ABLE Act.

Sponsored by: Representative(s) Throne, Berger, Freeman, Harvey, Kirkbride, Northrup, Petroff and Schwartz and Senator(s) Christensen, Coe, Craft and Peterson

A BILL

for

1 AN ACT relating to welfare; creating the achieving a better life experience program for individuals with disabilities; specifying program requirements; establishing a trust; specifying the state treasurer as trustee; providing for general powers of the trustee; providing rulemaking authority; excluding the program from benefit eligibility determinations as specified; providing limitations; providing for appointment of financial institutions as managers of the program; providing duties of managers of the program; providing definitions; requiring a report; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:
Section 1. W.S. 42-9-101 through 42-9-110 is created to read:

CHAPTER 9

ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM


This chapter shall be known and may be cited as the "Wyoming ABLE Program Act".

42-9-102. Legislative declaration.

The legislature hereby declares that the establishment of an ABLE program will assist individuals and families in saving money for the purpose of supporting individuals with disabilities to maintain health, independence and quality of life. It is the intent of the legislature to achieve this purpose through the establishment of an ABLE program pursuant to 26 U.S.C. § 529A to be administered through the office of the state treasurer as provided in this chapter.

42-9-103. Definitions.
(a) As used in this chapter:

(i) "ABLE" means achieving a better life experience;

(ii) "Account" means an individual trust account or savings account established as prescribed in this chapter;

(iii) "Contracting state" means a contracting state as defined in section 529A of the Internal Revenue Code;

(iv) "Designated beneficiary" means an eligible individual who is a resident of the state of Wyoming or a resident of a contracting state and who is the owner of the account;

(v) "Eligible individual" means an eligible individual as defined in section 529A of the Internal Revenue Code;
(vi) "Financial institution" means as defined in W.S. 21-16-810(a)(vi);

(vii) "Program" means an ABLE program which may be established under this chapter;

(viii) "Qualified disability expenses" means qualified disability expenses as defined under section 529A of the Internal Revenue Code;

(ix) "Treasurer" means the state treasurer acting in the capacity as administrator of the program;

(x) "Trust" means the ABLE trust of any program established under this chapter;

(xi) "Trustee" means the state treasurer acting in his capacity as trustee of the trust.

42-9-104. Wyoming ABLE program trust.
(a) If a program is established pursuant to this chapter the treasurer shall establish a trust to be operated as an instrumentality of the state.

(b) The treasurer shall be the sole trustee of the trust.

(c) The assets of the trust shall be held in trust for designated beneficiaries. Property rights shall not exist in the trust in favor of the state of Wyoming.

42-9-105. General powers of treasurer.

(a) This chapter shall be administered through the office of the state treasurer acting in accordance with this chapter.

(b) The treasurer may:

(i) Establish a program as provided in this chapter. Any program established shall be developed, implemented and maintained in a manner consistent with this chapter and section 529A of the Internal Revenue Code to
obtain the benefits provided thereunder for the program and its participants;

(ii) Retain professional services, if necessary, including accountants, auditors, consultants and other experts;

(iii) Make and enter into any and all contracts, agreements or arrangements necessary to implement this chapter;

(iv) Retain, employ and contract for the services of financial institutions and research, technical and other services necessary to implement this chapter;

(v) Contract with any other ABLE program established pursuant to section 529A of the Internal Revenue Code in order to provide similar benefits for Wyoming residents;

(vi) Seek rulings and other guidance from the United States department of the treasury, the internal
revenue service and the United States securities and exchange commission relating to the program;

(vii) Make changes to the program required to obtain and maintain:

(A) Program status as a qualified ABLE program under section 529A of the Internal Revenue Code;

(B) Any exemptions under federal and state security laws.

(viii) Select the financial institution or financial institutions to act as the recipient of contributions, serve as managers of the program and invest the contributions to the accounts.

