MICHIGAN ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM ACT
Act 160 of 2015

AN ACT to create the Michigan achieving a better life experience (ABLE) program; to provide for ABLE accounts; to prescribe the powers and duties of certain state agencies, boards, and departments; to allow certain tax credits or deductions; and to provide for penalties and remedies.

History: 2015, Act 160, Eff. Jan. 26, 2016.

The People of the State of Michigan enact:

206.981 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan achieving a better life experience (ABLE) program act".

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.982 Definitions.

Sec. 2. As used in this act:

(a) "ABLE" means achieving a better life experience.

(b) "ABLE savings account" or "account" means an account established under this act.

(c) "Account owner" means an individual who is a resident of this state, or a resident of a contracting state, and who enters into a Michigan ABLE savings program agreement and establishes an ABLE savings account. The account owner shall be the designated beneficiary of the account unless the designated beneficiary is a minor or lacks capacity to enter into an agreement, in which case a designated representative may open an account on behalf of the minor or incapacitated individual and serve as the account owner.

(d) "Contracting state" means a state without a qualified ABLE program that has entered into a contract with this state to provide its residents access to the Michigan ABLE program.

(e) "Department" means the department of treasury.

(f) "Designated beneficiary" means an eligible individual designated as the individual whose qualified disability expenses are expected to be paid from the account. The designated beneficiary must be an eligible individual at the time the account is established. The designated beneficiary shall be the account owner unless he or she is a minor or lacks capacity to enter into an agreement. The account owner may change the designated beneficiary as provided in this act.

(g) "Designated representative" means an individual who is authorized to act on behalf of the designated beneficiary if the designated beneficiary is a minor or has a guardian, conservator, or other fiduciary who has been appointed for purposes of managing that designated beneficiary's financial affairs.

(h) "Disability certification" means that term as defined in section 529A of the internal revenue code.

(i) "Eligible individual" means that term as defined in section 529A of the internal revenue code.

(j) "Internal revenue code" means the United States internal revenue code of 1986 in effect on January 1, 2015 or at the option of the taxpayer, in effect for the current year.

(k) "Management contract" means the contract executed between the treasurer and a program manager.

(*l*) "Member of the family" means a family member as defined in section 529A of the internal revenue code.

(m) "Michigan ABLE savings program agreement" means the agreement between the program and an account owner that establishes an ABLE savings account.

(n) "Program" means the Michigan ABLE savings program established pursuant to this act.

(o) "Program manager" means 1 or more entities selected by the treasurer to act as a manager of the program.

(p) "Qualified disability expenses" means that term as defined in section 529A of the internal revenue code.

(q) "Qualified withdrawal" means a distribution that is not subject to a penalty or an excise tax under section 529A of the internal revenue code or taxation under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, and that meets any of the following:

(*i*) A withdrawal from an account to pay the qualified disability expenses of the designated beneficiary incurred after the account is established.

(*ii*) A withdrawal made as the result of the death or disability of the designated beneficiary of an account.

(*iii*) A transfer of funds due to the termination of the management contract as provided in section 5.

(*iv*) A transfer of funds as provided in section 8.

(r) "Savings plan" or "plan" means a plan that provides different investment strategies and allows account

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distributions for qualified disability expenses.

(s) "Treasurer" means the state treasurer.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.983 Michigan ABLE savings program; establishment; program manager; purposes, powers, and duties of state treasurer or designee; selection of program managers; proposals; factors; duties of treasurer and program manager; contract.

Sec. 3. (1) The Michigan ABLE savings program is established in the department of treasury. The program shall consist of more than 1 program manager and shall provide multiple savings plans.

(2) The treasurer shall solicit proposals from entities to be a program manager to provide the services described in subsection (5).

(3) The purposes, powers, and duties of the Michigan ABLE savings program are vested in and shall be exercised by the treasurer or the designee of the treasurer.

(4) The state treasurer shall administer the Michigan ABLE savings program and shall be the trustee for the funds of the Michigan ABLE savings program.

(5) The treasurer may employ or contract with personnel and contract for services necessary for the administration of each savings plan under the program and the investment of the assets of each savings plan under the program including, but not limited to, managerial, professional, legal, clerical, technical, and administrative personnel or services.

