

Legislative Analysis



MICHIGAN ABLE PROGRAM ACT

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House Bill 4542 (reported from committee as H-2)
House Bill 4543 (reported from committee w/o amendment)
Sponsor: Rep. Anthony G. Forlini

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4544 (reported from committee w/o amendment)
Sponsor: Rep. Nancy E. Jenkins

Committee: Financial Services
Complete to 5-26-15

SUMMARY:

House Bill 4542 would create the Michigan Achieving a Better Life Experience (ABLE) Program Act and establish a new savings program, with tax advantages, aimed at assisting persons with disabilities. Such programs are newly authorized for the states to operate by Section 529A of the federal Internal Revenue Code. Some of the features of this legislation are similar to those found in the existing Michigan Education Savings Program Act, under which contributions can be made to special savings accounts with the proceeds to be used to pay higher education expenses. The administration by the Michigan Department of Treasury of the new savings accounts would be similar to its administration of the higher education (529 Plan) savings accounts.

Under the bill, as of January 1, 2016, individuals who were residents of the state, or residents of a contracting state, could contribute money to ABLE savings accounts, with the proceeds to be used to pay qualified disability expenses, which are defined in federal law as expenses related to a person's blindness or disability, including expenses for education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management, and legal fees, among others.

One feature of the plans is that contributions to and distributions from the savings accounts would be disregarded, generally speaking, in determining eligibility for assistance under the state's Social Welfare Act.

A resident of the state or a resident of a contracting state could open an ABLE savings account to pay the qualified disability expenses of one designated beneficiary. To do so requires entering into an agreement with the Department of Treasury. The maximum account balance limit could not exceed the maximum amount allowed for an education savings account under the Michigan Education Savings Program Act. (Currently, this is \$235,000, but under the amendments in a related bill, 4541, that would be increased to \$500,000.) The required minimum initial deposit and required minimum contributions in the first year of the program could not be greater than \$25 for a cash contribution or \$15 per pay period for a payroll deduction plan. Money in the accounts would be invested by

program managers selected by the Department of Treasury, who could charge a fee of up to two percent of the average daily net assets of the program. (Further details of House Bill 4542 are provided later in the summary.)

House Bill 4543 would amend the Income Tax Act (MCL 206.30), for tax years beginning after December 31, 2016, in the following ways. (1) It would allow a taxpayer to deduct from taxable income contributions made to an ABLE savings account, not to exceed \$5,000 for a single return or \$10,000 for a joint return, per tax year. (2) It would allow a deduction for interest earned in a tax year on contributions to an ABLE savings account if the contributions were deductible. (3) It would allow a deduction for qualified withdrawals from an ABLE savings account to the designated beneficiary. The bill also would require that amounts withdrawn from an account that were not qualified withdrawals be added to taxable income, subject to certain limitations.

House Bill 4544 would amend the Social Welfare Act (MCL 400.1 et al.) to require the Department of Human Services to disregard money associated with a designated beneficiary's ABLE savings account in its financial eligibility determination for any assistance program under the act. This would include money in an ABLE account, earnings on money in an account, contributions to a designated beneficiary's own account, and distributions from an account for qualified disability expenses.

The bills are tie-barred to each other, meaning none could take effect unless all are enacted. The bills would take effect 90 days after they were enacted into law.

DETAILED DESCRIPTION OF HOUSE BILL 4542:

Key Terms

An "account owner" is defined as an individual who is a resident of the state, or a resident of a contracting state, and who enters into a Michigan ABLE savings program agreement and establishes an ABLE savings account. The account owner would be the designated beneficiary of the account unless the designated beneficiary is a minor or lacks capacity to enter into an agreement. In that case, a designated representative could open an account on behalf of the minor or incapacitated individual and serve as the account owner.

A "contracting state" is defined to mean a state without a qualified ABLE program that has entered into a contract with this state to provide its residents access to the Michigan ABLE program.

A "designated beneficiary" is defined as an "eligible individual" designated as the individual whose qualified disability expenses are expected to be paid from the account. As noted above, the designated beneficiary must be the account owner unless the beneficiary is a minor or lacks capacity to enter into an agreement. The bill says "the account owner may change the designated beneficiary as provided in this act."

A "designated representative" is defined to mean an individual who is authorized to act on behalf of the designated beneficiary. A designated representative includes, but is not

limited to, a guardian, trustee, executor, administrator, receiver, conservator, or any other person acting in any fiduciary capacity to the designated beneficiary. Designated beneficiary may also include an individual who is granted financial power of attorney for the designated beneficiary.

A number of the key terms are not defined in the bill except to refer to Section 529A of the federal Internal Revenue Code. These include "eligible individual," "disability certification," and "qualified disability expenses," among others.

