



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 360 (as enrolled)
House Bills 4542, 4543, and 4544 (as enrolled)
Sponsor: Senator Rebekah Warren (S.B. 360)
Representative Anthony G. Forlini (H.B. 4542 & 4543)
Representative Nancy E. Jenkins (H.B. 4544)
Senate Committee: Finance
House Committee: Tax Policy (S.B. 360)
Financial Services (H.B. 4542-4544)

Date Completed: 10-19-15

RATIONALE

Individuals living with mental or physical disabilities face challenges such as securing employment, finding housing adapted to their unique needs, or living independently. For these and other reasons, many disabled individuals, and their families, depend on public assistance programs. However, people with disabilities may not have more than a certain level of assets--typically \$3,000 or \$5,000--before they become ineligible for many government support programs. This limit prevents them from saving money that could be used to help pay for their disability--related expenses. To address this issue, the Federal government passed the Stephen J. Beck, Jr. Achieving a Better Life Experience (ABLE) Act, which added Section 529A to the Internal Revenue Code to allow tax-exempt savings accounts for disability-related expenses, similar to Section 529 savings accounts for higher education expenses. The Act states that money in an ABLE savings account must be disregarded for purposes of means-tested Federal programs (except for certain conditions related to the Supplemental Security Income program). Before a state's residents can start their own ABLE accounts, the Act requires the state to create its own ABLE program or sign on with another state's program. It is believed that Michigan should enact legislation allowing the creation of these ABLE savings accounts, and preventing the funds in the accounts from being considered when a person's eligibility for asset-limited public assistance is determined.

CONTENT

House Bill 4542 would create the "Michigan Achieving a Better Life Experience (ABLE) Program Act", which would allow an individual to open an ABLE savings account to pay the qualified disability expenses of a designated beneficiary. The bill would do the following:

- Establish the Michigan ABLE Savings Program in the Department of Treasury.
- Require an individual or designated representative to enter into an agreement with the Program, when opening an account.
- Allow contributions to an account up to limits imposed by the Internal Revenue Code and rules promulgated by the State Treasurer.
- Limit an account balance to the amount allowed for an Education Savings Program account.
- Allow an income tax exemption for contributions to an ABLE savings account and qualified withdrawals from an account as provided in the Income Tax Act (which House Bill 4543 would amend).
- Require contributions to an individual's account and distributions for qualified disability expenses to be disregarded in a determination of the individual's eligibility for assistance from the State.

- **Require the State Treasurer to select program managers for the Program and enter into contracts with them.**
- **Establish reporting and disclosure requirements for program managers.**

House Bill 4543 would amend the Income Tax Act to allow a deduction, per tax year, of up to \$5,000 for a single return and \$10,000 for a joint return for contributions to an ABLE savings account; and allow a deduction for qualified withdrawals from an account.

House Bill 4544 would amend the Social Welfare Act to require the Department of Health and Human Services, for any assistance program for which financial eligibility was determined, to disregard in its financial eligibility determination money associated with a designated beneficiary's ABLE savings account.

Senate Bill 360 would amend the Michigan Education Savings Program Act to increase the maximum account balance limit for an education savings account from \$235,000 to \$500,000.

All of the bills are tie-barred to each other.

Senate Bill 360 and House Bills 4542 and 4544 would take effect 90 days after being enacted.

House Bill 4542

Program Establishment

The Michigan ABLE Savings Program would be established in the Department of Treasury and would have to consist of more than one program manager and provide multiple savings plans. The State Treasurer would have to administer the Program and be the trustee for its funds.

