

No. 2016-17

AN ACT

SB 879

Providing for the establishment of a savings program by the Treasury Department to encourage savings accounts for individuals with disabilities; establishing the Pennsylvania ABLE Savings Program and the ABLE Savings Program Fund; and imposing duties on the Treasury Department.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Pennsylvania ABLE Act.

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"ABLE." Achieving a Better Life Experience.

"ABLE account contract." A contract between a program manager or the department and an account owner.

"ABLE savings account." An individual savings account established in accordance with this act.

"Account." An ABLE savings account.

"Account owner." A person or legal entity authorized to be an ABLE account owner under section 529A of the Internal Revenue Code who enters into an ABLE account contract under this act.

"Department." The Treasury Department of the Commonwealth.

"Designated beneficiary." An eligible individual whose qualified disability expenses may be paid from the account.

"Eligible individual." An eligible individual as defined in section 529A(e)(1) of the Internal Revenue Code.

"Fund." The ABLE Savings Program Fund established in section 302.

"Internal Revenue Code." The Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

"Nonqualified withdrawal." A withdrawal from an account which is not:

- (1) A qualified withdrawal.
- (2) A rollover distribution.

"Program." The Pennsylvania ABLE Savings Program established under section 301.

"Qualified ABLE program." As defined in section 529A(b)(1) of the Internal Revenue Code.

"Qualified disability expense." A qualified disability expense included under section 529A of the Internal Revenue Code.

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

"Rollover distribution." A rollover distribution as used in section 529A of the Internal Revenue Code.

CHAPTER 3
PENNSYLVANIA ABLE SAVINGS PROGRAM

Section 301. Pennsylvania ABLE Savings Program.

(a) Establishment.—The department may establish and maintain a savings program to allow ABLE savings accounts to be opened for eligible individuals for payment of qualified disability expenses. Notwithstanding any other provision of law, an ABLE savings program established by the department shall be maintained at all times in such a manner that ensures the program's status as a qualified ABLE program.

(b) Administration.—The department may utilize the administrative or investment structures of the Tuition Account Investment Program established by the act of April 3, 1992 (P.L.28, No.11), known as the Tuition Account Programs and College Savings Bond Act, without separately soliciting proposals for assistance in the management of all or part of the program.

(c) Investment manager and trustee.—The department may contract with one or more persons or legal entities to serve as investment managers, program managers and trustees on behalf of the program. If the department contracts with investment managers, program managers or trustees in order to fulfill the objectives of the program, the investment managers, program managers and trustees shall work with the department to provide a program to develop investment portfolios and to supervise investments and investment programs.

(d) Contracts with other states.—The department may contract with another state for any of the following:

(1) For another state to provide all or part of the program to beneficiaries residing in this Commonwealth.

(2) To provide all or part of the program to beneficiaries residing in another state.

(3) To engage in joint efforts to establish and maintain ABLE savings programs.

Section 302. ABLE Savings Program Fund.

(a) Fund established.—The ABLE Savings Program Fund is established in the State Treasury. The fund shall consist of all of the following:

(1) All contributions made to accounts of eligible individuals pursuant to ABLE account contracts and all interest, earnings and additions to the accounts.

(2) Any fees or charges levied on accounts to cover administrative expenses of the program.

(3) Other money appropriated or made available to the department for the program from any source and all interest, earnings and additions to the money.

(b) Continuing appropriation.—All money in the fund, including fees and charges levied on an account to cover the expenses to administer the program, contributions and increase in value on the contributions, for

distribution to or on behalf of eligible individuals, is hereby appropriated to the department on a continuing basis to carry out the provisions of this act.

(c) Assets.—The assets of the fund shall be preserved, invested and expended solely for the purpose of carrying out this act.

(d) Investment.—The money in the fund shall be invested in accordance with policies established by the department to provide for an appropriate balance of risk, liquidity and return commensurate with the management of a prudent investor. The department, the investment managers, program managers and trustees shall have the authority to invest and reinvest the money in the fund in all lawful investments.

Section 303. Operating and administrative costs.

The department shall prepare and, through the Governor, submit annually to the General Assembly a budget covering the operating and administrative expenses of the program. Upon approval by the General Assembly in an appropriation bill, expenses incurred by the program and the department shall be paid from program fees and charges or from other available funds.

Section 304. Interdepartmental cooperation.

The head of any department, board, commission, agency or instrumentality of the Commonwealth, unless otherwise prohibited by law, shall assist the department in providing information about the program to potential eligible individuals and their families.

Section 305. Department powers and duties.

The department shall have the powers necessary or convenient to carry out this act, including the power to:

- (1) Administer the program and the fund.
- (2) Enter into contracts with individuals for the establishment of ABLE savings accounts.
- (3) Pay to an account owner or designated beneficiary, or a third party authorized by an account owner, upon receipt of appropriate documentation required by the department, funds from the account to pay for the eligible individual's qualified disability expenses.
- (4) Contract for goods and services and employ personnel, including contracts with private consultants, actuaries, managers, legal counsel and auditors as necessary for rendering professional, managerial and technical assistance and advice.
- (5) Solicit and accept gifts, grants, loans and other aid from any person, corporation or other entity or from a government entity and participate in any Federal, State or local government program that results in additional funds being available to pay for the qualified disability expenses of eligible individuals with ABLE savings accounts.
- (6) Charge and collect administrative fees and charges in connection with any transaction, including continued participation in the program.
- (7) Close ABLE savings accounts and return any remaining funds, minus any fees, to the account owner.
- (8) Contract for insurance, letters of credit and collateral agreements.
- (9) Adjust the terms of contracts with account owners.
- (10) Solicit answers from appropriate Federal agencies regarding the application of security or other Federal laws to the program.

