

SENATE BILL NO. 104

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY SENATOR GIESSEL

Introduced: 4/11/15

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to financial accounts for persons with disabilities; relating to financial**
2 **institutions; relating to property exemptions; relating to securities; and providing for an**
3 **effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 SHORT TITLE. AS 06.65, enacted by sec. 2 of this Act, may be cited as the Alaska
8 ABLE Savings Program Act.

9 * **Sec. 2.** AS 06 is amended by adding a new chapter to read:

10 **Chapter 65. Alaska Savings Program for Eligible Individuals.**

11 **Sec. 06.65.010. Program authorized.** The Alaska savings program for eligible
12 individuals is created in the department. The department shall implement and
13 administer the program under this chapter and as required by the federal authorizing
14 law.

1 **Sec. 06.65.020. Department authority.** To implement and administer the
2 program, the department may, in addition to the other authority provided to the
3 department under this chapter,

4 (1) contract with a person to advise and assist the department to
5 implement the program;

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

8 (3) change the program as required for participants in the program
9 to obtain the federal income tax treatment provided by the federal authorizing
10 statute;

11 (4) charge, impose, and collect fees for administering the program
12 or in connection with a contract or other transaction relating to the program;

13 (5) develop marketing plans and material to promote the program;

14 (6) establish a method for the allocation of money to pay for the
15 administrative costs of the program;

16 (7) notify the secretary when a program account has been opened
17 for a designated beneficiary and submit reports on the program as required by the
18 secretary and this chapter.

19 **Sec. 06.65.030. Contracts with financial institutions.** The department
20 may contract with one or more financial institutions to provide one or more types
21 of program accounts.

22 **Sec. 06.65.040. Procurement code.** The department shall comply with
23 AS 36.30 (State Procurement Code) when the department procures a contract
24 under AS 06.65.030.

25 **Sec. 06.65.050. Procurement specifications.** (a) When procuring a
26 contract under AS 06.65.030, the department shall require a person responding to
27 the solicitation for the contract to describe the types of program accounts that the
28 person is offering.

29 (b) When determining the financial institution offer that is the most
30 advantageous to the state, the department shall consider, in addition to the other
31 requirements of AS 36.30,

- 1 (1) the financial stability and integrity of the financial organization;
- 2 (2) the safety of the types of program accounts being offered;
- 3 (3) the ability of the financial organization to satisfy the record-
- 4 keeping and reporting requirements of the program;
- 5 (4) the plan of the financial organization for promoting the program
- 6 and the investment the financial organization is willing to make to promote the
- 7 program;
- 8 (5) the fees, if any, that the financial institution will charge the
- 9 program account owners;
- 10 (6) the minimum contribution amount that the financial institution
- 11 will require for the initial deposit into the program account and the minimum
- 12 contribution amount that the financial organization will require or accept after the
- 13 initial deposit;
- 14 (7) the ability of the financial organization to accept electronic
- 15 payments, including payroll deductions, for a program account; and
- 16 (8) other benefits to the state or state residents included in the
- 17 proposal of a financial institution, including fees that the financial institution will
- 18 pay to the department to cover expenses of the department's operation of the
- 19 program.

20 **Sec. 06.65.060. Financial contractor obligations.** In addition to any other

21 obligations imposed by the contract with the department, a financial contractor

22 shall

- 23 (1) provide program accounts that comply with the federal
- 24 authorizing law;
- 25 (2) take the action necessary to keep the program in compliance
- 26 with the requirements of this chapter and to manage the program accounts in
- 27 compliance with the federal authorizing law;
- 28 (3) keep adequate records of each program account and keep each
- 29 program account segregated from other program accounts;
- 30 (4) compile the information contained in statements required to be
- 31 prepared under AS 06.65.200 and provide the statements and the compiled

1 material to the department;

2 (5) provide the department with access to the books and records of
3 the financial contractor to the extent needed to determine compliance with the
4 contract, this chapter, and the federal authorizing law;