(6) When selecting program managers, the treasurer shall give preference to proposals from single entities that propose to provide all of the functions described in subsection (5) and that demonstrate the most advantageous combination, to both potential participants and this state, of the following factors and the management contract shall address these factors:

(a) Financial stability.

(b) The safety of the investment instruments being offered.

(c) The ability of the investment instruments to track the increasing costs of disability expenses.

(d) The ability of an entity to satisfy the record-keeping and reporting requirements of this act.

(e) The entity's plan for marketing the savings plan and the investment it is willing to make to promote the savings plan.

(f) The fees, if any, proposed to be charged to persons for opening or maintaining an account.

(g) The minimum initial deposit and minimum contributions that the entity will require which, for the first year of the savings plan, shall not be greater than $25.00 for a cash contribution or $15.00 per pay period for payroll deduction plans.

(h) The ability of an entity to accept electronic withdrawals, including payroll deduction plans.

(i) The willingness of an entity to offer a program of broker-sold products available through financial advisors.

(j) The ability of an entity to provide financial literacy materials and training resources, as described by the department, to all account owners.

(k) The ability of an entity to provide a higher level of customer service to support the unique needs of designated beneficiaries.

(7) The treasurer shall enter into a contract with each program manager which shall address the respective authority and responsibility of the treasurer and the program manager to do all of the following:

(a) Develop and implement the savings plan or plans offered under the program.

(b) Invest the money received from account owners in 1 or more investment instruments.

(c) Engage the services of consultants on a contractual basis to provide professional and technical assistance and advice.

(d) Determine the use of financial organizations as account depositories and financial managers.

(e) Charge, impose, and collect annual administrative fees and service in connection with any agreements, contracts, and transactions relating to individual accounts, exclusive of initial sales charges, which shall not exceed 2.0% of the average daily net assets of the account.

(f) Develop marketing plans and promotional material.

(g) Establish the methods by which funds are allocated to pay for administrative costs.

(h) Provide criteria for terminating and not renewing the management contract.

(i) Address the ability of the program manager to take any action required to keep the savings plan or plans offered under the program in compliance with requirements of this act and its management contract and to manage the savings plan or plans offered under the program to qualify as a qualified ABLE program under section 529A of the internal revenue code.

(j) Keep adequate records of each account and provide the treasurer with information that the treasurer

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requires related to those records.

(k) Compile the information contained in statements required to be prepared under this act and provide that compilation to the treasurer in a timely manner.

(*l*) Hold all accounts for the benefit of the designated beneficiary.

(m) Provide for audits at least annually by a firm of certified public accountants.

(n) Provide the treasurer with copies of all regulatory filings and reports related to the savings plan or plans offered under the program made during the term of the management contract or while the program manager is holding any accounts, other than confidential filings or reports except to the extent those filings or reports are related to or are a part of the savings plan or plans offered under the program. It is the responsibility of the program manager to make available for review by the treasurer the results of any periodic examination of the program manager by any state or federal banking, insurance, or securities commission, except to the extent that the report or reports are not required to be disclosed under state or federal law.

(o) Ensure that any description of the savings plan or plans offered under the program, whether in writing or through the use of any media, is consistent with the marketing plan developed by the program manager.

(p) Offer a program of broker-sold products available through financial advisors.

(q) Take any other necessary and proper activities to carry out the purposes of this act.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.984 Management contract; supervision.

Sec. 4. The treasurer shall be responsible for the ongoing supervision of each management contract.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.985 Management contract; term of years; termination.

Sec. 5. (1) A management contract shall be for a term of years specified in the management contract.

(2) The treasurer may terminate a management contract based on the criteria specified in the management contract.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.986 Contracts as necessary and proper.

Sec. 6. The treasurer may enter into contracts that it considers necessary and proper for the implementation of this program.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.987 ABLE savings accounts; establishment; opening of account by individual or designated representative; agreement; form; contents; contributions; exemption from creditor process; distributions; separate accounting.

Sec. 7. (1) Beginning January 1, 2016, ABLE savings accounts may be established under this act.

(2) Any individual who is a resident of this state or a resident of a contracting state may open an ABLE savings account to save money to pay the qualified disability expenses of the designated beneficiary. Each account opened under this act shall have only 1 designated beneficiary. Only 1 account shall be opened for any 1 designated beneficiary.

