

**TREASURER OF STATE[781]**

**Adopted and Filed**

**Rule making related to Iowa ABLE savings plan trust**

The Treasurer of State hereby adopts new Chapter 20, “Iowa ABLE Savings Plan Trust,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapter 12I.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 12I.

*Purpose and Summary*

This rule making adopts rules on the administration of the Iowa ABLE savings plan trust.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 21, 2018, as **ARC 4123C**. A public hearing was held on December 12, 2018, at 1 p.m. in the Lucas State Office Building, First Floor, 321 East 12th Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. One change from the Notice has been made. The word “final” was added to the first sentence of subrule 20.21(6).

*Adoption of Rule Making*

This rule making was adopted by the Treasurer of State on April 26, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Treasurer of State for a waiver of the discretionary provisions, if any, pursuant to 781—Chapter 19.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on June 26, 2019.

The following rule-making action is adopted:

Adopt the following new 781—Chapter 20:

CHAPTER 20  
IOWA ABLE SAVINGS PLAN TRUST

**781—20.1(12I) Purpose.** The purpose of these rules is to provide for the administration and operation of the Iowa ABLE savings plan trust.

**781—20.2(12I) Definitions.** In addition to the terms defined in Iowa Code section 12I.1, the following terms apply to this chapter:

“*Account*” means an account in the plan opened by the account owner or authorized individual on behalf of the account owner to receive contributions and to provide funds for qualified disability expenses.

“*Account balance*” means the fair market value of an account.

“*Account balance limit*” means the amount set as such by the plan as set forth in the plan addendum. When the fair market value of an account reaches the account balance limit, no additional contributions will be accepted by the plan. Assets in an account can continue to accrue earnings beyond the account balance limit.

“*Account owner*” means the account owner and designated beneficiary of the account. An account owner must be an eligible individual. References herein to an account owner include an authorized individual or an authorized agent acting on behalf of an account owner.

“*Annual contribution limit*” means the annual limit on contributions from all sources to an account in a qualified ABLE program under Section 529A.

“*Authorized agent*” means a person granted permission, which is revocable, by the account owner or authorized individual to access information about the account or to take specified actions on the account or to do both of those things.

“*Authorized individual*” means an individual authorized to act on the account owner’s behalf with respect to the account. The authorized individual may neither have nor acquire any beneficial interest in the account during the account owner’s lifetime and must administer the account for the benefit of the account owner.

“*Beneficiary*” or “*designated beneficiary*” means the eligible individual who is the owner of the account.

“*Contractor*” means any party retained by the plan administrator to assist in the day-to-day operations of the plan, including record-keeping, investment advisory and administrative services. The plan administrator may delegate any responsibilities with respect to day-to-day operations of the plan to one or more contractors.

“*Contribution*” means an amount contributed to an account in accordance with the Internal Revenue Code, these rules and the plan disclosure documents.

“*Eligible individual*” means an eligible individual as defined in Section 529A.

“*Federal penalty tax*” means a 10 percent additional federal tax imposed on the earnings portion of certain nonqualified withdrawals.

“*Fund*” means the underlying investments that are mutual funds or exchange-traded funds.

“*Iable*” means the name and logo registered under Iowa law to represent the Iowa ABLE savings plan trust.

“*Internal Revenue Code*” means the Internal Revenue Code of 1986, as amended, and regulations promulgated or proposed thereunder.

“*Investment managers*” means the managers of the underlying investments.

“*Investment options*” means the investment choices offered by the plan. Account owners can choose to invest in any number of investment options.

“*IRS*” means the Internal Revenue Service.

*“Member of the family”* means a sibling of the eligible individual, whether by blood or by adoption, including a brother, sister, stepbrother, stepsister, half-brother, and half-sister.

*“Nonqualified withdrawal”* means any withdrawal that does not meet the requirements of being a qualified withdrawal or a rollover. Expenses will not be qualified disability expenses if they are incurred at a time when an account owner is not an eligible individual.