Under federal law, the term "eligible individual" for a taxable year means, generally:

- The individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act and such blindness or disability occurred before the date on which the individual attained age 26; or
- A disability certification with respect to such individual is filed with the U.S. Secretary of the Treasury for such taxable year.

A "disability certification" refers to a certification (1) that the individual has a medically determinable physical or mental impairment resulting in marked and severe functional limitations and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months, or is blind; and that such blindness or disability occurred before the individual turned 26; and (2) that includes a copy of the individual's diagnosis signed by a physician.

"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 approved according to federal regulations.

Program Administration

As noted earlier, the ABLE Savings Account Program would be administered by the Michigan Department of Treasury. The administration of this program would be similar to the administration of the Michigan Education Savings Account Program, and the bill's description of administrative requirements are parallel to those found in the Michigan Education Savings Program Act.

The program would have to consist of more than one manager and provide multiple savings plans. The treasurer would have to solicit proposals from entities to be the program manager, and would have to give preference to proposals from single entities that propose to provide all of the necessary functions (managerial, professional, legal, clerical, technical, and administrative) and that demonstrate the most advantageous combination, to both potential participants and the state, of financial stability, safety of investment instruments, the ability of investment instruments to track increasing costs of disability expenses, the

ability to meet record keeping and reporting requirements, the plan for marketing and the investment in promoting savings plans, the fees proposed to be charged to people for opening and maintaining accounts, the ability to accept electronic withdrawals, including payroll deduction plans, the ability of an entity to provide financial literacy materials to all account owners, provide a higher level of customer service to support the unique needs of designated beneficiaries, and the willingness to offer a program of broker-sold products available through financial advisors.

The treasurer would have to enter into a contract with each program manager addressing the respective authority and responsibility of the treasurer and program manager to carry out a wide range of functions described in the bill, including, developing the savings plans, investing money from the accounts, engaging consultants, determining the use of financial organizations as account depositories and managers, collecting administrative and other fees, developing marketing plans, establishing methods by which funds are allocated to pay for administrative costs, providing criteria for terminating and not renewing management contracts, keeping adequate records and providing the state treasurer with needed information, compiling required information, holding accounts for the benefit of designated beneficiary, providing for audits at least annually by a firm of certified public accountants, providing the treasurer with copies of all regulatory filings and reports related to the program, ensuring that the description of the savings program was consistent with the marketing plan, taking the necessary actions to keep the program in compliance with state and federal law and the management contract, and offering a program of broker-sold products available through financial advisors.

The treasurer would be responsible for the ongoing supervision of each management contract. A management contract would be for a term of years specified in the contract, and the treasurer could terminate a contract based on criteria in the contract.

A program manager would be required to file an annual report with the state treasurer, to include the names and identification numbers of account owners and designated beneficiaries (none of which would be subject to the Freedom of Information Act); the total amount contributed to all accounts during the year; all distributions from all accounts and whether or not each distribution was a qualified withdrawal; and any information the program manager or treasurer required regarding the taxation of amounts contributed to or withdrawn from accounts.

Savings Accounts

An individual who is a resident of this state or a resident of a contracting state could open a savings account to save money to pay the qualified disability expenses of the designated beneficiary. To open an account, the individual (or designated representative of a designated beneficiary) would enter an agreement with the program manager. The agreement could designate only one beneficiary. The program could not require a designated representative to obtain court approval before opening and funding an ABLE savings account. Any person could make a contribution to an account, subject to limitations of Section 529A of the federal Internal Revenue Code. Contributions could only be made in cash, or by check, money order, credit card, or by a similar method, but could not be

property. The ABLE account would need to be exclusively used for the designated beneficiary and be considered a spend-thrift account.

An account owner could change the designated beneficiary of the account to another eligible individual as long as that person is member of the family of the previous designated beneficiary, and could transfer all or a portion of an account to another designated beneficiary who is eligible to be an account holder. The owner could designate another individual as a successor owner of the account in the event of his or her death. Changes in designated beneficiaries and transfers are not permitted to the extent that the change or transfer would constitute excess contributions or unauthorized investment choices.

Distributions from an account would have to be used to pay for qualified disability expenses and only in the following ways: directly to a provider of goods and services, if purchased for a designated beneficiary; in the form of a check payable to the designated beneficiary or account holder; or in the form of an electronic transfer of funds to an account specified by the designated beneficiary or account holder. Each savings plan would have to provide separate accounting for each beneficiary.

Generally, the account owner and the designated beneficiary would not be able to direct, or indirectly direct, the investment of any contributions to the account or the earnings on an account more than two times in any calendar year. The individual who established the account would be able to select among different investment strategies designed by the program manager as allowed under section 529A of the Internal Revenue Service Code.

Each program manager would also be required to report distributions from an account for the benefit of any designated beneficiary during a tax year to the Internal Revenue Service and to the account owner.