5 (6) hold program accounts for the benefit of the program account
6 owner;

7 (7) be audited at least annually by a firm of certified public
8 accountants selected by the department and provide the results of the audits to the
9 department;

10 (8) provide the department with copies of all filings and reports
11 related to the program made by the financial contractor during the contract or
12 while the financial contractor holds program accounts;

13 (9) make available to the department for review the results of
14 periodic examinations of the financial contractor by a state or federal banking,
15 insurance, or securities agency, except to the extent that the report is confidential
16 under state or federal law; and

17 (10) ensure that the descriptions of the program in the media that
18 the financial contractor uses to promote the program are consistent with a
19 marketing plan developed by the department for the program.

20 **Sec. 06.65.070. Additional audits.** In addition to the annual audit required
21 by AS 06.65.060(7), the department may require a financial contractor to have an
22 audit conducted of the financial contractor's operations and financial position
23 when the department is concerned about the financial position, the record-keeping
24 practices, or the status of the program accounts of the financial contractor.

25 **Sec. 06.65.080. Contract termination; nonrenewal.** The department may
26 terminate or fail to renew a financial contract. If the department terminates or does
27 not renew a contract with a financial contractor, the department shall take custody
28 of the program accounts held by the financial contractor and transfer the program
29 accounts to another financial contractor as soon as possible and into program
30 accounts that are as similar as possible to the types of program accounts being
31 transferred.

1 **Sec. 06.65.090. Eligible individuals.** To be eligible for a program account,
 2 when an individual or the individual's representative establishes the program
 3 account or makes a distribution to another program account under AS 06.65.190,
 4 the individual shall

5 (1) have established residency in this state under AS 01.10.055;

6 (2) be an individual who is entitled to benefits based on blindness
 7 or disability under 42 U.S.C. 401 - 434 or 42 U.S.C. 1381 - 1383f, and the
 8 blindness or disability occurred before the date on which the individual reached
 9 the age of 26; and

10 (3) be an individual for whom a disability certification, which
 11 satisfies the secretary and the federal authorizing law, is filed with the secretary
 12 for the calendar year in which the eligible individual or the eligible individual's
 13 representative opens the program account.

14 **Sec. 06.65.100. Representative of eligible individual.** (a) A person may act as
 15 the representative of an eligible individual under this chapter if the eligible individual
 16 is a minor or lacks decision-making capacity and if the person is

17 (1) a parent, guardian, or conservator of the eligible individual; in
 18 this paragraph,

19 (A) "conservator" has the meaning given in AS 13.06.050;

20 (B) "guardian" has the meaning given in AS 13.06.050;

21 (C) "parent" includes a stepparent; or

22 (2) a trustee of the property of the eligible individual.

23 (b) The representative of an eligible individual may establish a program
 24 account for the eligible individual, and the eligible individual is the designated
 25 beneficiary of the program account. The representative shall manage the program
 26 account for the benefit of the designated beneficiary.

27 (c) In this section, "decision-making capacity" means the ability to
 28 understand and appreciate the nature and consequences of a decision and the
 29 ability to reach and communicate an informed decision.

30 **Sec. 06.65.110. Program account ownership.** (a) The owner of a program
 31 account is the designated beneficiary of the program account.

1 (b) If a representative of an eligible individual establishes a program account
 2 for an eligible individual, the representative is not an owner of the program account
 3 and does not have or acquire an interest in the assets of the program account.

4 **Sec. 06.65.120. Number of program accounts.** An eligible individual
 5 may not be the designated beneficiary on more than one program account.

6 **Sec. 06.65.130. Program account application.** The application for a
 7 program account must be in the form established by the department and contain

8 (1) the name, address, and social security number of the program
 9 account owner and the representative who opens the program account for the
 10 eligible individual;

11 (2) the name, address, and social security number of the designated
 12 beneficiary and the representative who opens the program account for the eligible
 13 individual;

14 (3) certification that the program account owner has not contributed
 15 an amount that exceeds the program account limits set under AS 06.65.150; and

16 (4) additional information that the department and the secretary
 17 determine is necessary.

