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## **An Act To Establish a Tax-free Savings Program for Individuals with Disabilities**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA §156** is enacted to read:

### **§ 156. ABLE ME Savings Program**

- 1. Short title.** This section may be known and cited as "the ABLE ME Savings Program Act."
- 2. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
  - A. "Account" or "ABLE ME savings account" means an individual savings account established in accordance with the provisions of this section that is used for qualified disability expenses.
  - B. "Account owner" means the person who enters into an ABLE ME savings account agreement pursuant to the provisions of this section. The account owner must also be the designated beneficiary, except that 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. "Code" means the United States Internal Revenue Code of 1986, as amended.
  - D. "Conservator" means a person appointed by the court pursuant to Title 18-A, section 5-410.
  - E. "Depository" means the treasurer or a financial organization selected by the treasurer to hold accounts.
  - F. "Designated beneficiary" means a resident of this State whose qualified disability expenses may be paid from the account.
  - G. "Eligible individual" means an individual who is entitled to benefits based on blindness or disability under 42 United States Code, Section 401 et seq. or 42 United States Code, Section 1381 et seq., as amended, and whose blindness or disability occurred before the date on which the individual attained 26 years of age, or an individual who filed a disability certification with the secretary to the secretary's satisfaction for the taxable year.
  - H. "Financial organization" means a credit union or financial institution authorized to do business in this State under Title 9-B that meets standards established by the treasurer, including an organization chartered by an agency of the Federal Government or subject to the jurisdiction and regulation of the United States Securities and Exchange Commission.

I. "Guardian" means a person who has qualified pursuant to court appointment to make decisions regarding the support, care, education, health and welfare of an eligible individual or designated beneficiary.

J. "Management contract" means the contract executed by the treasurer with a financial organization selected to act as a depository or program manager.

K. "Member of the family" has the same meaning as in the Code, Section 529A.

L. "Nonqualified withdrawal" means a withdrawal from an account that is not a qualified withdrawal or rollover distribution.

M. "Program" means the ABLE ME Savings Program established pursuant to this section.

N. "Program manager" means the treasurer or a financial organization selected by the treasurer to act as a manager of the program.

O. "Qualified disability expense" means any qualified disability expense included in the Code, Section 529A.

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

Q. "Rollover distribution" means a rollover distribution as defined in the Code, Section 529A.

R. "Secretary" means the Secretary of the Treasury of the United States.

S. "Treasurer" means the Treasurer of State.

**3. ABLE ME Savings Program established; implementation.** There is established the ABLE ME Savings Program pursuant to the federal Achieving a Better Life Experience Act of 2014 to allow an individual with a disability and the individual's family to save private funds to support the individual and to provide guidelines for the maintenance of individual savings accounts under the program.

A. The treasurer shall implement and administer the program under the terms and conditions specified in this section and shall do all things necessary and proper to carry out the purpose of this section. The treasurer:

(1) May engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;

(2) May seek rulings and other guidance from the secretary and the federal Internal Revenue Service relating to the program;

(3) Shall develop marketing plans and promotional material to advertise and promote the program;

(4) Shall, by February 15th annually, evaluate the program and provide a report to the Governor and the Legislature;

(5) Shall notify the secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the secretary;

(6) May enter into agreements with other states either to allow residents of the State to participate in a plan operated by another state or to allow residents of other states to participate in the ABLE ME Savings Program;

(7) Shall, through rulemaking:

(a) Make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by the Code, Section 529A;

(b) Establish, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program;

(c) Establish the methods by which the funds held in accounts are dispersed; and

(d) Establish the method by which funds are allocated to pay for administrative costs of the program.

Rules adopted pursuant to this subparagraph are routine technical rules pursuant to chapter 375, subchapter 2-A;

(8) Shall select, if acting as the depository or program manager, one or more investment instruments for the program; and

(9) Shall act as a depository or program manager or shall select one or more financial organizations to act as depositories or program managers.

B. The treasurer may use financial organizations as depositories or program managers pursuant to this subsection.

(1) The treasurer may solicit proposals from financial organizations to act as depositories or program managers. A financial organization that submits a proposal shall describe the investment instruments that will be held in accounts.

(2) The treasurer shall make the selection of a financial organization on the basis of a proposal under subparagraph (1) that demonstrates the combination of the following factors most favorable to both potential program participants and this State:

(a) The financial stability and integrity of the financial organization;

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

(c) The ability of the financial organization to satisfy record-keeping and reporting requirements;

(d) The financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;

(e) The fees, if any, proposed to be charged to the account owners;

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

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

(h) 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.