(c) The treasurer shall:

(i) Adopt rules and regulations as necessary to administer this chapter and to ensure any program established pursuant to this chapter is in compliance with section 529A of the Internal Revenue Code;
(ii) Maintain, invest and reinvest the funds credited to the trust in accordance with the investment restrictions established by the treasurer and the standard of care described in the Wyoming Uniform Prudent Investor Act; and

(iii) Interpret, in rules, policies, guidelines and procedures, the provisions of this chapter broadly in light of its purpose and objectives.

42-9-106. Financial institutions.

(a) The treasurer may implement the program through the use of one (1) or more financial institutions to act as managers of the program.

(b) If a program is established pursuant to this chapter the treasurer shall solicit proposals from financial institutions to act as the recipients of contributions and managers of the program.
(c) If a program is established pursuant to this chapter the treasurer shall select as the managers of the program the financial institution or financial institutions from among bidding financial institutions that demonstrate the most advantageous combination, to potential program participants, of the following factors:

(i) Financial stability and integrity;

(ii) The ability of the financial institutions, directly or through a subcontract, to satisfy record keeping and reporting requirements;

(iii) The financial institution's plan for promoting the program and the investment it is willing to make to promote the program;

(iv) The commercially reasonable fees, if any, proposed to be charged to persons for maintaining accounts;

(v) The minimum initial cash contribution and minimum contributions that the financial institution will require, and the willingness of the financial institution
to accept contributions through payroll deduction plans or systematic deposit plans; and

(vi) Any other benefits to the state or its residents included in the proposal, including an account opening fee payable to the treasurer by the owner of the account.

(d) The treasurer may select more than one (1) financial institution for the program if the internal revenue service has provided guidance or the treasurer has received a legal opinion to the effect that giving a contributor a choice of two (2) or more financial institutions will not cause the plan to fail to qualify for favorable tax treatment under section 529A of the Internal Revenue Code, and the treasurer concludes that the choice of two (2) or more financial institutions is in the best interest of program participants and will not interfere with the promotion of the program.

(e) A program manager shall:
(i) Take all actions required to keep the program in compliance with the requirements of this chapter and manage the program so that it is treated as a qualified ABLE program under section 529A of the Internal Revenue Code;

(ii) Keep adequate records of each account, keep each account segregated from every other account and provide the treasurer with the information necessary to prepare the reports required by section 529A of the Internal Revenue Code or file the reports on behalf of the treasurer;

(iii) Provide representatives of the treasurer, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract; and

(iv) Hold all accounts in trust for the benefit of the designated beneficiary.
(f) If a contract executed by the treasurer and a financial institution pursuant to this section is not renewed, all of the following conditions apply at the end of the term of the contract that is not renewed, so long as applying these conditions does not disqualify the program as a qualified ABLE program under section 529A of the Internal Revenue Code:

(i) Accounts previously established at the financial institution shall not be terminated;

(ii) Additional contributions may be made to the accounts;

(iii) No new accounts may be placed with that financial institution; and

(iv) The accounts may be transferred to the successor financial institution on terms mutually acceptable to the original and successor financial institutions.
(g) The treasurer may terminate a contract with a financial institution at any time in accordance with terms of the contract or if the treasurer determines that the financial institution is in material breach of the contract and the breach has not been cured in accordance with the terms of the contract. If a contract is terminated pursuant to this subsection, the treasurer shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager or transfer the accounts to another ABLE program established pursuant to section 529A of the Internal Revenue Code.

42-9-107. Program requirements.

(a) If a program is established pursuant to this chapter, the program shall be operated through the use of accounts. Opening of accounts, the contents of account applications, contributions to accounts and distributions shall be governed by rule and regulation of the treasurer. Contributions to accounts shall be made in cash only unless otherwise permitted pursuant to section 529A of the Internal Revenue Code.
(b) An owner of the account may change the designated beneficiary of an account or direct the transfer or rollover of all or a portion of an account to another account in accordance with the provisions of section 529A of the Internal Revenue Code and the rules and regulations of the treasurer.

(c) A designated beneficiary is limited to one (1) account. Separate records and accounting shall be maintained for each designated beneficiary.