Pursuant to the IRS Code, each program manager would have to submit notice to the department when each ABLE account is established. The notice would need Each program manager would be required to provide statements that identify the individual contributions made during the tax year, the total contributions made to the account for the tax year, the value of the account at the end of the tax year, distributions made during tax year, and any other information the treasurer requires, to each account holder on or before January 31 following the end of each calendar year.

The department would be required to submit to the commissioner of Social Security on a monthly basis, statement on relevant distributions and account balances for all ABLE savings accounts. Each program manager would be required to disclose in writing to each account owner, and any other person who requested it, the following information: the terms and conditions for establishing an ABLE account; restrictions on the substitutions of designated beneficiaries and transfer of account funds; the person entitled to terminate a savings program agreement; the period of time during which a beneficiary could receive benefits under the agreement; the terms and conditions under which money could be wholly or partially withdrawn from an account or the program, including any reasonable fees, charges, and penalties; the potential tax consequences associated with contributions,

distributions, and withdrawals; the investment history and potential growth of account funds, including a projection of the impact of the growth of funds on the maximum allowable amount in an account; and all other rights and obligations under savings program agreements, and other terms, conditions, and provisions of a contract or an agreement entered into under the new act.

The bill stipulates that the new act would not create and could not be construed to create any obligation upon the state or any agency or instrumentality of the state to guarantee for the benefit of an account holder or a designated beneficiary the rate of interest or other return on an account or the payment of interest or other return on an account. The contracts and other documents used in connection with a contribution to an account would have to clearly indicate that the account is not insured by the state and that the money deposited and the investment earned in the account are not guaranteed by the state.

Exclusion of Expenses from Social Welfare Act

Any amount and interest earned on a savings account for the individual, any contributions to the account, and any distribution from a savings account for qualified disability expenses, would be disregarded under the state Social Welfare Act for the purposes of determining eligibility to receive, or determining the amount of, any assistance or benefit authorized for the benefit of an individual, with respect to any period during which that individual maintains, makes contributions to or receives distributions from his or her savings account. However, a distribution for housing expenses under Title XVI of the federal Social Security Act would not be disregarded, and any amount and interest earned on that account would be considered a resource, to the extent the amount exceeds \$100,000.

Upon the death of the designated beneficiary, the amount remaining in his or her ABLE savings account would have to be distributed according to section 529A of the Internal Revenue Service code.

FISCAL IMPACT:

House Bill 4542 would create new administrative and operational costs for the Department of Treasury through the creation of the Michigan Achieving a Better Life Experience (ABLE) Program Act. The increased costs to the Department of Treasury would be offset by the collection of a designated portion of the administrative fee not to exceed 2% of the average daily net assets of the account. If operated similarly to the Michigan Education Savings Program Act, the contracted Program Managers would retain a percentage-based administration fee and the Department of Treasury would receive a State Administrative Fee. Under the Michigan Education Savings Program Act, the fee is reduced once certain gross asset levels are reached.

As written, the bills would have a negative impact on gross individual income tax collections. The magnitude of this impact cannot be determined in advance. The number of participants and the rate at which they contribute to ABLE savings accounts are unknown. Furthermore, the number of eligible individuals in the state is not known, since this population (those whose disability or blindness occurred before the age of 26) is not

tracked in any publicly available data. The reduction in gross individual income tax collections would affect both the General Fund and the School Aid Fund.

POSITIONS:

Department of Treasury supports the bills. (5-20-15)
Autism Speaks testified in support of the bill as introduced. (5-13-15)
Blue Cross Blue Shield Michigan support the bills. (5-20-15)
Central Michigan Regional Inclusive Community Coalition supports the bills as introduced. (5-13-15)
Community Living Services supports the bills as introduced. (5-13-15)
Disability Network/Michigan supports House Bills 4542, 4543 as introduced. (5-13-15)
Health Care Association of Michigan supports the bills as introduced. (5-13-15)
Hope Community Center testified in support of the bills as introduced. (5-13-15)
Macomb ISD supports the bills. (5-20-15)
Michigan Banker's Association supports the bills. (5-20-15)
Michigan Developmental Disabilities Council supports the bills as introduced. (5-13-15)
National Association of Financial and Insurance Advisors supports the bills as introduced. (5-13-15)
NDSS and Down Syndrome Association of N.W. MI testified in support of the bills as introduced. (5-13-15)
National Down Syndrome Society supports the bills as introduced. (5-13-15)
Statewide Independent Living Council supports House Bills 4542 and 4543 as introduced (5-13-15)
The Arc of Michigan, testified in support of the bills as introduced. (5-13-15)

Legislative Analyst: E. Best/C. Couch
Fiscal Analyst: Adam Desrosiers
Ben Gielczyk

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.