*“NYSE”* means the New York Stock Exchange, Inc.

*“Participation agreement”* means the agreement between the account owner and the plan that governs the account owner’s use of the plan.

*“Plan”* means the Iowa ABLE savings plan trust.

*“Plan addendum”* means the plan-specific disclosure document which contains substantive disclosure of the terms and conditions of an investment in the plan. The plan addendum is intended to be read with the plan disclosure statement.

*“Plan administrator”* means the treasurer of state as trustee and administrator of the plan.

*“Plan disclosure documents”* means the plan disclosure statement and the plan addendum applicable to the plan, including any supplements or amendments thereto.

*“Plan disclosure statement”* means the document adopted by the plan administrator which is intended to provide a description of the program and disclosure of the terms and conditions of an investment in the plan, including any supplements thereto distributed from time to time.

*“Qualified disability expenses”* means qualified disability expenses as defined in Section 529A.

*“Qualified withdrawal”* means any withdrawal from an account used to pay for qualified disability expenses of the account owner.

*“Rollover”* means a contribution to an account of an account owner (or of an eligible individual who is a member of the family of the account owner) of all or a portion of an amount withdrawn from the account owner’s account, provided the contribution is made within 60 days of the date of the withdrawal and, in the case of a rollover to the account owner’s ABLE account, no rollover has been made to an ABLE account of the account owner within the prior 12 months.

*“Secretary”* means the Secretary of the Treasury of the United States.

*“Section 529A”* means Section 529A of the Internal Revenue Code.

*“Social Security Act”* means the Social Security Act of 1935, as amended.

*“State”* means the state of Iowa.

*“Treasurer”* means the treasurer of the state of Iowa.

*“Underlying investments”* means the mutual funds, exchange-traded funds, bank products and any other investments in which assets of the plan are invested through the investment options.

**781—20.3(12I) Creation of Iowa ABLE savings plan trust.** The plan is created as a trust pursuant to Iowa Code chapter 12I. The treasurer is the trustee of the plan and, pursuant to Iowa Code chapter 12I, has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of Iowa Code chapter 12I pertaining to the plan.

The plan provides for the establishment of accounts under the plan by eligible individuals in order to provide a means to save for qualified disability expenses. The eligible individual is the account owner. The treasurer shall segregate moneys received by the plan into two funds: the program fund and the administrative fund. Contributions to the plan made on behalf of an eligible individual may only be made in the form of cash. An account owner is not permitted to provide investment direction regarding contributions or earnings held by the plan.

**781—20.4(12I) Participation agreement and plan disclosure documents.** The following material shall be used to administer the plan.

**20.4(1)** The plan shall have a form of participation agreement which must be used to establish accounts. The participation agreement shall be signed and dated in accordance with the requirements of the plan disclosure documents by the account owner to verify that the account owner agrees to the terms and conditions of the plan.

**20.4(2)** The plan will have plan disclosure documents setting forth the terms of the plan and describing the investment options, procedures, fees and costs applicable to the plan. The plan disclosure documents shall also set forth the privacy policy adopted by the plan administrator for the plan. Persons interested in the plan should consult the plan disclosure documents. The plan disclosure documents may be changed at any time by the plan administrator, and any such change may impact the rights of the account owner under the plan.

**781—20.5(12I) Eligible individual.** An account owner must be an eligible individual. An individual is an eligible individual for a taxable year if, during that year, either (1) the individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act (“benefits eligibility”), or (2) a disability certification meeting specified requirements is filed with the Secretary in accordance with Section 529A (“certification eligibility”). In all cases, the blindness or disability must have occurred before the individual’s twenty-sixth birthday. This rule establishes the following other requirements for opening an account:

**20.5(1)** An account owner may be a resident of any state.

**20.5(2)** An account owner must be a U.S. citizen or resident alien.

**20.5(3)** An account owner must, on signing a participation agreement, provide the plan administrator with a valid social security number or tax identification number.

