SESSION OF 2015

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2100

As Amended by House Committee on Children and Seniors

Brief*

HB 2100 would establish the Kansas ABLE (Achieving a Better Life Experience) Savings Program (program), an enabling tax-deferred savings program authorized by the passage of the federal ABLE Act, for the purpose of empowering individuals with disabilities and their families to save private funds to support the individuals with disability and to provide guidelines for the maintenance of such accounts. The State Treasurer (Treasurer) would implement and administer the program. Additional program details follow.

Definitions

Several terms would be defined in the bill, including "financial organization"; "conservator" and "guardian" (both as defined in KSA 59-3050 *et seq.*); and "qualified disability expenses," referring to those disability expenses included in § 529A of the federal Internal Revenue Code of 1986, as amended. The additional terms that would be defined would include these:

- "Account owner" would refer to the person who enters into an ABLE savings agreement, and who also is the designated beneficiary;
- "Designated beneficiary" would mean a Kansas resident whose "qualified disability expenses" may be paid from the account, and who must be an

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org eligible individual at the time the account is established;

- "Eligible individual" for an account would refer to an individual entitled to benefits based on blindness or disability that occurred before such individual attained the age of 26, or an individual who filed a disability certification, to the satisfaction of the Secretary of the U.S. Treasury (Secretary), with the Secretary for such taxable year;

- "Management contract" would refer to the contract executed by the Treasurer and a financial organization selected to act as a depository and manager of the program; and

- "Savings agreement" would be an agreement between the program manager or the Treasurer and the account owner.

Duties and Responsibilities of Treasurer

The Treasurer would implement and administer the program. Duties would include making changes to the program required for the participants to receive the federal income tax benefits or treatment under § 529A, as amended; establishing methods for disbursement of funds held in accounts and for the allocation of funds for administrative costs; promulgating rules and regulations to effectuate the provisions of the program; making an annual evaluation of the program and preparing an annual report of such evaluation to be provided to the Governor, the Senate, and the House of Representatives; and notifying the Secretary when an ABLE account is opened and submitting reports concerning the program required by the Secretary.

The Treasurer would be authorized to enter into agreements with other states to either allow Kansas residents to participate in a plan operated by another state or to allow residents of other states to participate in the Kansas program.

Program Implementation

The Treasurer would be authorized to implement the program through the use of financial organizations as account depositories and managers and to solicit proposals from financial organizations to act as depositories and managers. The financial organizations submitting proposals would be required to describe the investment instruments held in accounts.

The Treasurer would be able to select more than one financial organization or investment instrument for the program. The Treasurer would be required to select the financial organization demonstrating the most advantageous combination, both to potential participants and the state, of eight factors set out in the bill.

Minimum Required Contract Terms

The Treasurer would be authorized to enter into any contracts with a financial organization needed to put into effect the provisions of the program. The bill would establish the minimum required management contract terms to be performed by the financial organization. These terms would include requiring a financial organization to take action to ensure compliance with program requirements and actions not contrary to managing the program as a qualified ABLE program under § 529A; provide adequate records, keep accounts segregated, and provide the Treasurer with the information necessary to prepare statutorily required statements; provide the Treasurer access to the books and records of the program manager to the extent needed to determine compliance with the contract, the program, and § 529A; hold accounts for the benefit for account owners; have independent audits performed at least annually and provide the audit results to the Treasurer; provide the Treasurer with copies of all regulatory filings and reports during the term of the management contract or while holding any accounts (other than confidential filings and reports that do not become part of the program) and make available to the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance or securities commission, except those reports that may not be disclosed under law; and ensure any description of the program in any media form is consistent with the developed marketing plan.

Authorized Actions by Treasurer

The Treasurer would be authorized to do the following:

- Enter into any contracts necessary and proper for program implementation;
- Require an audit of the operations and financial position of the program depository and manager, if the Treasurer has reason to be concerned about the financial position, the record-keeping practices, or the status of accounts; and
- Terminate or not renew a management agreement and, upon termination or non-renewal, take custody of accounts and seek prompt transfer of the accounts to another selected program manager or depository and into investment instruments as similar as possible to the original instruments.

The bill would allow the Treasurer, the Department for Children and Families, the Department of Health and Environment, and the Department of Aging and Disability Services to exchange data regarding eligible individuals to carry out the purpose of this act.

ABLE Account Requirements

An ABLE account would be opened by a designated beneficiary, or a conservator or guardian of a designated beneficiary who lacks capacity to enter into a contract, and each beneficiary would be allowed to have only one account.

A non-refundable application fee could be established by the Treasurer. The account application would be in the form prescribed by the Treasurer and contain the required information specified in the bill.

Contribution Conditions

After an ABLE savings account was opened, any person would be allowed to make contributions, subject to § 529A limitations or rules and regulations promulgated by the Secretary pursuant to this act. Only cash contributions would be permitted.

The Treasurer or program manager would be required to reject or promptly withdraw contributions in excess of the established limits, or the total contributions if:

- The value of the account is equal to or greater than the account maximum established by the Treasurer (equal to the account maximum for post-secondary education savings accounts established pursuant to KSA 75-640 *et seq.*, and amendments thereto); or
- The designated beneficiary is not an eligible individual in the current calendar year.