(3) To open an ABLE savings account, the individual or designated representative of a designated beneficiary shall enter into a Michigan ABLE savings program agreement with the program. The program shall recognize an individual as a designated representative and not require a designated representative to obtain court approval before opening and funding an ABLE savings account under this act. The Michigan ABLE savings program agreement shall be in the form prescribed by a program manager and approved by the treasurer and contain all of the following:

(a) The name, address, and social security number of the account owner.

(b) A designated beneficiary. The name, address, and social security number of the designated beneficiary, if the account owner is the designated beneficiary's designated representative.

(c) Any other information that the treasurer or program manager considers necessary.

(4) Any person may make contributions to an account after the account is opened, subject to the limitations imposed by section 529A of the internal revenue code or any rules and regulations promulgated by the treasurer pursuant to this act.

(5) Contributions to accounts shall only be made in cash, by check, by credit card, or by any similar method as approved by the state treasurer but shall not be property.

(6) Notwithstanding any other provision of law to the contrary, money in the ABLE savings account shall be exempt from creditor process and shall not be liable to attachment, garnishment, or other process, nor shall

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it be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of the designated beneficiary or account owner. However, this state may be a creditor of the account in the event of the death of the designated beneficiary as provided under section 529A(f) of the internal revenue code.

(7) Distributions from an account shall be made in the following manner:

(a) In the form of a check payable to the designated beneficiary or account owner.

(b) In the form of an electronic funds transfer to an account specified by the designated beneficiary or account owner.

(c) Directly to a provider of goods and services that are qualified disability expenses, if purchased for a designated beneficiary.

(8) Each savings plan under the program shall provide separate accounting for each designated beneficiary.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.988 Changes in account owners or designated beneficiaries; transfers.

Sec. 8. (1) Changes in account owners or designated beneficiaries are permitted as follows:

(a) An account owner may change the designated beneficiary of an account to another eligible individual who is a member of the family of the previously designated beneficiary.

(b) An account owner may transfer all or a portion of an account to another ABLE savings account with another designated beneficiary as long as the new designated beneficiary of the account to which the transfer is made is an eligible individual and a member of the family of the previous designated beneficiary.

(c) An account owner may designate another individual as a successor owner of the account in the event of the death of the account owner. The successor owner must meet the definition of an account owner under this act.

(2) Changes in designated beneficiaries and transfers under this section are not permitted to the extent that the change or transfer would constitute excess contributions or unauthorized investment choices.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.989 Directing investment of contributions in violation of internal revenue code; prohibition; administrative services; use of interest as loan security.

Sec. 9. (1) An account owner shall not, directly or indirectly, direct the investment of any contributions to an account or the earnings on an account in violation of section 529A of the internal revenue code. An account owner may select among different investment strategies designed by a program manager to the extent allowed under section 529A of the internal revenue code.

(2) The program may allow employees of the program, or the employees of a contractor hired by the program to perform administrative services, to make contributions to an account.

(3) An interest in an account shall not be used by an account owner or a designated beneficiary as security for a loan. Any pledge of an interest in an account has no force or effect.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.990 Maximum account balance limit.

Sec. 10. (1) The maximum account balance limit for an ABLE account shall not exceed the maximum amount allowed for an education savings account pursuant to section 10 of the Michigan education savings program act, 2000 PA 161, MCL 390.1480.

(2) The program manager shall notify an account owner if the annual contributions to an ABLE savings account get within $1,000.00 of the contributions limits established under section 7(4). The program manager shall provide an account owner with written notification at least 5 business days before rejecting a contribution as provided in subsection (3).

(3) The program manager shall reject a contribution to any account for a designated beneficiary if, at the time of the contribution, the total balance of the account for that designated beneficiary has reached the maximum account balance limit under subsection (1) or the contribution is in excess of the limits established pursuant to section 7(4). An account may continue to accrue earnings if the total balance of the account for that beneficiary has reached the maximum account balance limit and shall not be considered to have exceeded the maximum account balance limit under subsection (1).

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.991 Submission of certain information to internal revenue service, department, and account owner.

Sec. 11. (1) In accordance with section 529A(d) of the internal revenue code, each program manager shall

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submit both of the following to the internal revenue service and the department:

(a) A notice upon the establishment of each ABLE savings account. The notice must contain the name and state of residence of the designated beneficiary and any other information as required by law or regulation.