18 **Sec. 06.65.140. Program account establishment fee.** The financial
 19 contractor may charge an eligible individual a nonrefundable fee for establishing a
 20 program account. The department shall establish the amount of the fee by contract
 21 with the financial contractor or by regulation.

22 **Sec. 06.65.150. Program account contributions.** (a) A person may not
 23 make a contribution to open or add to a program account unless the person makes
 24 the contribution in cash.

25 (b) Any person may make a contribution to a program account after the
 26 program account is opened, but the amount that the person may contribute is
 27 subject to the limits set by the federal authorizing law.

28 (c) The department or the financial contractor shall reject or withdraw
 29 from a program account

30 (1) that part of a contribution that exceeds the limit established
 31 under (b) of this section; or

1 (2) the total amount of a contribution, if the department or the
2 financial contractor determines that

3 (A) the value of the program account without the
4 contribution is equal to or greater than the maximum limit established by
5 the federal authorizing statute for the program account; or

6 (B) the designated beneficiary is not an eligible individual
7 during the calendar year in which the contribution is made.

8 (d) If a person makes a distribution from a program account during a
9 calendar year, the financial contractor shall report the distribution to the federal
10 Internal Revenue Service and to the account owner or the representative of the
11 account owner.

12 (e) The report under (d) of this section must include the distribution
13 information required by state and federal law.

14 **Sec. 06.65.160. Limited investment direction.** A designated beneficiary
15 or the designated beneficiary's representative may not, directly or indirectly, direct
16 the investment of a program account, including the earnings on the program
17 account, more than twice in one calendar year.

18 **Sec. 06.65.170. Change of designated beneficiary.** A designated
19 beneficiary or the designated beneficiary's representative may change the
20 designated beneficiary of an account to an eligible individual who is a member of
21 the family of the previous designated beneficiary.

22 **Sec. 06.65.180. Distributions for qualified expenses.** Except as allowed
23 under AS 06.65.190, a designated beneficiary or the representative of the
24 designated beneficiary may not make a withdrawal or other distribution from a
25 program account unless the withdrawal or other distribution is used to pay for the
26 qualified expenses of the designated beneficiary.

27 **Sec. 06.65.190. Rollover distribution.** (a) Subject to the restrictions in the
28 federal authorizing law for rollover distributions, a designated beneficiary or the
29 designated beneficiary's representative may make a distribution of the money in a
30 program account to another program account if the designated beneficiary of the
31 program account to which the distribution is being made is

1 (1) the same eligible individual; or

2 (2) an eligible individual who is a member of the family of the
3 designated beneficiary from whom the distribution is made.

4 (b) To qualify as a distribution allowed under (a) of this section, the
5 designated beneficiary or the designated beneficiary's representative shall make
6 the distribution to the other program account before the 60th day after the
7 designated beneficiary or the designated beneficiary's representative makes the
8 distribution from the program account.

9 **Sec. 06.65.200. Statements.** (a) A financial contractor shall provide
10 program account statements to the department, the secretary, and the designated
11 beneficiary of each program account established with the financial contractor at
12 least four times each calendar year and within 30 days after the end of the three-
13 month period to which the statement relates.

14 (b) The statements required by (a) of this section must

15 (1) identify each contribution made to the program account during
16 the reporting period;

17 (2) give the total amount of the contributions made to the program
18 account during the reporting period;

19 (3) give the value of the program account at the end of the
20 reporting period;

21 (4) identify each distribution made from the program account
22 during the reporting period;

23 (5) identify contributions that exceed the limits set by the federal
24 authorizing law; and

25 (6) provide other information that the department or the secretary
26 requires to be included in the report.

27 **Sec. 06.65.210. Preparation and filing.** In addition to the other reporting
28 requirements of this chapter, a program depository shall prepare and file
29 statements and program account information as required by state and federal law.