Account Owner Options

The bill would allow the account owner to change the designated beneficiary of an account to a member of the family of the prior designated beneficiary, according to procedures established by the Treasurer, and to transfer all or a portion of an account to another ABLE savings account for a designated beneficiary who is a member of the family as defined by § 529A. An account owner would not be allowed to use an interest in an account as a security for a loan, and any such pledge would have no force and effect.

Reporting Requirements

Any distribution from an account to any individual or for the benefits of any individual during a calendar year would have to be reported to the federal Internal Revenue Service, each account owner, and the designated beneficiary or the distributee as required by state or federal law.

The bill would require an account owner to be provided at least four statements each year within 30 days after the end of the three-month period to which a statement relates. The information that would need to be included in the statements is outlined in the bill. Statements and information relating to these accounts would have to be prepared and filed as required by this act and any other state or federal law.

Separate accounting for each designated beneficiary would be required, and an annual fee could be imposed on the account owner for maintenance of an account.

Treatment of Account Funds

Moneys in an ABLE account would be exempt from attachment, execution, or garnishment per KSA 2014 Supp. 60-2308 and could be claimed by the Kansas Medicaid plan only after the death of the designated beneficiary subject to limitations imposed by the Secretary.

Obligations Not Created

The Act would not obligate the Treasurer, the state, or any agency or instrumentality of the state to guarantee the return of principal, the rate of interest or other return on any account, or the payment of interest or other return on any account for the benefit of an account owner or designated beneficiary. The Treasurer would be authorized to promulgate rules and regulations to clarify that documents used in connection with opening an account clearly indicate the account is not insured by the state and the principal deposited and the investment return are not guaranteed by the state.

Kansas ABLE Savings Program Trust and Savings Expense Funds Established

The bill would establish the Kansas ABLE Savings Program Trust Fund in the State Treasury. If the Treasurer decides to accept deposits from contributors, instead of having the deposits sent directly to the program manager, the funds would be deposited in the trust fund. All interest derived from the deposit and investment of moneys in the savings trust fund would be credited to the fund. All unexpended and unencumbered moneys in the trust fund at the end of any fiscal year would remain in the trust fund and not be credited or transferred to the State General Fund (SGF), or to any other fund.

Additionally, the Kansas ABLE Savings Expense Fund would be established in the State Treasury, consisting of moneys received from the ABLE savings program manager, or any governmental or private grants, and any SGF appropriations for the program. All expenses incurred by the Treasurer in developing and administering the program would be payable from this expense fund.

Background

The House Committee on Children and Seniors introduced the bill at the request of Representative Davis. At the House Committee hearing, testimony in support of the bill was provided by the Kansas State Treasurer, Congressman Kevin Yoder, a National Down Syndrome Society Kansas State Ambassador, two private citizens, and representatives of the Autism Society the Heartland, the Disability Rights Center of Kansas, the Kansas Council on Developmental Disabilities, and the Shawnee County Advocacy Council on

Aging. Written testimony in favor of the bill was provided by Congresswoman Lynn Jenkins and representatives of Autism Speaks, the Cerebral Palsy Research Foundation, Goodwill Industries of Kansas, the Kansas Commission on Disability Concerns, the Kansas Department for Aging and Disability Services, the Kansas Department for Children and Families, LeadingAge Kansas, and the National Down Syndrome Society. Proponents testified the bill would allow families and individuals to contribute up to $14,000 per year for the disability-related expenses of a disabled individual in a tax-deferred savings account. The proponents said the bill recognized the extra and significant costs of living with a disability by allowing for the establishment of ABLE accounts to be used for disability-related expenses without affecting the individual's eligibility for Social Security Supplemental Security Income, Medicaid, and other public benefits. The proponents noted Congress passed the ABLE Act in December 2014, but each state must adopt its own ABLE Savings Program. No opposing or neutral testimony was received.

The House Committee amended the bill to ensure technical conformance with state guardianship and conservatorship language and the federal ABLE law by replacing "trustee" with "conservator;" adding definitions for "conservator" and "guardian"; and clarifying the Kansas Medicaid plan may claim moneys in an ABLE savings account only after the death of the designated beneficiary, subject to limitations imposed by the Secretary.

According to the fiscal note prepared by the Division of the Budget, the Treasurer indicates passage of the bill would not have a noticeable fiscal effect until FY 2017. The agency anticipates using existing resources to initiate the program in FY 2016, using existing staff in FY 2016 and FY 2017, and not hiring staff dedicated solely to the program until the position could be paid for with fee revenue from account owners. For FY 2017, the agency would use $50,000 from the SGF to create marketing materials and attract new owners, with the marketing budget for future years paid for by fees charged to account owners. Further, the agency indicates the tax-free growth of earnings in these accounts would cause a slight drop in future SGF revenue due to an estimated $18,555 in lost tax revenue. The agency states the effect on Medicaid caseloads would be minimal.

The Department of Revenue states passage of the bill would have a minimal effect on the SGF, estimating a reduction in income tax receipts of $40,000. Passage of the bill would have no effect on administrative costs for the Department.

The Department for Children and Families also states passage of the bill would have a minimal effect on Medicaid caseloads. The agency assumes the Social Security Administration would make the determination of a participant's disability, so there would be no costs to the agency for certification. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.