**20.5(4)** An account owner must have a valid permanent U.S. street address.

**20.5(5)** No account owner may have more than one account in an ABLÉ plan in existence at the same time. A prior ABLÉ account that has been closed does not prohibit the subsequent creation of another ABLÉ account for the same account owner. As part of the enrollment process, the account owner will be required to certify under penalties of perjury that the account owner has no other ABLÉ account (except in the case of a rollover).

**20.5(6)** If an individual desires to open an account based on benefits eligibility, the individual must make the following certifications under penalties of perjury that:

*a.* The individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act and has received a benefit verification letter from the Social Security Administration and agrees to retain and provide the letter (or a genuine copy of the letter or other evidence) to the plan, the plan administrator, the IRS, or the U.S. Department of the Treasury upon request;

*b.* The individual’s disability was present before the individual’s twenty-sixth birthday.

**20.5(7)** If an individual desires to open an account based on certification eligibility, the individual must certify under penalties of perjury that the individual:

*a.* Has a medically determinable physical or mental impairment which results in marked or severe functional limitations and which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months;

*b.* Is blind (within the meaning of the Social Security Act); or

*c.* Has a condition listed in the “List of Compassionate Allowances Conditions” maintained by the Social Security Administration.

The individual must also certify that the disability, blindness, or compassionate allowances condition occurred before the date of the individual’s twenty-sixth birthday and that the individual has a copy of the individual’s diagnosis relating to the relevant impairment(s), signed by a physician meeting the criteria of Social Security Act Section 1861(r)(1). The individual must also agree to retain and provide a copy of the diagnosis and related information to the plan upon request.

**20.5(8)** By maintaining an account, the account owner is making a continuing certification that the account owner is an eligible individual. It is the account owner’s responsibility to notify the plan in writing if the account owner ceases to be an eligible individual. It is also the account owner’s responsibility to notify the plan in writing if the account owner subsequently requalifies as an eligible individual.

**781—20.6(12I) Authorized individual.** An authorized individual may establish an account on behalf of the account owner and make investment decisions for the account owner. An authorized individual

may neither have nor acquire any beneficial interest in the account during the account owner's lifetime and must administer the account for the benefit of the account owner. Whenever an action is required to be taken by an account owner in connection with an account, the authorized individual may take such action on behalf of the account owner.

**20.6(1)** A parent or legal guardian of an account owner who is a minor may be the authorized individual for that account owner. An adult account owner with legal capacity may appoint an individual as an authorized individual. In addition, a conservator legally appointed for an adult account owner who lacks legal capacity may be an authorized individual.

**20.6(2)** An authorized individual may be required to provide supporting documentation to the plan. The plan may freeze an account until the plan receives the required documentation and is able to verify the authorized individual's authority to open, transact and maintain an account on behalf of the account owner.

**781—20.7(12I) Authorized agent.** An account owner with legal capacity or an authorized individual may designate an authorized agent to act on the account. An authorized agent may be appointed with varying levels of authority in accordance with the plan disclosure documents. Certain levels of authority will require the completion of a power of attorney form.

**781—20.8(12I) Forms.**

**20.8(1)** Appropriate forms must be completed on paper, online or via telephone (whichever is applicable for the requested actions) to perform the actions set forth in and in accordance with the plan disclosure documents. Current forms are available online at [IAble.gov](http://IAble.gov). Among the actions which require the completion of an appropriate form are opening and closing an account, transferring ownership rights of an account to another person, changing investments, requesting a full or partial withdrawal, requesting a rollover, and assigning an authorized agent.

**20.8(2)** The plan administrator may from time to time provide additional forms for use by account owners in connection with actions involving the plan and will make those forms available online and in paper format and may authorize substitute forms for the plan or a process in lieu of forms except when not permitted by Iowa Code chapter 12I.

