

As Amended by House Committee

Session of 2015

HOUSE BILL No. 2100

By Committee on Children and Seniors

1-23

1 AN ACT concerning the state treasurer; relating to financial institutions;  
2 creating tax deferred savings accounts for individuals with disabilities.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. There is hereby established an enabling savings program  
6 and such program shall be known and may be cited as the Kansas ABLE  
7 savings program. The purpose of the Kansas ABLE savings program is to  
8 authorize the establishment of savings accounts empowering individuals  
9 with a disability and their families to save private funds to support the  
10 individual with a disability and to provide guidelines for the maintenance  
11 of such accounts.

12 Sec. 2. As used in this act:

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

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

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

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

27 ~~(d)~~ **(e)** "Eligible individual" means an individual who is entitled to  
28 benefits based on blindness or disability under 42 U.S.C. § 401 et seq. or  
29 42 U.S.C. § 1381 et seq., as amended, and such blindness or disability  
30 occurred before the date on which the individual attained age 26, or an  
31 individual who filed a disability certification, to the satisfaction of the  
32 secretary, with the secretary for such taxable year.

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

- 35 (1) Licensed or chartered by the commissioner of insurance;  
36 (2) licensed or chartered by the state bank commissioner;

1 (3) chartered by an agency of the federal government; or

2 (4) subject to the jurisdiction and regulation of the securities and  
3 exchange commission of the federal government.

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

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

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

11 ~~(h)~~ **(j) "Nonqualified withdrawal"** means a withdrawal from an  
12 account which is not:

13 (1) A qualified withdrawal; or

14 (2) a rollover distribution.

15 ~~(g)~~ **(k) "Program"** means the Kansas ABLE savings program  
16 established pursuant to this act.

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

19 ~~(e)~~ **(m) "Qualified disability expense"** means any qualified disability  
20 expense included in section 529A of the federal internal revenue code of  
21 1986, as amended.

22 ~~(d)~~ **(n) "Qualified withdrawal"** means a withdrawal from an account to  
23 pay the qualified disability expenses of the designated beneficiary of the  
24 account.

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

28 ~~(b)~~ **(p) "Savings agreement"** means an agreement between the  
29 program manager or the treasurer and the account owner.

30 ~~(a)~~ **(q) "Secretary"** means the secretary of the United States treasury.

31 ~~(z)~~ **(r) "Treasurer"** means the state treasurer.

32 Sec. 3. (a) The treasurer shall implement and administer the program  
33 under the terms and conditions established by this act. In furtherance of  
34 such implementation and administration, the treasurer shall have the  
35 authority and responsibility to:

36 (1) Develop and implement the program in a manner consistent with  
37 the provisions of this act;

38 (2) engage the services of consultants on a contract basis for  
39 rendering professional and technical assistance and advice;

40 (3) seek rulings and other guidance from the secretary and the federal  
41 internal revenue service relating to the program;

42 (4) make changes to the program required for the participants in the  
43 program to obtain the federal income tax benefits or treatment provided by

1 section 529A of the federal internal revenue code of 1986, as amended;

2 (5) charge, impose and collect administrative fees and service charges  
3 in connection with any agreement, contract or transaction relating to the  
4 program;

5 (6) develop marketing plans and promotion material;

6 (7) establish the methods by which the funds held in accounts shall be  
7 dispersed;

8 (8) establish the method by which funds shall be allocated to pay for  
9 administrative costs;

10 (9) do all things necessary and proper to carry out the purposes of this  
11 act;

12 (10) promulgate rules and regulations necessary to effectuate the  
13 provisions of this act;

14 (11) make an annual evaluation of the ABLE savings program and  
15 prepare an annual report of such evaluation to be provided to the governor,  
16 the senate and the house of representatives; and

17 (12) notify the secretary when an account has been opened for a  
18 designated beneficiary and submit other reports concerning the program  
19 required by the secretary.