When selecting program managers, the Treasurer would have to give preference to proposals from single entities that demonstrated the most advantageous combination of the following factors, and the management contract would have to address these factors:

- Financial stability.
- The safety of the investment instruments being offered.
- The ability of the investment instruments to track the increasing costs of disability expenses.
- The ability of an entity to satisfy record-keeping and reporting requirements.
- Its plan for marketing the savings plan and the investment it was willing to make to promote the plan.
- The fees, if any, proposed to be charged for opening or maintaining an account.
- The minimum initial deposit and minimum contributions the entity would require which, for the first year of the savings plan, could not be greater than \$25 for cash contributions or \$15 per pay period for payroll deductions.
- The ability of an entity to accept electronic withdrawals, including payroll deduction plans.
- The willingness of an entity to offer a program of broker-sold products available through financial advisors.
- The ability of an entity to provide financial literacy materials and training resources to all account holders.
- The ability of an entity to provide a higher level of customer service to support the unique needs of designated beneficiaries.

The Treasurer would have to enter into a contract with each program manager that addressed the respective authority and responsibility of the Treasurer and program manager to do all of the following:

- Develop and implement the savings plan or plans offered.
- Invest the money received from account owners.
- Engage the services of consultants on a contractual basis to provide professional and technical assistance and advice.

- Determine the use of financial organizations as account depositories and financial managers.
- Charge, impose, and collect annual administrative fees, which could not exceed 2.0% of the average daily net assets of the account.
- Develop marketing plans and promotional material.
- Establish the methods by which funds would be allocated to pay for administrative costs.
- Provide criteria for terminating and not renewing the management contract.
- Address the ability of the program manager to keep the plans offered in compliance with requirements of the proposed Act and its management contract and to manage the plans to qualify as a qualified ABLE program under Section 529A of the Internal Revenue Code (IRC).
- Keep adequate records of each account and provide the Treasurer with information that he or she required.
- Compile the information contained in statements required under the proposed Act and provide that compilation to the Treasurer in a timely manner.
- Hold all accounts for the benefit of the designated beneficiary.
- Provide for audits at least annually by a firm of certified public accountants.
- Provide the Treasurer with copies of all filings and reports related to the plans offered, made during the term of the management contract or while the program manager was holding any accounts, other than confidential filings or reports except to the extent they were related to the plans offered.
- Ensure that any description of the plans offered was consistent with the marketing plan developed by the program manager.
- Offer a program of broker-sold products available through financial advisors.
- Take any other necessary and proper activities to carry out the purposes of the proposed Act.

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

Opening an ABLE Savings Account

Any individual who was a resident of the State or a resident of a contracting state would be allowed to open an ABLE savings account to save money to pay the qualified disability expenses of a qualified beneficiary. Each account could have only one designated beneficiary, and only one account could be opened for any one designated beneficiary. To open an account, the individual or designated representative would have to enter into a Michigan ABLE Savings Program agreement with the Program. The Program could not require a designated representative to obtain court approval before opening and funding an account for a designated beneficiary.

The program agreement would have to be in a form prescribed by the program manager and approved by the State Treasurer and contain all of the following:

- The name, address, and Social Security number of the account owner.
- A designated beneficiary, and the name, address, and Social Security number of the designated beneficiary if he or she were not the account owner.
- Any other information that the Treasurer or program manager deemed necessary.

Each savings plan under the Program would have to provide separate accounting for each designated beneficiary.

Contributions & Distributions

Any person would be permitted to make contributions to an account, subject to the limitations imposed by Section 529A of the IRC or any rules and regulations put into effect by the Treasurer. (Section 529A, the Achieving a Better Life Experience Act of 2014, restricts aggregate contributions from all contributors to not more than the amount of the gift tax exclusion for that year, currently \$14,000.) Contributions would have to be made in cash, by check, by credit card, or by any similar method as approved by the Treasurer, but could not be property.

The Program could allow its employees, or employees of a contractor hired by the Program to perform administrative services, to contribute to an account.

The money in an ABLÉ savings account would be exempt from creditor process and would not be liable to attachment, garnishment, or other process, nor could it be seized, taken, appropriated, or applied to pay any debt or legal liability of the designated beneficiary or account owner, except that the State could be a creditor of the account after the death of the designated beneficiary as provided in Section 529A of the IRC (which permits a state to recover up to the amount of medical assistance paid by the state of behalf of the designated beneficiary).

