



Sen. Scott M. Bennett

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1 AMENDMENT TO SENATE BILL 1383

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1383 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The State Treasurer Act is amended by adding  
5 Section 16.6 as follows:

6 (15 ILCS 505/16.6 new)

7 Sec. 16.6. ABLE account program.

8 (a) As used in this Section:

9 "ABLE account" or "account" means an account established  
10 for the purpose of financing certain qualified expenses of  
11 eligible individuals as specifically provided for in this  
12 Section and authorized by Section 529A of the Internal Revenue  
13 Code.

14 "ABLE account plan" or "plan" means the savings account  
15 plan provided for in this Section.

16 "Account administrator" means the person selected by the

1 State Treasurer to administer the daily operations of the ABLE  
2 account plan and provide marketing, recordkeeping, investment  
3 management, and other services for the plan.

4 "Aggregate account balance" means the amount in an account  
5 on a particular date or the fair market value of an account on  
6 a particular date.

7 "Beneficiary" means the ABLE account owner.

8 "Board" means the Illinois State Board of Investment.

9 "Contracting state" means a state without a qualified ABLE  
10 program which has entered into a contract with Illinois to  
11 provide residents of the contracting state access to a  
12 qualified ABLE program.

13 "Designated representative" means a person who is  
14 authorized to act on behalf of an account owner. An account  
15 owner is authorized to act on his or her own behalf unless the  
16 account owner is a minor or the account owner has been  
17 adjudicated to have a disability so that a guardian has been  
18 appointed. A designated representative acts in a fiduciary  
19 capacity to the account owner. The State Treasurer shall  
20 recognize a person as a designated representative without  
21 appointment by a court in the following order of priority:

22 (1) The account owner's plenary guardian of the estate,  
23 or the account owner's limited guardian of financial or  
24 contractual matters. Any guardian acting in this capacity  
25 shall not be required to seek court approval for any ABLE  
26 qualified distributions.

1           (2) The agent named by the account owner in a property  
2           power of attorney recognized as a statutory short form  
3           power of attorney for property.

4           (3) Such individual or entity that the account owner so  
5           designates in writing, in a manner to be established by the  
6           State Treasurer.

7           (4) Such other individual or entity designated by the  
8           State Treasurer pursuant to its rules.

9           "Disability certification" has the meaning given to that  
10          term under Section 529A of the Internal Revenue Code.

11          "Eligible individual" has the meaning given to that term  
12          under Section 529A of the Internal Revenue Code.

13          "Participation agreement" means an agreement to  
14          participate in the ABLE account plan between an account owner  
15          and the State, through its agencies and the State Treasurer.

16          "Qualified disability expenses" has the meaning given to  
17          that term under Section 529A of the Internal Revenue Code.

18          "Qualified withdrawal" or "qualified distribution" means a  
19          withdrawal from an ABLE account to pay the qualified disability  
20          expenses of the beneficiary of the account.

21          (b) The "Achieving a Better Life Experience" or "ABLE"  
22          account program is hereby created and shall be administered by  
23          the State Treasurer. The purpose of the ABLE plan is to  
24          encourage and assist individuals and families in saving private  
25          funds for the purpose of supporting individuals with  
26          disabilities to maintain health, independence, and quality of

1 life, and to provide secure funding for disability-related  
2 expenses on behalf of designated beneficiaries with  
3 disabilities that will supplement, but not supplant, benefits  
4 provided through private insurance, federal and State medical  
5 and disability insurance, the beneficiary's employment, and  
6 other sources. Under the plan, a person may make contributions  
7 to an ABLE account to meet the qualified disability expenses of  
8 the designated beneficiary of the account. The plan must be  
9 operated as an accounts-type plan that permits persons to save  
10 for qualified disability expenses incurred by or on behalf of  
11 an eligible individual.

12 The State Treasurer shall promote awareness of the  
13 availability and advantages of the ABLE account plan as a way  
14 to assist individuals and families in saving private funds for  
15 the purpose of supporting individuals with disabilities. The  
16 cost of these promotional efforts shall not be funded with fees  
17 imposed on participants by the State Treasurer.

18 The State Treasurer shall not accept contributions for ABLE  
19 accounts under this Section until the Internal Revenue Service  
20 has issued its final regulations concerning ABLE accounts.

21 A separate account must be maintained for each beneficiary  
22 for whom contributions are made, and no more than one account  
23 shall be established per beneficiary. If an ABLE account is  
24 established for a designated beneficiary, no account  
25 subsequently established for such beneficiary shall be treated  
26 as an ABLE account. The preceding sentence shall not apply in

1 the case of an ABLE account established for purposes of a  
2 rollover as permitted under Section 529A of the Internal  
3 Revenue Code.

