneys
18 received from an ABLE savings program manager, any governmental
19 or private grants, and any general fund appropriations for the
20 program.



1 (b) The fund shall be used if the director elects to
2 accept deposits from contributors, rather than have deposits
3 sent directly to the program manager. The fund shall consist of
4 any moneys deposited by contributors in accordance with this
5 chapter which are not deposited directly with the program
6 manager.

7 (c) All interest derived from the deposit and investment
8 of moneys in the savings program trust fund shall be credited to
9 the fund. At the end of any fiscal year, all unexpended and
10 unencumbered moneys in the savings program trust fund shall
11 remain in the savings program trust fund and shall not be
12 credited or transferred to the general fund or any other funds.

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

16 SECTION 3. Section 651-124, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§651-124 Pension money exempt.** The right of a debtor to
19 a pension, annuity, retirement or disability allowance, death
20 benefit, any optional benefit, or any other right accrued or
21 accruing under any retirement plan or arrangement described in




1 section 401(a), 401(k), 403(a), 403(b), 408, 408A, 409 (as in
2 effect prior to January 1, 1984), 414(d), or 414(e) of the
3 Internal Revenue Code of 1986, as amended, or any fund created
4 by the plan or arrangement, or any ABLE savings account
5 established pursuant to chapter _____, shall be exempt from
6 attachment, execution, seizure, the operation of bankruptcy or
7 insolvency laws under 11 United States Code section 522(b), or
8 under any legal process whatever. However, this section shall
9 not apply to:

- 10 (1) A "qualified domestic relations order" as defined in
11 section 206(d) of the Employee Retirement Security Act
12 of 1974, as amended, or in section 414(p) of the
13 Internal Revenue Code of 1986, as amended; and
14 (2) Contributions made to a plan or arrangement within the
15 three years before the date a debtor files for
16 bankruptcy, whether voluntary or involuntary, or
17 within three years before the date a civil action is
18 initiated against the debtor, except for contributions
19 to a retirement plan established by state statute if
20 the effect would be to eliminate a state employee's
21 retirement service credit."



- 1 SECTION 4. New statutory material is underscored.
- 2 SECTION 5. This Act shall take effect on July 1, 2015.

APPROVED this 2 day of JUL , 2015



GOVERNOR OF THE STATE OF HAWAII