(d) A designated beneficiary shall not use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

(e) Upon the death of the designated beneficiary, funds in the account may be claimed by the Medicaid program of the state or the Medicaid program of another state in accordance with the provisions of section 529A of the Internal Revenue Code and the rules and regulations of the treasurer.
(f) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution shall be reported to the internal revenue service and the designated beneficiary to the extent required by federal law.

(g) The financial institution shall provide statements to designated beneficiaries at least once each year.

(h) Statements and information returns relating to accounts shall be prepared and filed to the extent required by federal or state tax law.


(a) Notwithstanding any other provision of law, in determining an applicant’s financial eligibility to receive public assistance or in determining the amount of public assistance an applicant is eligible to receive under a state or local funded program, an agency administering the
program shall not consider the following as it relates to
the applicant’s ABLE account:

(i) Amounts in the account, including earnings
on the account;

(ii) Contributions to the account;

(iii) Distributions from the account for
qualified disability expenses.

(b) Subsection (a) of this section applies only to
applicants who are:

(i) The account owner or designated beneficiary
of the account;

(ii) An individual whose eligibility for the
public assistance is conditioned on the account’s account
owner or designated beneficiary disclosing the account
owner’s or designated beneficiary’s income or other
financial information to the agency administering the
program.

(a) Nothing in this chapter shall be construed to:

(i) Prevent the treasurer from complying with his duty to conform the program to federal requirements for a qualified ABLE program under section 529A of the Internal Revenue Code;

(ii) Establish state residency for a person merely because the person is a designated beneficiary; or

(iii) Guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified disability expenses of a designated beneficiary.

(b) Nothing in this chapter establishes any obligation of the trust, the state or any agency or instrumentality of the state to guarantee for the benefit of any designated beneficiary or contributor to an account any of the following:
The return of any amounts contributed to an account;

(ii) The rate of interest or other return on any account;

(iii) The payment of interest or other return on any account; or

(iv) The cost of qualified disability expenses.

(c) Under rules adopted by the treasurer, every contract, application, deposit slip or other similar document that may be used in connection with a contribution to an account shall clearly indicate that the account is not insured by the state and neither the principal deposited nor the investment return is guaranteed by the state.

42-9-110. Limitations on liability.

(a) Neither the program, the trust, the trustee, the treasurer nor the state shall be liable for any loss
incurred by any designated beneficiary as a result of participating in the program.

(b) The treasurer, the trustee and officials and employees of the treasurer are entitled to immunity from liability, defense and indemnification under the Wyoming Governmental Claims Act.

Section 2. W.S. 4-10-912 is amended to read:

4-10-912. Application to Wyoming family college savings program trust and Wyoming ABLE program trust.

This act does not apply to the Wyoming family college savings program trust created by W.S. 21-16-811(a) or the Wyoming ABLE program trust created by W.S. 42-9-104(a), except that this article shall continue to apply as required under W.S. 21-16-813(c)(iii) and 42-9-105(c)(ii).

Section 3.

(a) The office of the state treasurer, in consultation with the Wyoming governor's council on
developmental disabilities and the University of Wyoming institute for disabilities, shall report to the governor and the joint labor, health and social services interim committee on or before October 1, 2016 on the achieving a better life experience program authorized pursuant to section 1 of this act. The report shall include:

(i) A recommendation of the appropriate lead agency for the program;

(ii) An analysis of the appropriate instrumentality to invest the program account funds, including the relative cost-benefit of using a state sponsored program or privately run program;

(iii) A determination of the staffing and funding needs of the program;

(iv) A proposed implementation plan for a state sponsored program, including an implementation date for the program and communication with the public about investing in the program accounts;
(v) Any other issues considered useful in the planning and implementation of the program in the state.

(b) The joint labor, health and social services interim committee shall consider the recommendations of the office of the state treasurer and shall develop legislation it deems appropriate for consideration by the legislature in the 2017 general session.

Section 4. This act is effective July 1, 2016.