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Reps. Baumbach, Bolden, Brady, Briggs King, Dukes, Gray, Hensley, Hudson, Q. Johnson, J. Johnson, Kenton, Kowalko, Longhurst, Lynn, Matthews, Mitchell, Outten, Osienski, Peterman, Potter, Jaques, Schwartzkopf, B. Short, D. Short, Smyk, Spiegelman, K. Williams, Wilson, Yearick; Sens. Lopez, Poore

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 60

AN ACT TO AMEND TITLES 10 AND 16 OF THE DELAWARE CODE RELATING TO SAVINGS ACCOUNTS TO SUPPORT INDIVIDUALS WITH DISABILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part IX, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 96A. DELAWARE ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNTS

§ 9601A Purpose.

The purpose of this chapter is to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life. This chapter is the State of Delaware's implementation of the federal Stephen J. Beck, Jr., Achieving a Better Life Experience Act of 2014, Pub. L. No. 113-295, 128 Stat. 4010.

§ 9602A Definitions.

As used in this chapter:

(1) "Account" means an individual account, a trust account, or a savings account established in accordance with the provisions of this chapter.

(2) "Account owner" means an eligible individual, or if the eligible individual is under 18 years of age or is incapacitated, a parent or legal guardian of the eligible individual.

(3) "Contracting state" means a state that does not have a program compliant with the federal ABLE act and which has entered into a contract with the State of Delaware to provide residents of the other state access to Delaware's Achieving a Better Life Experience Program.

(4) "Designated beneficiary" means, with respect to an account or accounts, the eligible individual whose qualified disability expenses are expected to be paid from the account.

(5) “Eligible individual” means a resident of this State or a contracting state who is:

a. Entitled to benefits based on blindness or disability under Title II or XVI of the federal Social Security Act, where such blindness or disability occurred before the date on which the individual attained age 26; or

b. An individual with respect to whom a disability certification, meeting the requirements of the federal ABLE act, is filed.

(6) “Federal ABLE act” means the Stephen J. Beck, Jr., Achieving a Better Life Experience Act of 2014, Pub. L. No. 113-295, 128 Stat. 4010, and includes subsequent amendments to that Act, as well as regulations promulgated thereunder by the United States Secretary of the Treasury.

(7) “Program” means the Delaware Achieving a Better Life Experience Program established by this chapter.

(8) “Qualified disability expenses” means any expenses related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the federal regulations.

§ 9603A Achieving a Better Life Experience Board; composition; establishment of ABLE Program.

(a) This chapter shall be administered by the Achieving a Better Life Experience Board, hereinafter referred to as the Board. The Office of the State Treasurer shall provide assistance to the Board in the administration of the Program as directed by the Board chairperson.

(b) The Board shall be composed of the following:

(1) A Board chairperson, selected by the Governor.

(2) The State Treasurer or the Treasurer’s designee.

(3) The Secretary of the Department of Health and Social Services, or the Secretary’s designee.

(4) Two members of the public who by reason of their education and experience relating to disabilities or financial planning are qualified to serve, one to be appointed by the Speaker of the House of Representatives and one to be appointed by the President Pro Tempore of the Senate.

(5) A current member of the Delaware College Investment Board, to be appointed by the Governor.

(6) A person with a disability who is an eligible individual under this chapter, to be appointed by the Governor.

(c) Persons appointed to the Board pursuant to (b)(4), (5), and (6) of this section shall serve for staggered two-year terms, except for the initial members of the Board, two of whom shall serve for three years.

50 (d) The Board shall establish, develop, implement and maintain a Delaware Achieving a Better Life Experience
51 Program for all eligible individuals and families for the purpose of supporting individuals with disabilities to maintain
52 health, independence, and quality of life. The Board shall ensure and maintain the program's status as a "qualified ABLE
53 program" as defined by the federal ABLE act.

54 (e) The Board shall publish an annual report to the Governor and General Assembly detailing its activities on or
55 before September 30 of each year.

56 § 9604A Powers of the Board.

57 The Board shall have the following powers, duties and functions:

58 (1) To make and enter into all contracts, agreements, or arrangements, and to retain, employ, and contract for the
59 services of private and public financial institutions, depositories, consultants, investment advisors or manager, third party
60 plan administrators, research, and technical and other services necessary or desirable for carrying out the purposes of this
61 chapter.

62 (2) To maintain, invest, and reinvest the funds contributed to the Program consistent with the investment
63 restrictions established by the Board. The investment restrictions shall be consistent with the objectives of the Program and
64 the Board shall exercise the judgment and care then prevailing which people of prudence, discretion, and intelligence
65 exercise in the management of their own affairs with due regard to the probable income and level of risk from investments
66 of money belonging to the State in accordance with the policies established by the Board.

67 (3) To charge fees and expenses to the funds held under the program or to persons establishing or owning
68 accounts.

69 (4) To promulgate rules and regulations necessary for the administration of this chapter and to ensure the Plan's
70 compliance with the federal ABLE act.

71 § 9605A The Program.

72 (a) An account may be opened by any person who desires to save to pay the qualified disability expenses of an
73 eligible individual, by making an initial contribution to the program in accordance with regulations promulgated by the
74 Board.