4 An ABLE account may be established under this Section only  
5 for a designated beneficiary who is a resident of Illinois or a  
6 resident of a contracting state.

7 Prior to the establishment of an ABLE account, an account  
8 owner must provide documentation to the State Treasurer that  
9 the account beneficiary is an eligible individual.

10 Annual contributions to an ABLE account on behalf of a  
11 beneficiary are subject to the requirements of subsection (b)  
12 of Section 529A of the Internal Revenue Code. No person may  
13 make a contribution to an ABLE account if such a contribution  
14 would result in the aggregate account balance of an ABLE  
15 account exceeding the account balance limit authorized under  
16 Section 529A of the Internal Revenue Code. The Treasurer shall  
17 review the contribution limit at least annually.

18 The State Treasurer shall administer the plan, including  
19 accepting and processing applications, maintaining account  
20 records, making payments, and undertaking any other necessary  
21 tasks to administer the plan, including the appointment of an  
22 account administrator. The State Treasurer may contract with  
23 one or more third parties to carry out some or all of these  
24 administrative duties, including, but not limited to,  
25 providing investment management services, incentives, and  
26 marketing the plan.

1       In designing and establishing the plan's requirements and  
2 in negotiating or entering into contracts with third parties  
3 under this Section, the State Treasurer shall consult with the  
4 Board. The State Treasurer shall establish fees to be imposed  
5 on participants to recover the costs of administration,  
6 recordkeeping, and investment management. The State Treasurer  
7 must use his or her best efforts to keep these fees as low as  
8 possible, consistent with efficient administration.

9       The Illinois ABLE Accounts Administrative Fund is created  
10 as a nonappropriated trust fund in the State treasury. The  
11 State Treasurer shall use moneys in the Administrative Fund to  
12 pay for administrative expenses he or she incurs in the  
13 performance of his or her duties under this Section. The State  
14 Treasurer shall use moneys in the Administrative Fund to cover  
15 administrative expenses incurred under this Section. The  
16 Administrative Fund may receive any grants or other moneys  
17 designated for administrative purposes from the State, or any  
18 unit of federal or local government, or any other person, firm,  
19 partnership, or corporation. Any interest earnings that are  
20 attributable to moneys in the Administrative Fund must be  
21 deposited into the Administrative Fund. Any fees established by  
22 the State Treasurer to recover the costs of administration,  
23 recordkeeping, and investment management shall be deposited  
24 into the Administrative Fund.

25       Subject to appropriation, the State Treasurer may pay  
26 administrative costs associated with the creation and

1 management of the plan until sufficient assets are available in  
2 the Administrative Fund for that purpose.

3 Applications for accounts, account owner data, account  
4 data, and data on beneficiaries of accounts are confidential  
5 and exempt from disclosure under the Freedom of Information  
6 Act.

7 (c) The State Treasurer may invest the moneys in ABLE  
8 accounts in the same manner and in the same types of  
9 investments provided for the investment of moneys by the Board.  
10 To enhance the safety and liquidity of ABLE accounts, to ensure  
11 the diversification of the investment portfolio of accounts,  
12 and in an effort to keep investment dollars in the State, the  
13 State Treasurer may make a percentage of each account available  
14 for investment in participating financial institutions doing  
15 business in the State, except that the accounts may be invested  
16 without limit in investment options from open-ended investment  
17 companies registered under Section 4.32 of the federal  
18 Investment Company Act of 1940. The State Treasurer may  
19 contract with one or more third parties for investment  
20 management, recordkeeping, or other services in connection  
21 with investing the accounts.

22 The account administrator shall annually prepare and adopt  
23 a written statement of investment policy that includes a risk  
24 management and oversight program. The risk management and  
25 oversight program shall be designed to ensure that an effective  
26 risk management system is in place to monitor the risk levels

1 of the ABLE plan, to ensure that the risks taken are prudent  
2 and properly managed, to provide an integrated process for  
3 overall risk management, and to assess investment returns as  
4 well as risk to determine if the risks taken are adequately  
5 compensated compared to applicable performance benchmarks and  
6 standards.

7 The State Treasurer may enter into agreements with other  
8 states to either allow Illinois residents to participate in a  
9 plan operated by another state or to allow residents of other  
10 states to participate in the Illinois ABLE plan.

11 (d) The State Treasurer shall ensure that the plan meets  
12 the requirements for an ABLE account under Section 529A of the  
13 Internal Revenue Code. The State Treasurer may request a  
14 private letter ruling or rulings from the Internal Revenue  
15 Service and must take any necessary steps to ensure that the  
16 plan qualifies under relevant provisions of federal law.  
17 Notwithstanding the foregoing, any determination by the  
18 Secretary of the Treasury of the United States that an account  
19 was utilized to make non-qualified distributions shall not  
20 result in an ABLE account being disregarded as a resource.