Distributions from an account would have to be made by one of the following:

- A check payable to the designated beneficiary or account owner.
- An electronic funds transfer to an account specified by the designated beneficiary or account owner.
- Directly to the provider of goods and services that were qualified disability expenses, if purchased for a designated beneficiary.

Contributions to and interest earned on an ABLÉ savings account would be exempt from the Michigan income tax, and withdrawals from an account would be taxable, as provided in Section 30 of the Income Tax Act (the section House Bill 4543 would amend).

Contributions, earnings, and distributions for qualified disability expenses would have to be disregarded in a determination of eligibility to receive, or the amount of, any assistance program offered by the State that required consideration of the financial circumstances of an individual, for any period during which the individual maintained, contributed to, or received distributions from his or her ABLÉ savings account.

Transfer of Account

An account owner could change the designated beneficiary of an account to another eligible individual who was a member of the previous beneficiary's family. The owner also could transfer all or a portion of an account to the ABLÉ savings account of an eligible individual who was also a family member of the previous beneficiary. In addition, the owner could designate another individual as a successor owner in the event of his or her death. Any change of designated beneficiaries or transfer would not be permitted to the extent it would constitute excess contributions or unauthorized investment choices.

Prohibitions & Restrictions

An account owner could select among different investment strategies designed by the program manager. He or she would be prohibited from directing the investment of any contributions or earnings in violation of Section 529A of the IRC (which prohibits directing the investments more than twice in a calendar year).

An account owner or designated beneficiary could not use an interest in an account as security for a loan.

The maximum account balance limit for an ABLÉ account could not exceed the maximum allowed for an education savings account (which is currently \$235,000 but, under Senate Bill 360, would be increased to \$500,000). The program manager would have to reject any contribution that was in excess of the annual contribution limits or that would put the total balance of the account above the maximum allowable balance. The program manager would have to notify an account owner if the annual contributions were within \$1,000 of the limit. Written notification would have to be provided at least five business days before a contribution was rejected. An account with a total balance that had reached the maximum account balance limit could still accrue earnings, and would not be considered to have exceeded the maximum account balance limit.

The proposed Act and any agreement under it would not give a designated beneficiary any rights or legal interest with respect to an account unless he or she was the account owner, and being a designated beneficiary of an agreement would not grant residency status to an individual.

The Act would not create any obligation upon the State or any agency or instrumentality of the State to guarantee the rate or payment of interest or other return on an account. The contracts, applications, deposit slips, and other similar documents used with connection with an account contribution would have to clearly indicate that the account was not insured by the State and investment return earned on an account was not guaranteed by the State.

Reporting & Disclosures

Each program manager would have to submit to the Internal Revenue Service and the Department 1) a notice upon the establishment of an ABLE savings account, and 2) an aggregate report of the contributions, distributions, the return of excess contributions, and any other matter as required by law or regulation regarding its ABLE program during the tax year.

Each program manager also would be required to file with the Treasurer an annual report that included all of the following:

- The names and identification numbers of account owners and designated beneficiaries (which would not be subject to disclosure under 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.
- Any information that the program manager or Treasurer could require regarding taxation of contributions or withdrawals.

Each program manager would have to provide to the account owner, by the January 31 following the end of the calendar year, statements that identified the individual contributions made during the tax year, the total contributions made to the account during the tax year, the value of the account at the end of the tax year, distributions made during the tax year, the amount of excess contributions returned during the tax year, and any other information required by the Department.

Every month, the Department would be required to submit electronically to the Commissioner of Social Security a statement on relevant distributions and account balances from all ABLE savings accounts.

Each program manager would be required to disclose the following in writing to each account owner and any other person who requested information about an ABLE savings account:

- The terms and conditions for establishing an account.
- Restrictions on the substitutions of designated beneficiaries and transfer of account funds.
- The person entitled to terminate a program agreement.
- The period of time during which a designated beneficiary could receive benefits under the program agreement.
- The terms and conditions under which money could be wholly or partially withdrawn from an account or the Program, including any charges, fees, and penalties that could be imposed for withdrawal.
- The potential tax consequences associated with contributions to and distributions and withdrawals from accounts.
- Investment history and potential growth of account funds and a projection of the impact of the growth of the account funds on the maximum amount allowable in the account.
- All other rights and obligations under Michigan ABLE Savings Program agreements and any other terms, conditions, and provisions of a contract or agreement.