75 (b) Any person may make a contribution to an account once an account is opened.

76 (c) Contributions to an account shall be made only in cash, except where otherwise permitted by the federal ABLE
77 act.

78 (d) Separate records and accounting shall be required by the Program for each account and reports shall be made
79 no less frequently than annually to the account owner and the designated beneficiary.

80 § 9606A Prohibitions.

81 (a) A designated beneficiary may have only one account.

82 (b) No account nor any interest in an account may be used as security for a loan.

83 (c) Total contributions on behalf of a designated beneficiary may not exceed the limit established under
84 Subchapter XII, Chapter 34 of Title 14.

85 (d) Except as permitted by the federal ABLE act, no person shall have the right to direct the investment of any
86 contributions to or earnings from the Program.

87 § 9607A State and local means-tested programs.

88 Accounts established pursuant to this chapter shall not be included in determining income eligibility of the
89 designated beneficiary for state or local assistance programs.

90 § 9608A Limitations on liability.

91 (a) The Board and each of its members shall be entitled to the immunities set forth in Chapter 40 of Title 10, and
92 in addition, no member of the Board shall be liable for any act or omission made during the member's tenure on the Board,
93 or for any loss incurred by any person as a result of the participation by any Board member in the Program. Further, the
94 State shall indemnify each Board member who is a party to or is threatened to be made a party to any threatened, pending,
95 or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, arising by reason of such
96 member's participation in the Program, against any expenses (including attorney's fees if the Attorney General shall
97 determine that such Board member is not entitled to representation by the State), judgments, fines, and amounts paid in
98 settlement actually and reasonably incurred by that member in connection with such action, suit, or proceeding, if that
99 member acted in good faith and in a manner that member reasonably believed to be in the best interest of the State, and
100 with respect to any criminal action or proceeding, so long as that member had no reasonable cause to believe that the
101 member's conduct was unlawful. Any expenses incurred by such Board member in defending a civil, administrative or
102 investigative action, suit or proceeding shall be paid by the State in advance of the final disposition of such action, suit, or
103 proceeding upon authorization by a majority of the members of the Board and by the Governor of the State.

104 (b) Neither the Program, the Board and each of its members, nor the State, including the Office of the State
105 Treasurer, shall insure any account or guarantee any rate of return or any interest rate on any contribution; nor shall they or
106 any one of them be liable for any loss incurred by any person as a result of participating in the plan.

107 Section 2. Amend Chapter 49, Title 10 of the Delaware Code by making deletions as shown by strike through and
108 insertions as shown by underline as follows:

§ 4916 Exemption of Delaware College Investment Plan Accounts and Delaware Achieving a Better Life Experience Accounts.

(a) In addition to the exemptions provided in §§ 4902 and 4903 of this title, there shall be exempt from execution or attachment process assets held in and proceeds payable under Chapter 5 of Title 13, ~~or~~ from any account established under the Delaware College Investment Plan pursuant to subchapter XII of Chapter 34 of Title 14 (a "Plan Account") or any account established under the Delaware Achieving a Better Life Experience Program pursuant to Chapter 96A of Title 16 (and "ABLE Account"). This exemption shall only apply to such amount as does not exceed the total contributions permitted under § 529(b)(7) of the Internal Revenue Code with respect to any Plan Account or ABLE Account.

(b) This section shall not exempt from execution or attachment assets contributed by a debtor to any Plan Account or ABLE Account within 365 days to the extent that such assets contributed within said 365 days exceed the greater of:

(1) \$5,000; or

(2) The average annual contribution made by such debtor to such Plan Account or ABLE Account for the 2 calendar years preceding the date of the filing of such execution or attachment or the filing of such petition.

(c) This section shall not exempt from execution or attachment any judgment obtained under § 554 of Title 30. If any portion of this section is held invalid or is preempted by federal law, in whole or in part, the remaining portions shall remain in effect to the maximum extent permitted by law.

(d) In the case of a Plan Account or ABLE Account owned by a trust, nothing in this section may be construed to limit the protections afforded to trusts by § 3536 of Title 12.

SYNOPSIS

This bill creates an Achieving a Better Life Experience ("ABLE") Program in Delaware, to implement federal legislation enabling the creation of savings accounts with tax advantages similar to 529 accounts, designed to be used by persons with disabilities to save for qualifying disability and education related expenses. The ABLE Program will be overseen by a Board composed of 7 members: a chair appointed by the Governor, the State Treasurer, the Secretary of the Department of Health and Social Services, a current member of the Board which oversees Delaware's 529 plans, a public member appointed by the Speaker of the House of Representatives, a public member appointed by the President Pro Tempore of the Senate, and a person with a disability appointed by the Governor. The Office of the State Treasurer shall provide support to the Board in carrying out its functions. The Board is empowered to take actions necessary to run the Program in compliance with federal law and regulations, including contracting with financial service providers and other consultants to implement the plan. Any contributions to these plans will not be counted against a designated beneficiary in determining that individual's income eligibility for state or local means-tested programs.

Section 2 of the bill exempts ABLE accounts from execution or attachment pursuant to court judgments in the same manner and to the same extent as 529 education accounts are protected.