The treasurer may select more than one financial organization to act as a depository or program manager.

(3) The treasurer may enter into a contract with a financial organization selected pursuant to subparagraph (2) to be a depository or program manager. A management contract must include, at a minimum, terms requiring the financial organization acting as a depository or program manager to, as relevant:

(a) Take any action required to keep the program in compliance with requirements of this section and any action not contrary to its management contract to maintain the program as a qualified ABL program as defined in the Code, Section 529A;

(b) 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 subsection 4, paragraph E;

(c) Compile information contained in statements required to be prepared under subsection 4, paragraph E and provide the compilations to the treasurer;

(d) Provide the treasurer with such information as is necessary to determine compliance with subsection 4, paragraph E;

(e) Provide the treasurer with access to its books and records to the extent needed to determine compliance with the management contract, this subsection and the Code, Section 529A;

(f) Hold all accounts for the benefit of the account owner or owners;

(g) Be audited at least annually by a firm of certified public accountants selected by the financial organization and provide the results of the audit to the treasurer;

(h) 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 financial organization shall make available for review by the treasurer the results of any periodic examination of that financial organization 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

(i) Ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plans developed by the treasurer pursuant to paragraph A, subparagraph (3).

(4) As part of a management contract made pursuant to subparagraph (3), the treasurer may:

(a) Require that an audit be conducted of the operations and financial position of the depository or program manager at any time if the treasurer has any reason to be concerned about the financial position, the record-keeping practices or the status of accounts of that depository or program manager; and

(b) Terminate or not renew a management contract. If the treasurer terminates or does not renew a management contract, the treasurer shall take custody of accounts held by that depository or program manager and shall seek to promptly transfer the accounts to another depository or program manager and into investment instruments as similar to the original instruments as possible.

(5) Every contract, application or other similar document that may be used in connection with opening an account must clearly indicate that the account is not insured by the State and that the principal deposited and the investment return are not guaranteed by the State.

C. Notwithstanding any provision of law to the contrary, the treasurer and the Department of Health and Human Services may exchange data regarding eligible individuals to carry out the purposes of this section.

**4. ABLE ME Savings Accounts.** A designated beneficiary or a conservator or guardian of a designated beneficiary who lacks capacity to enter into a contract may open an ABLE ME savings account. A designated beneficiary may have only one account. A designated beneficiary must be an eligible individual at the time the account is established. The account owner may change the designated beneficiary pursuant to paragraph C, subparagraph (1).

A. The treasurer shall establish the application for an ABLE ME savings account, which must require, at a minimum, the following:

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

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

(3) Certification relating to the prohibition against excess contributions as specified in paragraph B.

B. Any person may make a contribution to an ABLE ME savings account after the account is opened, subject to the limitations imposed by the Code, Section 529A and any rules or regulations promulgated by the secretary.

(1) A contribution to an ABLE ME savings account may be made only in cash.

(2) The treasurer, depository or program manager promptly shall reject or withdraw from the ABLE ME savings account and return to the contributor:

(a) Contributions that are in excess of the limits established as specified in this paragraph;  
or

(b) All contributions if:

(i) The value of the account is equal to or greater than the account maximum established by the treasurer, which must be equal to the account maximum for postsecondary education savings accounts under the Maine College Savings Program established in Title 20-A, chapter 417-E; or

(ii) The designated beneficiary is not an eligible individual in the calendar year in which the contribution is made.

C. The rights and duties of an account owner are described in this paragraph.

(1) An account owner may:

(a) Make qualified withdrawals from the account;

(b) 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

(c) Transfer all or a portion of an account to another ABLE ME savings account, the designated beneficiary of which is a member of the family of the prior designated beneficiary.

(2) An account owner may not use an interest in an account as security for a loan. A pledge of an interest in an account in violation of this subparagraph has no legal force or effect.

(3) Money withdrawn from an account by an account owner that is a nonqualified withdrawal is subject to a penalty as established in the Code, Section 529A.

D. When an account owner dies, the account must be transferred to the ownership of the designated beneficiary or, if there is none or if the transfer is not possible, the account must be transferred to the estate of the deceased.