Definitions

The bill would define "account owner" 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 have to be the designated beneficiary of the account unless the beneficiary was a minor or lacked capacity to enter into an agreement, in which case a designated representative could open an account on his or her behalf and serve as the account owner. A "contracting state" would be a state without a qualified ABLE program that entered into a contract with this State to provide its residents access to the Michigan ABLE program.

"Designated beneficiary" would mean an eligible individual designated as the individual whose qualified expenses are expected to be paid from the account. The designated beneficiary would have to be an eligible individual at the time the account was established. "Eligible individual" would be defined as the term is defined in Section 529A of the Internal Revenue Code, which states that an individual is an eligible individual if 1) he or she is entitled to benefits based on disability or blindness under the Social Security Act, and such blindness or disability occurred before age 26, and 2) a disability certification is filed with the Secretary of Treasury for the taxable year. "Disability certification" would mean that term as defined in Section 529A, i.e., a certification by the individual or the parent or guardian of the individual that the individual has a medically determinable physical or mental impairment, which results in severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for at least 12 months, or is blind, and that such blindness or disability occurred before the individual turned 26.

"Designated representative" would mean an individual who is authorized to act on behalf of the designated beneficiary if the designated beneficiary is a minor or has a guardian, conservator, or other fiduciary who has been appointed for purposes of managing that beneficiary's financial affairs.

"Qualified withdrawal" would mean a distribution that is not subject to a penalty or excise tax under Section 529A (which provides for the taxation of distributions not used for disability expenses), and not subject to the Michigan income tax, and meets any of the following:

- A withdrawal to pay the qualified disability expenses of the designated beneficiary incurred after the account is established.
- A withdrawal made as the result of the death or disability of the designated beneficiary.
- A transfer of funds due to the termination of the management contract.
- A transfer of funds to another ABLE account in which the designated beneficiary is a family member of the previous beneficiary.

"Qualified disability expenses" would mean the term as defined in Section 529A, i.e., any expenses related to the eligible individual's blindness or disability that 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 approved expenses.

House Bill 4543

For tax years beginning after December 31, 2015, the bill would allow a taxpayer to deduct from taxable income, to the extent not deducted from adjusted gross income, all of the following:

- Contributions made by the taxpayer in the tax year less qualified withdrawals made in the tax year from an ABLE savings account, not to exceed a total deduction of \$5,000 for a single return or \$10,000 for a joint return per tax year.
- Interest earned in the tax year on the contributions if they were deductible.

- Distributions that were qualified withdrawals from an ABLE savings account to the designated beneficiary of that account.

The amount calculated for contributions to an account could not be less than zero.

A taxpayer would have to add to his or her adjusted gross income the amount of money withdrawn by the taxpayer in the tax year from the account, not to exceed the total amount deducted in the tax year and all previous tax years, if the withdrawal were not a qualified withdrawal. This provision would not apply to withdrawals that were less than the sum of all contributions made in all previous tax years for which no deduction was claimed, minus any contributions for which no deduction was claimed that were withdrawn in all previous tax years.

House Bill 4544

The bill would require the Department of Health and Human Services, for any assistance program for which financial eligibility was determined, to disregard in its financial eligibility determination money associated with a designated beneficiary's ABLE savings account, including, but not limited to, all of the following:

- Money in a designated beneficiary's ABLE savings account.
- Earnings on money in an ABLE savings account.
- Contributions to a beneficiary's own ABLE savings account.
- Distributions from an ABLE savings account for the beneficiary's qualified disability expenses.

Senate Bill 360

The bill would amend the Michigan Education Savings Program Act to increase the maximum account balance limit for an education savings account. The Act allows individuals to contribute money to a tax-advantaged account for the benefit of a designated beneficiary to use for qualified educational expenses. Currently, the maximum account balance limit for all of the accounts that name any one individual as the designated beneficiary may not exceed \$235,000. The bill would change the limit to \$500,000.

