

STATE OF KANSAS

SENATE CHAMBER

MADAM PRESIDENT:

I move to amend **HB 2216**, as amended by Senate Committee, on page 18, following line 4, by inserting:

"New Sec. 9. There is hereby established an enabling savings program and such program shall be known and may be cited as the Kansas ABLE savings program. The purpose of the Kansas ABLE savings program is to authorize the establishment of savings accounts empowering individuals with a disability and their families to save private funds to support the individual with a disability and to provide guidelines for the maintenance of such accounts.

New Sec. 10. As used in this act:

(a) "Account" or "ABLE savings account" means an individual savings account established in accordance with the provisions of this act.

(b) "Account owner" means the person who enters into an ABLE savings agreement pursuant to the provisions of this act. The account owner must also be the designated beneficiary. A conservator or guardian may be appointed as an account owner for a designated beneficiary who is a minor or lacks capacity to enter into an agreement.

(c) "Conservator" means a person appointed by the court pursuant to K.S.A. 59-3050 et seq., and amendments thereto.

(d) "Designated beneficiary" means a Kansas resident whose qualified disability expenses may be paid from the account. The designated beneficiary must be an eligible individual at the time the account is established. The account owner may change the designated beneficiary.

(e) "Eligible individual" means an individual who is entitled to benefits based on blindness or

disability under 42 U.S.C. § 401 et seq. or 42 U.S.C. § 1381 et seq., as amended, and such blindness or disability occurred before the date on which the individual attained age 26, or an individual who filed a disability certification, to the satisfaction of the secretary, with the secretary for such taxable year.

(f) "Financial organization" means an organization authorized to do business in the state of Kansas and is:

- (1) Licensed or chartered by the commissioner of insurance;
- (2) licensed or chartered by the state bank commissioner;
- (3) chartered by an agency of the federal government; or
- (4) subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.

(g) "Guardian" means a person appointed by the court pursuant to K.S.A. 59-3050 et seq., and amendments thereto.

(h) "Management contract" means the contract executed by the treasurer and a financial organization selected to act as a depository and manager of the program.

(i) "Member of the family" has the meaning ascribed thereto in section 529A of the federal internal revenue code of 1986, as amended.

(j) "Nonqualified withdrawal" means a withdrawal from an account which is not:

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

(k) "Program" means the Kansas ABLE savings program established pursuant to this act.

(l) "Program manager" means a financial organization selected by the treasurer to act as a depository and manager of the program.

(m) "Qualified disability expense" means any qualified disability expense included in section 529A of the federal internal revenue code of 1986, as amended.

(n) "Qualified withdrawal" means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(o) "Rollover distribution" means a rollover distribution as defined in section 529A of the federal internal revenue code of 1986, as amended.

(p) "Savings agreement" means an agreement between the program manager or the treasurer and the account owner.

(q) "Secretary" means the secretary of the United States treasury.

(r) "Treasurer" means the state treasurer.

New Sec. 11. (a) The treasurer shall implement and administer the program under the terms and conditions established by this act. In furtherance of such implementation and administration, the treasurer shall have the authority and responsibility to:

- (1) Develop and implement the program in a manner consistent with the provisions of this act;
- (2) engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;
- (3) seek rulings and other guidance from the secretary and the federal internal revenue service relating to the program;
- (4) make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529A of the federal internal revenue code of 1986, as amended;
- (5) charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program;
- (6) develop marketing plans and promotion material;
- (7) establish the methods by which the funds held in accounts shall be dispersed;
- (8) establish the method by which funds shall be allocated to pay for administrative costs;

- (9) do all things necessary and proper to carry out the purposes of this act;
- (10) promulgate rules and regulations necessary to effectuate the provisions of this act;
- (11) make an annual evaluation of the ABLE savings program and prepare an annual report of such evaluation to be provided to the governor, the senate and the house of representatives; and
- (12) notify the secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the secretary.

(b) The treasurer may enter into agreements with other states to either allow Kansas residents to participate in a plan operated by another state or to allow residents of other states to participate in the Kansas ABLE program.

New Sec. 12. (a) The treasurer may implement the program through use of financial organizations as account depositories and managers. The treasurer may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The treasurer may select more than one financial organization and investment instrument for the program. The treasurer shall select as program depositories and managers the financial organization, from among the bidding financial organizations, that demonstrates the most advantageous combination, both to potential program participants and this state, of the following factors:

- (1) Financial stability and integrity of the financial organization;
- (2) the safety of the investment instrument being offered;
- (3) the ability of the financial organization to satisfy recordkeeping and reporting requirements;
- (4) the financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;
- (5) the fees, if any, proposed to be charged to the account owners;

(6) the minimum initial deposit and minimum contributions that the financial organization will require;

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

(8) other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The treasurer may enter into any contracts with a financial organization necessary to effectuate the provisions of this act. Any management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of this act and any actions not contrary to its contract to manage the program to qualify as a "qualified ABLE program" as defined in section 529A of the federal internal revenue code of 1986, as amended;

(2) keep adequate records of each account, keep each account segregated from each other account and provide the treasurer with the information necessary to prepare the statements required by section 13, and amendments thereto;

(3) compile and total information contained in statements required to be prepared under section 13, and amendments thereto, and provide such compilations to the treasurer;

(4) if there is more than one program manager, provide the treasurer with such information as is necessary to determine compliance with section 13, and amendments thereto;

(5) provide the treasurer with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this act, and section 529A of the federal internal revenue code of 1986, as amended;

(6) hold all accounts for the benefit of the account owner or owners;

(7) be audited at least annually by a firm of certified public accountants selected by the

program manager and provide the results of such audit to the treasurer;

(8) provide the treasurer with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the treasurer the results of any periodic examination of such manager by any state or federal banking, insurance or securities commission, except to the extent that such report or reports may not be disclosed under law; and

(9) ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of this act.