(11) Consider means whereby contributions into an ABLE savings account can be deducted from salary.

(12) Promulgate regulations to implement the provisions of this act.

(13) Take any other action necessary to carry out the purpose of this act and incidental to the duties imposed on the department.

CHAPTER 5 ACCOUNTS

Section 501. ABLE savings accounts.

(a) ABLE account contract.—An ABLE savings account may be opened through a contract entered into by an account owner and the department. If the account owner is a fiduciary, the account owner shall continue to have signatory authority over the account until the account owner relinquishes the authority.

(b) Fiduciaries.—To the extent that Federal law requires an eligible individual to be the account owner, the following may enter into an ABLE account contract as fiduciary for an eligible individual who is a minor or who lacks capacity to enter into an ABLE account contract:

(1) A parent or guardian.

(2) A person or legal entity designated in writing by the parent or guardian.

(3) A trustee of a trust for which the eligible individual is a beneficiary.

(4) For an eligible individual receiving benefits based on blindness or a disability under Title II of the Social Security Act (49 Stat. 620, 42 U.S.C. § 401 et seq.) or Title XVI of the Social Security Act (42 U.S.C. § 1381), the representative payee for those benefits.

(5) Any other person or entity authorized under section 529A of the Internal Revenue Code with signature authority over the account.

(c) Change of designated beneficiary.—An account owner may change the designated beneficiary named in the ABLE account contract to another eligible individual if permitted under section 529A of the Internal Revenue Code.

Section 502. Nonqualified withdrawals.

(a) Value received.—Upon a full or partial withdrawal of funds from an account, which are not used for qualified disability expenses, the account owner or the account owner's designee shall receive the market value of the account for the amount requested.

(b) Fees.—The department may collect administrative fees or charges for costs upon a nonqualified withdrawal or termination and deduct the fee from the amount otherwise payable.

(c) Involuntary termination.—The department may close an account and return any remaining funds in the account as a nonqualified withdrawal in order to comply with Federal law or if the department, in its sole discretion, determines that termination is in the best interest of the program or the designated beneficiary. Any person aggrieved by a determination to terminate an account may file an administrative appeal with the department within 30 days of the mailing date of the termination notice. A final resolution of the administrative appeal shall be deemed a final decision of

the State Treasurer and may be appealed by the aggrieved person to Commonwealth Court. The appeal must be filed within 30 days of the mailing date of the final decision of the State Treasurer. The case shall be heard in Commonwealth Court's appellate jurisdiction.

(d) Taxation.—In the event of a nonqualified withdrawal, to the extent the amount withdrawn includes earnings on the contributions to the account or contributions to the account that are eligible to be deducted from Pennsylvania income tax for the tax year in which the contributions were made, the amount of earnings and deductible contributions shall be subject to taxation as income under the laws of this Commonwealth.

Section 503. Treatment of accounts.

(a) Limitation.—An account shall not be subject to attachment, levy or execution by any creditor of a contributor, account owner or designated beneficiary and shall not be used as security for a loan.

(b) Disability or health benefits.—Amounts contributed to an account, increases in the value of the account and qualified withdrawals from the account shall not be used in calculating personal assets of a designated beneficiary or an account owner in order to determine eligibility for disability, medical assistance or other health benefits conferred by the Commonwealth.

(c) Student aid.—Amounts contributed to an account and increases in the value of the account shall not be used in calculating personal asset contributions for determining eligibility or need to qualify for student loan programs, student grant programs or other student aid programs administered by a Commonwealth agency, except as otherwise may be provided by Federal law.

(d) Death of beneficiary.—Unless prohibited by Federal law, upon the death of a designated beneficiary, proceeds from an account may be transferred to the estate of a designated beneficiary, or to an account for another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary. An agency or instrumentality of the Commonwealth may not seek payment under section 529A(f) of the Internal Revenue Code from the account or its proceeds for benefits provided to a designated beneficiary.

CHAPTER 7 EXEMPTIONS

Section 701. Exemption from security laws.

The program and accounts are exempt from any statute regulating securities, including the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972.

Section 702. State tax exemption.

(a) Property of funds.—The property of the program and the earnings from the program shall be exempt from all taxation by the Commonwealth and its political subdivisions.

(b) Contributions.—Contributions made to an account, any increase in the value of those contributions, the retention or transfer during life or as a result of death of any legal interest in an account and payment of qualified

disability expenses of eligible individuals from an account shall be exempt from all taxation by the Commonwealth and its political subdivisions.

CHAPTER 21
MISCELLEANOUS PROVISIONS

Section 2101. Limitation.

Any obligation or debt under this act shall not be deemed an obligation or debt of the Commonwealth, nor shall the Commonwealth be liable to pay principal and interest on obligations or to offset any loss of principal and interest earnings on investments made by the department under this act.

Section 2102. Effective date.

This act shall take effect immediately.

APPROVED—The 18th day of April, A.D. 2016

TOM WOLF