MCL 390.1480 (S.B. 360)
Proposed MCL 206.981-206.997 (H.B. 4542)
MCL 206.30 (H.B. 4543)
Proposed MCL 400.10g (H.B. 4544)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would allow individuals with disabilities and their families to save money in tax-advantaged accounts that could be used to pay for disability-related expenses. Disabled people are currently discouraged from accumulating assets because many public assistance programs are terminated if the beneficiary accumulates more than a certain amount of assets. For example, excluding real property, the asset limit is \$3,000 for the Family Independence Program and for State Disability Assistance, and \$5,000 for the Food Assistance Program. For Social Security Income-related Medicaid eligibility, the limit is \$2,000 for one person or \$3,000 for a group of two. Those amounts are not enough to replace the financial benefit of the assistance programs, so many individuals with a disability work for low or no wages and spend everything they earn. By allowing these people to save money without jeopardizing their eligibility for support programs, the bills would help them eventually become more self-sufficient.

Opposing Argument

Increasing the maximum amount allowed in an education savings account from \$235,000 to \$500,000 would reduce State revenue and primarily benefit upper-income people. According to a

2012 report by the United States Government Accountability Office, the median income of families with Section 529 savings plans was about \$142,400, compared to \$45,000 for families without those accounts. The same report found that the average balance in those accounts was \$14,700, well below the current maximum allowed balance. It is unclear that the current maximum is not high enough for the average Michigan family to save for college.

Response: The Federal ABLE Act requires the maximum allowed balance for an ABLE account to be the same amount that is allowed by a state for a 529 college savings plan. While the current maximum may be adequate to pay for a child's education, the lifetime costs for a disabled person could be significantly more than the allowed amount. The higher limit should be adequate for a disabled individual and his or her family to save enough money to pay for that person's disability-related expenses.

Legislative Analyst: Suzanne Loew

FISCAL IMPACT

House Bill 4542

The bill would result in additional costs to the Department of Treasury and would have no fiscal impact on local units of governments. The Department would have to create and administer the Michigan Achieving a Better Life Experience Savings Program. The associated costs would be paid for from administrative fees charged on the accounts, which would be capped at 2.0% of the average daily net assets of the accounts. The fees charged would be similar to the amount that is charged for the Michigan Education Savings Program, which is sufficient to cover administrative expenses without additional appropriations from the General Fund. Any contracts that the Department entered into with program managers would result in a division of the fees between the managers and the Department.

House Bill 4543 and Senate Bill 360

The bills would, in conjunction with the other bills, reduce State revenue by an unknown, and potentially significant amount, that would depend upon the number of individuals affected and the magnitude of affected contributions and/or withdrawals (whether qualified or not). The bills would reduce revenue not only by increasing the maximum account balance on Michigan education savings plan accounts, but also by allowing the exemptions associated with the ABLE program. Based on estimates from the Department of Treasury derived from Federal Joint Committee on Taxation data, the bills would reduce revenue by approximately \$300,000 in FY 2015-16 and \$400,000 in FY 2016-17. As participation increased in future years, the revenue reduction would increase, totaling an estimated \$1.0 million in FY 2017-18 and \$1.9 million in FY 2018-19.

The bills would reduce both General Fund and School Aid Fund revenue. Under the current income tax rate, approximately 23.8% of gross individual income tax revenue is deposited into the School Aid Fund.

House Bill 4544

The bill would have a minimal fiscal impact on the State and no impact on local units of government. Individuals who qualified for the income exemption could receive increased monthly benefits for State Disability Assistance, Family Independence Program assistance, or State Emergency Relief, among other services. In order to receive increased benefits, the individuals would have to deposit a sufficient amount of money into an ABLE savings account to change their benefit eligibility level. Any actual increase in benefits would depend on participation in the savings account program and also the extent to which participation would result in increased benefits.

Fiscal Analyst: John Maxwell
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.