(c) The treasurer may:

(1) Enter into such contracts as it deems necessary and proper for the implementation of the program;

(2) require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the treasurer has any reason to be concerned about the financial position, the recordkeeping practices or the status of accounts of such program depository and manager; and

(3) terminate or not renew a management agreement. If the treasurer terminates or does not renew a management agreement, the treasurer shall take custody of accounts held by such program manager and shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

(d) The treasurer, the department for children and families, the department of health and environment and the department for aging and disability services are authorized to exchange data regarding eligible individuals to carry out the purposes of this act.

New Sec. 13. (a) Any ABLE savings accounts established pursuant to the provisions of this act shall be opened by a designated beneficiary or a conservator or guardian of a designated beneficiary who lacks capacity to enter into a contract and each beneficiary may have only one account. The treasurer may establish a nonrefundable application fee. An application for such account shall be in the form prescribed by the treasurer and contain the:

(1) Name, address and social security number of the account owner;

(2) name, address and social security number of the designated beneficiary, if the account owner is the beneficiary's conservator or guardian;

(3) certification relating to no excess contributions; and

(4) additional information as the treasurer may require.

(b) Any person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by section 529A of the federal internal revenue code of 1986, as amended, or any rules and regulations promulgated by the secretary pursuant to this act.

(c) Contributions to ABLE savings accounts only may be made in cash. The treasurer or program manager shall reject or promptly withdraw contributions:

(1) In excess of the limits established pursuant to subsection (b); or

(2) the total contributions if the:

(A) Value of the account is equal to or greater than the account maximum established by the treasurer. Such account maximum must be equal to the account maximum for postsecondary education savings accounts established pursuant to K.S.A. 75-640 et seq., and amendments thereto; or

(B) designated beneficiary is not an eligible individual in the current calendar year.

(d) (1) An account owner may:

(A) Change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary in accordance with procedures established by the treasurer;

and

(B) transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in section 529A of the federal internal revenue code of 1986, as amended.

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

(e) (1) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, such distribution shall be reported to the federal internal revenue service and each account owner, the designated beneficiary or the distributee to the extent required by state or federal law.

(2) Statements shall be provided to each account owner at least four times each year within 30 days after the end of the three-month period to which a statement relates. The statement shall identify the contributions made during the preceding three-month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period and any other information that the treasurer shall require to be reported to the account owner.

(3) Statements and information relating to accounts shall be prepared and filed to the extent required by this act and any other state or federal law.

(f) (1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be imposed upon the account owner for the maintenance of an account.

(2) Moneys in an ABLE savings account:

(A) Shall be exempt from attachment, execution or garnishment as provided by K.S.A. 60-2308, and amendments thereto; and

(B) may be claimed by the Kansas medicaid plan only after the death of the designated

beneficiary subject to limitations imposed by the secretary.

New Sec. 14. (a) Nothing in this act shall create or be construed to create any obligation of the treasurer, the state or any agency or instrumentality of the state to guarantee for the benefit of any account owner or designated beneficiary with respect to the:

- (1) Return of principal;
- (2) rate of interest or other return on any account; or
- (3) payment of interest or other return on any account.

(b) The treasurer may promulgate rules and regulations to provide that every contract, application or other similar document that may be used in connection with opening an account clearly indicates that the account is not insured by the state and that the principal deposited and the investment return are not guaranteed by the state.

New Sec. 15. (a) The Kansas ABLE savings program trust fund is hereby established in the state treasury. The fund shall be utilized if the treasurer elects to accept deposits from contributors rather than have deposits sent directly to the program manager. Such fund shall consist of any moneys deposited by contributors in accordance with this act which are not deposited directly with the program manager. All interest derived from the deposit and investment of moneys in such savings trust fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in such savings trust fund shall remain therein and not be credited or transferred to the state general fund or to any other fund.

(b) (1) The Kansas ABLE savings expense fund is hereby established in the state treasury. The fund shall consist of moneys received from the ABLE savings program manager, or any governmental or private grants and any state general fund appropriations, if any, for the program.

(2) All expenses incurred by the treasurer in developing and administering the ABLE savings program shall be payable from the Kansas ABLE savings expense fund.";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking "banks and banking, financial institutions" and inserting "financial organizations"; in line 3, by striking "branch banking,"; also in line 3, after the semicolon by inserting "enacting the Kansas ABLE savings program;"

Senator _____