(b) An aggregate report of the contributions, distributions, the return of excess contributions, and any other matter as required by law or regulation regarding its ABLE program during the tax year.

(2) Each program manager shall provide to the account owner, on or before the January 31 following the end of each calendar year, statements that identify the individual contributions made during the tax year, the total contributions made to the account for the tax year, the value of the account at the end of the tax year, distributions made during the tax year, the amount of excess contributions returned during the tax year, and any other information as required by the department.

(3) As required under section 529A(d) of the internal revenue code, the department shall electronically submit on a monthly basis to the commissioner of social security, in a manner specified by the commissioner of social security, statements on relevant distributions and account balances from all ABLE savings accounts.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.992 Disclosure of information to account owner and other person requesting information.

Sec. 12. Each program manager shall disclose the following information in writing to each account owner of an ABLE savings account and any other person who requests information about an ABLE savings account:

(a) The terms and conditions for establishing an ABLE savings account.

(b) Restrictions on the substitutions of designated beneficiaries and transfer of account funds.

(c) The person entitled to terminate a Michigan ABLE savings program agreement.

(d) The period of time during which a designated beneficiary may receive benefits under the Michigan ABLE savings program agreement.

(e) The terms and conditions under which money may be wholly or partially withdrawn from an account or the program, including, but not limited to, any reasonable charges and fees and penalties that may be imposed for withdrawal.

(f) The potential tax consequences associated with contributions to and distributions and withdrawals from accounts.

(g) Investment history and potential growth of account funds and a projection of the impact of the growth of the account funds on the maximum amount allowable in an account.

(h) All other rights and obligations under Michigan ABLE savings program agreements and any other terms, conditions, and provisions of a contract or an agreement entered into under this act.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.993 Construction and interpretation of act and agreement.

Sec. 13. This act and any agreement under this act shall not be construed or interpreted to do any of the following:

(a) Give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner.

(b) Give residency status to an individual merely because the individual is a designated beneficiary.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.994 State obligation.

Sec. 14. (1) This act does not create and shall not be construed to create any obligation upon this state or any agency or instrumentality of this state to guarantee for the benefit of an account owner or designated beneficiary any of the following:

(a) The rate of interest or other return on an account.

(b) The payment of interest or other return on an account.

(2) The contracts, applications, deposit slips, and other similar documents used in connection with a contribution to an account shall clearly indicate that the account is not insured by this state and that the money deposited into and investment return earned on an account are not guaranteed by this state.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.995 Annual report.

Sec. 15. Each program manager shall file an annual report with the treasurer that includes all of the following:

(a) The names and identification numbers of account owners and designated beneficiaries. The information

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reported pursuant to this subdivision is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(b) The total amount contributed to all accounts during the year.

(c) All distributions from all accounts and whether or not each distribution was a qualified withdrawal.

(d) Any information that the program manager or treasurer may require regarding the taxation of amounts contributed to or withdrawn from accounts.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.996 Tax exemption.

Sec. 16. (1) Contributions to and interest earned on an ABLE savings account are exempt from taxation as provided in section 30 of the income tax act of 1967, 1967 PA 281, MCL 206.30.

(2) Withdrawals made from ABLE savings accounts are taxable as provided in section 30 of the income tax act of 1967, 1967 PA 281, MCL 206.30.

History: 2015, Act 160, Eff. Jan. 26, 2016.

206.997 Consideration of financial circumstances for purpose of assistance program; effect of ABLE savings account.

Sec. 17. (1) Notwithstanding any other provision of law regarding an assistance program offered by this state that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by that provision to be provided to or for the benefit of an individual, any amount and interest earned on an ABLE savings account for the individual, any contributions to the ABLE savings account of the individual, and any distribution for qualified disability expenses shall be disregarded as provided in section 10g of the social welfare act, 1939 PA 280, MCL 400.10g, with respect to any period during which the individual maintains, makes contributions to, or receives distributions from his or her ABLE savings account.

(2) Upon the death of the designated beneficiary, the amount remaining in his or her ABLE savings account shall be distributed pursuant to section 529A(f) of the internal revenue code.

History: 2015, Act 160, Eff. Jan. 26, 2016.

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