E. In addition to the duties required pursuant to a contract entered into by the treasurer and a depository or program manager, a depository or program manager shall:

(1) Provide a statement to an account owner at least 4 times each year within 30 days after the end of the 3-month period to which a statement relates. The statement must set out for the preceding 3-month period:

(a) Each individual contribution made to the account;

(b) The total contributions made to the account;

(c) The value of the account at the end of that period;

(d) Distributions made from the account; and

(e) Any other information that the treasurer requires to be reported to the account owner.

Statements and information relating to accounts must be prepared and filed to the extent required by this section and any other state or federal law;

(2) If there is a distribution from an account to an eligible individual or for the benefit of an eligible individual during a calendar year, report the distribution 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; and

(3) Provide separate accounting for each designated beneficiary.

F. Fees may be charged pursuant to this paragraph.

(1) The treasurer may establish a nonrefundable application fee.

(2) The treasurer may charge a depository or program manager an administrative fee as established by rule pursuant to subsection 3, paragraph A, subparagraph (7).

(3) The depository or program manager may charge the account owner an annual fee for the maintenance of an ABLE ME savings account only if the fee has been set pursuant to the management contract entered into between the treasurer and the depository or program manager.

All fees collected by the treasurer pursuant to subparagraphs (1) and (2) must be deposited in the ABLE ME Savings Expense Fund established in subsection 8 and used for the administrative expenses of the program.

G. A dispute between the account owner and the depository or program manager may be appealed to the treasurer. An adverse decision of the treasurer may be appealed to the Superior Court pursuant to chapter 375, subchapter 7.

**5. Treatment of funds in an ABLE ME savings account.** The treatment of funds in an ABLE ME savings account is specified in this subsection.

A. Account balances and qualified withdrawals are exempt from taxation pursuant to Title 36, chapter 803.

B. Account balances are exempt from attachment, execution or garnishment.

C. Account balances may be claimed by the Department of Health and Human Services as an offset against MaineCare costs only after the death of the designated beneficiary and subject to limitations imposed by the secretary.

**6. Obligation of the State.** This section may not 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 the return of principal, rate of interest or payment of interest or other return on any account.

**7. ABLE ME Savings Program Trust Fund.** The ABLE ME Savings Program Trust Fund, referred to in this subsection as "the trust fund," is established in the office of the treasurer. The treasurer may use the trust fund if the treasurer elects to accept deposits from contributors rather than have deposits sent directly to the depository or program manager. The trust fund consists of any money deposited by contributors in accordance with this section that is not deposited directly with the depository or program manager. All interest derived from the deposit and investment of money in the trust fund must be credited to the trust fund. Unexpended and unencumbered balances do not lapse but must be carried forward for the purposes of this section.

**8. ABLE ME Savings Expense Fund.** The ABLE ME Savings Expense Fund, referred to in this subsection as "the expense fund," is established in the office of the treasurer. The expense fund consists of funds received from the depository or program manager pursuant to subsection 4, paragraph F or any governmental or private grants and any General Fund appropriations for the program.

All expenses incurred by the treasurer in developing and administering the ABLE ME Savings Program are payable from the expense fund.

## **SUMMARY**

Under the federal Achieving a Better Life Experience Act of 2014, also known as the "ABLE Act," individuals with disabilities and the families of those individuals may establish federal tax exempt savings accounts and use the funds from those accounts to pay for the care of the individual with a disability, similar to so-called 529 accounts that allow tax-deferred savings for college expenses.

This bill establishes the ABLE ME Savings Program, based on the federal Act, to allow individuals with disabilities who are residents of Maine or their families to establish savings accounts to be used for qualified disability expenses. Contributions made to the accounts are tax-deferred; withdrawals for qualified disability expenses, as well as the earnings of the account, are tax exempt. The program is administered by the Treasurer of State in compliance with the federal Act. The Treasurer of State is authorized to contract with financial organizations to serve as depositories or managers of the program.

The program is open to an individual who is blind or disabled and whose blindness or disability occurred before the date on which the individual attained 26 years of age and to an individual who filed a disability certification to the satisfaction of the Secretary of the Treasury of the United States. Qualified disability expenses are defined in federal law and include expenses on behalf of a qualified individual for education, housing, transportation, employment training and support, assistive technology and personal support services and legal fees.

The Treasurer of State is required to establish, impose and collect fees for the administration of the program. These fees may be imposed on a depository or program manager contracted with by the treasurer and, pursuant to the contract between the treasurer and the depository or program manager, on the account holders for the maintenance of the accounts. The fees collected by the treasurer must be used for the administrative expenses of the treasurer.