30 **Sec. 06.65.220. Separate accounting.** A financial contractor shall provide
31 separate accounting for each program account established with the financial

1 contractor.

2 **Sec. 06.65.230. Annual fee.** A financial contractor may impose an annual
3 fee on the program account owner for the maintenance of a program account.

4 **Sec. 06.65.240. Use as security.** A person may not use a program account
5 or an interest in a program account as security for a loan. If a person pledges a
6 program account or an interest in a program account as security for a loan, the
7 pledge is void.

8 **Sec. 06.65.250. Exemption from creditor claims.** The money in a
9 program account and money paid out of a program account are exempt from a
10 claim by the creditors of the designated beneficiary of the program account.

11 **Sec. 06.65.260. No state obligation.** (a) This chapter may not be construed
12 to create an obligation of the state, the department, or an agency or instrumentality
13 of the state to guarantee for the benefit of a designated beneficiary

14 (1) the return of the principal deposited in the program account;

15 (2) a rate of interest or other return on the principal in a program
16 account; or

17 (3) the payment of interest or other return on the principal in a
18 program account.

19 (b) Every contract, application, and other document that may be used in
20 connection with opening a program account must clearly state that the state does
21 not insure a program account or guarantee the items described in (a) of this
22 section.

23 **Sec. 06.65.270. Confidentiality.** The department and the Department of
24 Health and Social Services shall maintain the confidentiality of the information
25 they receive or exchange under this chapter about eligible individuals, designated
26 beneficiaries, and program accounts as required by state and federal law.

27 **Sec. 06.65.280. Exchange of information.** The department may exchange
28 information with the Department of Health and Social Services to determine
29 whether an individual is an eligible individual.

30 **Sec. 06.65.290. Contracts with other states.** (a) Notwithstanding the other
31 provisions of this chapter, instead of establishing the program in this state, the

1 department may enter into a contract with another state to allow the residents of
 2 this state to participate in a program established by another state under the federal
 3 authorizing law.

4 (b) The department may enter into a contract with another state to allow
 5 the residents of that contracting state to participate in the program in this state.

6 (c) The procurement of a contract under this section is not subject to
 7 AS 36.30 (State Procurement Code).

8 **Sec. 06.65.300. Program expense fund.** (a) The program expense fund is
 9 established as a separate fund of the state in the general fund.

10 (b) The program expense fund consists of money appropriated to the fund
 11 to pay the expenses of the program.

12 (c) The department shall pay the expenses incurred by the department to
 13 implement and administer the program from the program expense fund.

14 (d) The department shall manage the fund.

15 (e) Except as provided otherwise by the appropriation for the money, the
 16 money remaining in the program expense fund at the end of a fiscal year does not
 17 lapse and remains available for expenditure under this section in successive fiscal
 18 years.

19 **Sec. 06.65.310. Regulations.** The department shall adopt regulations under
 20 AS 44.62 (Administrative Procedure Act) to implement this chapter.

21 **Sec. 06.65.320. Annual report.** The department shall evaluate the program
 22 each year. The department shall submit an annual report containing the evaluation
 23 to the senate secretary and chief clerk of the house of representatives on or before
 24 the first day of each regular session of the legislature and shall notify the
 25 legislature that the report is available.

26 **Sec. 06.65.390. Definitions.** In this chapter,

27 (1) "department" means the Department of Commerce,
 28 Community, and Economic Development;

29 (2) "designated beneficiary" means the eligible individual for
 30 whom a program account for qualified expenses is established under this chapter;

31 (3) "eligible individual" means an individual who is eligible under

1 AS 06.65.090;

2 (4) "federal authorizing law" means 26 U.S.C. 529A (Internal
3 Revenue Code) and the regulations issued under that statute;

4 (5) "financial contractor" means a financial institution that enters
5 into a contract with the department under AS 06.65.030;

6 (6) "financial institution" means a person that provides financial
7 services and is

8 (A) organized under this title or authorized to do business in
9 the state under this title;

