

## HOUSE BILL No. 2490

By Committee on Children and Seniors

1-18

1 AN ACT concerning persons with disabilities; relating to income taxation,  
2 ABLE savings accounts; authorizing the state treasurer to determine  
3 account owners and designated beneficiaries; adopting the federal  
4 definition for an eligible individual; adding persons who may open an  
5 account; requiring additional compliance with the federal internal  
6 revenue code; amending K.S.A. 75-651, 75-652, 75-653 and 75-655  
7 and repealing the existing sections.  
8

9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. K.S.A. 75-651 is hereby amended to read as follows: 75-  
11 651. There is hereby established an enabling savings program ~~and such~~  
12 ~~program~~ that shall be known and may be cited as the Kansas ABLE  
13 savings program. The purpose of the Kansas ABLE savings program is to  
14 authorize the establishment of savings accounts empowering individuals  
15 with a disability and their families to save private funds to support the  
16 individual with a disability, *obtain federal and state income tax benefits of*  
17 *a qualified ABLE program as defined in section 529A of the federal*  
18 *internal revenue code of 1986* and to provide guidelines for the  
19 maintenance of such accounts.

20 Sec. 2. K.S.A. 75-652 is hereby amended to read as follows: 75-652.  
21 As used in this act:

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

24 (b) "Account owner" means the person who enters into an ABLE  
25 savings agreement pursuant to the provisions of this act. The account  
26 owner ~~must~~ shall also be the designated beneficiary. A conservator ~~or,~~  
27 guardian *or a person authorized by the treasurer through procedures*  
28 *established by the treasurer* may be appointed as an account owner ~~for act~~  
29 ~~on behalf of a designated beneficiary who is a minor or lacks capacity to~~  
30 ~~enter into an agreement of an account in accordance with procedures~~  
31 *established by the treasurer.*

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

34 (d) "Designated beneficiary" means a Kansas resident *or a person*  
35 *authorized by the treasurer pursuant to K.S.A. 75-653, and amendments*  
36 *thereto*, whose qualified disability expenses may be paid from the account.

1 The designated beneficiary must be an eligible individual at the time the  
2 account is established. ~~The account owner may change the designated~~  
3 ~~beneficiary.~~

4 (e) ~~"Eligible individual" means an individual who is entitled to~~  
5 ~~benefits based on blindness or disability under 42 U.S.C. § 401 et seq. or~~  
6 ~~42 U.S.C. § 1381 et seq., as amended, and such blindness or disability~~  
7 ~~occurred before the date on which the individual attained age 26, or an~~  
8 ~~individual who filed a disability certification, to the satisfaction of the~~  
9 ~~secretary, with the secretary for such taxable year the same as defined in~~  
10 ~~section 529A of the federal internal revenue code of 1986, as amended.~~

11 (f) "Financial organization" means an organization authorized to do  
12 business in the state of Kansas and is:

- 13 (1) Licensed or chartered by the commissioner of insurance;
- 14 (2) licensed or chartered by the state bank commissioner;
- 15 (3) chartered by an agency of the federal government; or
- 16 (4) subject to the jurisdiction and regulation of the securities and  
17 exchange commission of the federal government.

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

20 (h) "Management contract" means the contract executed by the  
21 treasurer and a financial organization selected to act as a depository and  
22 manager of the program.

23 (i) ~~"Member of the family" has the meaning ascribed thereto means~~  
24 ~~the same as defined in section 529A of the federal internal revenue code of~~  
25 ~~1986, as amended.~~

26 (j) "Nonqualified withdrawal" means a withdrawal from an account  
27 which is not:

- 28 (1) A qualified withdrawal; or
- 29 (2) a rollover distribution.

30 (k) "Program" means the Kansas ABLE savings program established  
31 pursuant to this act.

32 (l) "Program manager" means a financial organization selected by the  
33 treasurer to act as a depository and manager of the program.

34 (m) ~~"Qualified disability expense" means any qualified disability~~  
35 ~~expense included the same as defined in section 529A of the federal~~  
36 ~~internal revenue code of 1986, as amended.~~

37 (n) "Qualified withdrawal" means a withdrawal from an account to  
38 pay the qualified disability expenses of the designated beneficiary of the  
39 account.

40 (o) "Rollover distribution" means a rollover distribution as defined in  
41 section 529A of the federal internal revenue code of 1986, as amended.

42 (p) "Savings agreement" means an agreement between the program  
43 manager or the treasurer and the account owner.

1 (q) "Secretary" means the secretary of the United States treasury.

2 (r) "Treasurer" means the state treasurer.