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

24 Sec. 4. (a) The treasurer may implement the program through use of  
25 financial organizations as account depositories and managers. The  
26 treasurer may solicit proposals from financial organizations to act as  
27 depositories and managers of the program. Financial organizations  
28 submitting proposals shall describe the investment instruments which will  
29 be held in accounts. The treasurer may select more than one financial  
30 organization and investment instrument for the program. The treasurer  
31 shall select as program depositories and managers the financial  
32 organization, from among the bidding financial organizations, that  
33 demonstrates the most advantageous combination, both to potential  
34 program participants and this state, of the following factors:

35 (1) Financial stability and integrity of the financial organization;

36 (2) the safety of the investment instrument being offered;

37 (3) the ability of the financial organization to satisfy recordkeeping  
38 and reporting requirements;

39 (4) the financial organization's plan for promoting the program and  
40 the investment the organization is willing to make to promote the program;

41 (5) the fees, if any, proposed to be charged to the account owners;

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

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

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

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

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

14 (2) keep adequate records of each account, keep each account  
15 segregated from each other account and provide the treasurer with the  
16 information necessary to prepare the statements required by section 5, and  
17 amendments thereto;

18 (3) compile and total information contained in statements required to  
19 be prepared under section 5, and amendments thereto, and provide such  
20 compilations to the treasurer;

21 (4) if there is more than one program manager, provide the treasurer  
22 with such information as is necessary to determine compliance with  
23 section 5, and amendments thereto;

24 (5) provide the treasurer with access to the books and records of the  
25 program manager to the extent needed to determine compliance with the  
26 contract, this act, and section 529A of the federal internal revenue code of  
27 1986, as amended;

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

29 (7) be audited at least annually by a firm of certified public  
30 accountants selected by the program manager and provide the results of  
31 such audit to the treasurer;

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

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

1 (c) The treasurer may:

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

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

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

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

19 Sec. 5. (a) Any ABLE savings accounts established pursuant to the  
20 provisions of this act shall be opened by a designated beneficiary or a  
21 ~~trustee~~ **conservator** or guardian of a designated beneficiary who lacks  
22 capacity to enter into a contract and each beneficiary may have only one  
23 account. The treasurer may establish a nonrefundable application fee. An  
24 application for such account shall be in the form prescribed by the  
25 treasurer and contain the:

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

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

30 (3) certification relating to no excess contributions; and

31 (4) additional information as the treasurer may require.

32 (b) Any person may make contributions to an ABLE savings account  
33 after the account is opened, subject to the limitations imposed by section  
34 529A of the federal internal revenue code of 1986, as amended, or any  
35 rules and regulations promulgated by the secretary pursuant to this act.

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

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

40 (2) the total contributions if the:

41 (A) Value of the account is equal to or greater than the account  
42 maximum established by the treasurer. Such account maximum must be  
43 equal to the account maximum for postsecondary education savings

1 accounts established pursuant to K.S.A. 75-640 et seq., and amendments  
2 thereto; or

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

5 (d) (1) An account owner may:

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

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

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

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

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

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

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

35 (2) Moneys in an ABLÉ savings account:

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

38 (B) may be claimed by the Kansas medicaid plan **only after the**  
39 **death of the designated beneficiary** subject to limitations imposed by the  
40 secretary.

41 Sec. 6. (a) Nothing in this act shall create or be construed to create  
42 any obligation of the treasurer, the state or any agency or instrumentality  
43 of the state to guarantee for the benefit of any account owner or designated

1 beneficiary with respect to the:

2 (1) Return of principal;

3 (2) rate of interest or other return on any account; or

4 (3) payment of interest or other return on any account.

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

10 Sec. 7. (a) The Kansas ABLE savings program trust fund is hereby  
11 established in the state treasury. The fund shall be utilized if the treasurer  
12 elects to accept deposits from contributors rather than have deposits sent  
13 directly to the program manager. Such fund shall consist of any moneys  
14 deposited by contributors in accordance with this act which are not  
15 deposited directly with the program manager. All interest derived from the  
16 deposit and investment of moneys in such savings trust fund shall be  
17 credited to the fund. At the end of any fiscal year, all unexpended and  
18 unencumbered moneys in such savings trust fund shall remain therein and  
19 not be credited or transferred to the state general fund or to any other fund.

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

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

27 Sec. 8. This act shall take effect and be in force from and after its  
28 publication in the statute book.