10 (B) chartered by an agency of the federal government; or

11 (C) subject to the jurisdiction and regulation of the United
12 States Securities and Exchange Commission;

13 (7) "member of the family" has the meaning given in the federal
14 authorizing statute;

15 (8) "program" means the Alaska savings program for eligible
16 individuals established under AS 06.65.010;

17 (9) "program account" means a savings account used by the
18 program to meet the qualified disability expenses of the designated beneficiary of
19 the account;

20 (10) "program account owner" means the designated beneficiary of
21 a program account;

22 (11) "qualified expense" means a qualified disability expense as
23 defined by the federal authorizing law;

24 (12) "representative" means a person who is a representative of an
25 eligible individual under AS 06.65.100(a);

26 (13) "savings account" means a financial account;

27 (14) "secretary" means the United States Secretary of the Treasury.

28 * **Sec. 3.** AS 09.38.015(a) is amended to read:

29 (a) An individual is entitled to exemption of the following property:

30 (1) a burial plot for the individual and the individual's family;

31 (2) health aids reasonably necessary to enable the individual or a

1 dependent to work or to sustain health;

2 (3) benefits paid or payable for medical, surgical, or hospital care to
3 the extent they are or will be used to pay for the care;

4 (4) an award under AS 18.67 (Violent Crimes Compensation Board) or
5 a crime victim's reparations act of another jurisdiction;

6 (5) benefits paid or payable as a longevity bonus under AS 47.45;

7 (6) compensation or benefits paid or payable and exempt under federal
8 law;

9 (7) liquor licenses granted under AS 04;

10 (8) tuition credit or savings accounts under a higher education savings
11 account established under AS 14.40.802 or an advance college tuition savings contract
12 authorized under AS 14.40.809(a);

13 (9) a permanent fund dividend to the extent allowed under
14 AS 43.23.065;

15 (10) [REPEALED

16 (11)] benefits paid or payable under AS 47.45.301 - 47.45.309;

17 **(11) the money in or paid from a program account established**
18 **under AS 06.65, including interest.**

19 * **Sec. 4.** AS 40.25.120(a) is amended to read:

20 (a) Every person has a right to inspect a public record in the state, including
21 public records in recorders' offices, except

22 (1) records of vital statistics and adoption proceedings, which shall be
23 treated in the manner required by AS 18.50;

24 (2) records pertaining to juveniles unless disclosure is authorized by
25 law;

26 (3) medical and related public health records;

27 (4) records required to be kept confidential by a federal law or
28 regulation or by state law;

29 (5) to the extent the records are required to be kept confidential under
30 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure
31 or retain federal assistance;

1 (6) records or information compiled for law enforcement purposes, but
2 only to the extent that the production of the law enforcement records or information

3 (A) could reasonably be expected to interfere with enforcement
4 proceedings;

5 (B) would deprive a person of a right to a fair trial or an
6 impartial adjudication;

7 (C) could reasonably be expected to constitute an unwarranted
8 invasion of the personal privacy of a suspect, defendant, victim, or witness;

9 (D) could reasonably be expected to disclose the identity of a
10 confidential source;

11 (E) would disclose confidential techniques and procedures for
12 law enforcement investigations or prosecutions;

13 (F) would disclose guidelines for law enforcement
14 investigations or prosecutions if the disclosure could reasonably be expected to
15 risk circumvention of the law; or

16 (G) could reasonably be expected to endanger the life or
17 physical safety of an individual;

18 (7) names, addresses, and other information identifying a person as a
19 participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the
20 advance college tuition savings program under AS 14.40.803 - 14.40.817;

21 (8) public records containing information that would disclose or might
22 lead to the disclosure of a component in the process used to execute or adopt an
23 electronic signature if the disclosure would or might cause the electronic signature to
24 cease being under the sole control of the person using it;

25 (9) reports submitted under AS 05.25.030 concerning certain
26 collisions, accidents, or other casualties involving boats;