3 Sec. 3. K.S.A. 75-653 is hereby amended to read as follows: 75-653.

4 (a) The treasurer shall implement and administer the program under the  
5 terms and conditions established by this act. In furtherance of such  
6 implementation and administration, the treasurer shall have the authority  
7 and responsibility to:

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

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

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

14 (4) make changes to the program required for the participants in the  
15 program to obtain the federal *and state* income tax benefits or treatment  
16 provided by section 529A of the federal internal revenue code of 1986, as  
17 amended;

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

21 (6) develop marketing plans and promotion material;

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

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

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

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

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

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

36 (b) The treasurer may enter into agreements with other states to either  
37 allow Kansas residents to participate in a plan operated by another state or  
38 to allow residents of other states to participate in the Kansas ABLE  
39 program.

40 Sec. 4. K.S.A. 75-655 is hereby amended to read as follows: 75-655.

41 (a) Any ABLE savings accounts established pursuant to the provisions of  
42 this act shall be opened by:

43 (1) A designated beneficiary ~~or a conservator or guardian of a~~

1 ~~designated beneficiary who lacks capacity to enter into a contract and; or~~

2 (2) *a person on behalf of a designated beneficiary in accordance with*  
 3 *section 529A of the federal internal revenue code of 1986, as amended,*  
 4 *any rules and regulations promulgated by the secretary or procedures*  
 5 *established by the treasurer.*

6 (b) Each beneficiary may have only one account.

7 (c) The treasurer may establish a nonrefundable application fee. An  
 8 application for such account shall be in the form prescribed by the  
 9 treasurer and contain the:

10 (1) Name, address and social security number of the account owner;  
 11 *and*

12 (2) ~~name, address and social security number of the designated~~  
 13 ~~beneficiary, if the account owner is the beneficiary's conservator or~~  
 14 ~~guardian;~~

15 (3) ~~certification relating to no excess contributions; and~~

16 (4) ~~additional information and certifications as the treasurer may~~  
 17 ~~require.~~

18 (b)(d) Any person may make contributions to an ABLE savings  
 19 account after the account is opened, subject to the limitations ~~imposed by~~  
 20 *in accordance with section 529A of the federal internal revenue code of*  
 21 *1986, as amended, or any rules and regulations promulgated by the*  
 22 *secretary pursuant to this act or procedures established by the treasurer.*

23 (e) Contributions to ABLE savings accounts only may be made in  
 24 cash. The treasurer or program manager shall reject or promptly withdraw  
 25 contributions:

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

27 (2) the total contributions if the:

28 (A) Value of the account is equal to or greater than the account  
 29 maximum established by the treasurer. Such account maximum must be  
 30 equal to the account maximum for postsecondary education savings  
 31 accounts established pursuant to K.S.A. 75-640 et seq., and amendments  
 32 thereto; or

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

35 (f) (1) An account owner may:

36 (A) ~~Change the designated beneficiary of an account to an individual~~  
 37 ~~who is a member of the family of the prior designated beneficiary in~~  
 38 *accordance with section 529A of the internal revenue code of 1986, as*  
 39 *amended, and procedures established by the treasurer; and*

40 (B) transfer all or a portion of an account to another ABLE savings  
 41 account, ~~the designated beneficiary of which is a member of the family as~~  
 42 ~~defined in in accordance with section 529A of the federal internal revenue~~  
 43 *code of 1986, as amended, and procedures established by the treasurer.*

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

4 ~~(e)~~(g) (1) If there is any distribution from an account to any  
5 individual or for the benefit of any individual during a calendar year, such  
6 distribution shall be reported to the federal internal revenue service and  
7 each account owner, the designated beneficiary or the distributee to the  
8 extent required by state or federal law.

9 (2) Statements shall be provided to each account owner at least four  
10 times each year within 30 days after the end of the three-month period to  
11 which a statement relates. The statement shall identify the contributions  
12 made during the preceding three-month period, the total contributions  
13 made to the account through the end of the period, the value of the account  
14 at the end of such period, distributions made during such period and any  
15 other information that the treasurer shall require to be reported to the  
16 account owner.

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

20 ~~(f)~~(h) (1) The program shall provide separate accounting for each  
21 designated beneficiary. An annual fee may be imposed upon the account  
22 owner for the maintenance of an account.

23 (2) Moneys in an ABLÉ savings account shall be exempt from  
24 attachment, execution or garnishment as provided by K.S.A. 60-2308, and  
25 amendments thereto.

26 ~~(g)~~(i) Except as otherwise provided by federal law, the proceeds from  
27 an account may be transferred upon the death of a designated beneficiary  
28 to: (1) The estate of a designated beneficiary; or (2) an account for another  
29 eligible individual specified by the designated beneficiary or the estate of  
30 the designated beneficiary. The state of Kansas, or any agency or  
31 instrumentality thereof, shall not seek payment under section 529A of the  
32 internal revenue code of 1986, as amended, from the account, or its  
33 proceeds, for benefits provided to a designated beneficiary, unless  
34 otherwise required by section 1917(b) of the federal social security act, 42  
35 U.S.C. § 1396p(b).

36 Sec. 5. K.S.A. 75-651, 75-652, 75-653 and 75-655 are hereby  
37 repealed.

38 Sec. 6. This act shall take effect and be in force from and after its  
39 publication in the statute book.