21 A person may make contributions to an ABLE account on  
22 behalf of a beneficiary. Contributions to an account made by  
23 persons other than the account owner become the property of the  
24 account owner. Contributions to an account shall be considered  
25 as a transfer of assets for fair market value. A person does  
26 not acquire an interest in an ABLE account by making



1 contributions to an account. A contribution to any account for  
2 a beneficiary must be rejected if the contribution would cause  
3 either the aggregate or annual account balance of the account  
4 to exceed the limits imposed by Section 529A of the Internal  
5 Revenue Code.

6 Any change in account owner must be done in a manner  
7 consistent with Section 529A of the Internal Revenue Code.

8 Notice of any proposed amendments to the rules and  
9 regulations shall be provided to all owners or their designated  
10 representatives prior to adoption. Amendments to rules and  
11 regulations shall apply only to contributions made after the  
12 adoption of the amendment. Amendments to this Section  
13 automatically amend the participation agreement. Any  
14 amendments to the operating procedures and policies of the plan  
15 shall automatically amend the participation agreement after  
16 adoption by the State Treasurer.

17 All assets of the plan, including any contributions to  
18 accounts, are held in trust for the exclusive benefit of the  
19 account owner and shall be considered spendthrift accounts  
20 exempt from all of the owner's creditors. The plan shall  
21 provide separate accounting for each designated beneficiary  
22 sufficient to satisfy the requirements of paragraph (3) of  
23 subsection (b) of Section 529A of the Internal Revenue Code.  
24 Assets must be held in either a state trust fund outside the  
25 State treasury, to be known as the Illinois ABLE plan trust  
26 fund, or in accounts with a third-party provider selected

1 pursuant to this Section. Amounts contributed to ABLE accounts  
2 shall not be commingled with State funds and the State shall  
3 have no claim to or against, or interest in, such funds.

4 Plan assets are not subject to claims by creditors of the  
5 State and are not subject to appropriation by the State.  
6 Payments from the Illinois ABLE account plan shall be made  
7 under this Section.

8 The assets of ABLE accounts and their income may not be  
9 used as security for a loan.

10 The assets of ABLE accounts and their income and operation  
11 shall be exempt from all taxation by the State of Illinois and  
12 any of its subdivisions to the extent exempt from federal  
13 income taxation. The accrued earnings on investments in an ABLE  
14 account once disbursed on behalf of a designated beneficiary  
15 shall be similarly exempt from all taxation by the State of  
16 Illinois and its subdivisions to the extent exempt from federal  
17 income taxation, so long as they are used for qualified  
18 expenses.

19 Notwithstanding any other provision of law that requires  
20 consideration of one or more financial circumstances of an  
21 individual, for the purpose of determining eligibility to  
22 receive, or the amount of, any assistance or benefit authorized  
23 by such provision to be provided to or for the benefit of such  
24 individual, any amount, including earnings thereon, in the ABLE  
25 account of such individual, any contributions to the ABLE  
26 account of the individual, and any distribution for qualified

1 disability expenses shall be disregarded for such purpose with  
2 respect to any period during which such individual maintains,  
3 makes contributions to, or receives distributions from such  
4 ABLE account.

5 (e) The account owner or the designated representative of  
6 the account owner may request that a qualified distribution be  
7 made for the benefit of the account owner. Qualified  
8 distributions shall be made for qualified disability expenses  
9 allowed pursuant to Section 529A of the Internal Revenue Code.  
10 Qualified distributions must be withdrawn proportionally from  
11 contributions and earnings in an account owner's account on the  
12 date of distribution as provided in Section 529A of the  
13 Internal Revenue Code. Upon the death of a beneficiary, the  
14 amount remaining in the beneficiary's account must be  
15 distributed pursuant to subsection (f) of Section 529A of the  
16 Internal Revenue Code.

17 (f) The State Treasurer may adopt rules to carry out the  
18 purposes of this Section. The State Treasurer shall further  
19 have the power to issue peremptory rules necessary to ensure  
20 that ABLE accounts meet all of the requirements for a qualified  
21 state ABLE program under Section 529A of the Internal Revenue  
22 Code and any regulations issued by the Internal Revenue  
23 Service.

24 Section 10. The State Finance Act is amended by adding  
25 Section 5.866 as follows:

1 (30 ILCS 105/5.866 new)

2 Sec. 5.866. The Illinois ABLE Accounts Administrative

3 Fund.".