27 (10) records or information pertaining to a plan, program, or
28 procedures for establishing, maintaining, or restoring security in the state, or to a
29 detailed description or evaluation of systems, facilities, or infrastructure in the state,
30 but only to the extent that the production of the records or information

31 (A) could reasonably be expected to interfere with the

1 implementation or enforcement of the security plan, program, or procedures;

2 (B) would disclose confidential guidelines for investigations or
3 enforcement and the disclosure could reasonably be expected to risk
4 circumvention of the law; or

5 (C) could reasonably be expected to endanger the life or
6 physical safety of an individual or to present a real and substantial risk to the
7 public health and welfare;

8 (11) the written notification regarding a proposed regulation provided
9 under AS 24.20.105 to the Department of Law and the affected state agency and
10 communications between the Legislative Affairs Agency, the Department of Law, and
11 the affected state agency under AS 24.20.105;

12 (12) records that are

13 (A) proprietary, privileged, or a trade secret in accordance with
14 AS 43.90.150 or 43.90.220(e);

15 (B) applications that are received under AS 43.90 until notice is
16 published under AS 43.90.160;

17 (13) information of the Alaska Gasline Development Corporation
18 created under AS 31.25.010 or a subsidiary of the Alaska Gasline Development
19 Corporation that is confidential by law or under a valid confidentiality agreement;

20 (14) information under AS 38.05.020(b)(11) that is subject to a
21 confidentiality agreement under AS 38.05.020(b)(12);

22 **(15) names, addresses, and other information identifying a person**
23 **as a participant in the Alaska savings program for eligible individuals under**
24 **AS 06.65.**

25 * **Sec. 5.** AS 45.55.990(32) is amended to read:

26 (32) "security" means a note; stock; treasury stock; bond; debenture;
27 evidence of indebtedness; certificate of interest or participation in any profit-sharing
28 agreement; limited liability company interest under AS 10.50, notwithstanding the
29 limitations of AS 45.08.103(c); collateral-trust certificate; preorganization certificate
30 or subscription; transferable share; investment contract; voting-trust certificate;
31 certificate of deposit for a security; viatical settlement interest; certificate of interest or

1 participation in an oil, gas, or mining title or lease or in payments out of production
 2 under the title or lease or in any sale of or indenture or bond or contract for the
 3 conveyance of land or any interest in land; an option on a contract for the future
 4 delivery of agricultural or mineral commodities or any other commodity offered or
 5 sold to the public and not regulated by the Commodity Futures Trading Commission;
 6 however, the contract or option is not subject to the provisions of AS 45.55.070 if it is
 7 sold or purchased on the floor of a bona fide exchange or board of trade and offered or
 8 sold to the public by a broker-dealer or agent registered under this chapter; investment
 9 of money or money's worth including goods furnished or services performed in the
 10 risk capital of a venture with the expectation of some benefit to the investor where the
 11 investor has no direct control over the investment or policy decision of the venture; or,
 12 in general, any interest or instrument commonly known as a "security," or any
 13 certificate of interest or participation in, temporary or interim certificate for, receipt
 14 for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing;
 15 "security" does not include a participation agreement entered into under AS 14.40.802,
 16 a program account established under AS 06.65, or an insurance or endowment
 17 policy or annuity contract under which an insurance company promises to pay a fixed
 18 or variable sum of money either in a lump sum or periodically for life or for some
 19 other specified period;

20 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
 21 read:

22 TRANSITION. The Department of Commerce, Community, and Economic
 23 Development shall file its first report required by AS 06.65.320, added by sec. 2 of this Act,
 24 on or before the first day of each regular session of the legislature.

25 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
 26 read:

27 TRANSITION: REGULATIONS. The Department of Commerce, Community, and
 28 Economic Development may adopt regulations authorized by AS 06.65.310, added by sec. 2
 29 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but
 30 not before the effective date of sec. 2 of this Act.

31 * **Sec. 8.** Section 7 of this Act takes effect immediately under AS 01.10.070(c).