**781—20.9(12I) Plan administrator rights and responsibilities.**

**20.9(1)** The plan administrator reserves the right to:

*a.* Freeze an account, suspend account services or do both: (1) if the plan administrator receives notice of a dispute regarding account assets or account ownership, including notice of the death of an account owner (until appropriate documentation is received and the plan administrator reasonably believes that it is lawful to transfer account ownership); (2) if the plan administrator reasonably believes a fraudulent transaction may occur or has occurred; or (3) when a minor account owner reaches the age of majority (until appropriate documentation is received);

*b.* Close an account, without the account owner's permission, in cases of threatening conduct or suspicious, fraudulent or illegal activity;

*c.* Terminate or refuse to establish an account if the plan administrator determines that it is in the best interest of the plan or required by law;

*d.* Close an account if the plan administrator determines that the account owner provided false or misleading information to the plan in establishing or maintaining an account or that the account owner is restricted by law from participating in the plan; and

*e.* Reject a contribution for any reason, including contributions to the plan that the plan administrator believes are not in the best interests of the plan, an investment option or the account owners.

**20.9(2)** The risk of market loss, tax implications, penalties, and any other expenses as a result of the above will be solely the account owner's responsibility.

**781—20.10(12I) Contributions.** The participation agreement and plan disclosure documents will provide for limits on the annual and total contributions to an account. This rule provides for implementation of such provisions.

**20.10(1)** Section 529A mandates an annual contribution limit for qualified ABLE programs. The account limit is subject to adjustment as provided in Section 529A. The limit may change from time to time, and any change will be set forth in the plan disclosure documents.

**20.10(2)** Anyone is allowed to make a contribution at any time during the calendar year to an account provided that the total of all annual contributions may not exceed the annual contribution limit and that all contributions are in compliance with the other requirements set forth in the plan disclosure documents.

**20.10(3)** The plan administrator shall actuarially determine an account balance limit applicable to the account of an account owner. No additional contributions may be made to an account when the fair market value of the account exceeds the account balance limit listed in the plan addendum. Accounts that have reached the account balance limit may continue to accrue earnings, although future contributions may not be made to such accounts. If, however, the market value of an account falls below the account balance limit due to market fluctuations and not as a result of withdrawals from the account, additional contributions will be accepted.

**20.10(4)** The plan administrator shall determine the maximum amount that an individual may contribute to an account and deduct from Iowa income taxes pursuant to Iowa Code chapter 422 on behalf of an account owner for the calendar year by applying the applicable inflation adjustment. The adjusted annual maximum shall be communicated to account owners in the plans and to the public in any reasonable manner determined by the plan administrator.

**781—20.11(12I) Substitution or change of beneficiary.** Iowa Code section 12I.3(3) “a” provides that beneficiaries may be changed subject to the rules and regulations of the treasurer. This rule establishes the criteria for substituting one beneficiary for another. Beneficiary changes shall also be subject to the procedures set forth in the plan disclosure documents.

**20.11(1)** The beneficiary must be the account owner. At the time of the substitution, the substitute beneficiary must be an eligible beneficiary pursuant to rule 781—20.5(12I) and must be a member of the family of the beneficiary being replaced.

**20.11(2)** An account owner has the right to change the beneficiary of an account. An account owner may request that a beneficiary be substituted by submitting the appropriate form to the plan administrator.

**781—20.12(12I) Change of account owner; transfer.** The account owner has the exclusive right to cancel the participation agreement or change the account owner in accordance with these rules and the plan disclosure documents.

**20.12(1)** An account owner may transfer the account owner’s ownership rights in an account only to another eligible individual who is a member of the family of the account owner. To do so, the account owner shall complete the appropriate form and provide any requested documentation.

**20.12(2)** All or a portion of an account owner’s account balance may be transferred to another account within the plan, but only during the life of the account owner. At the time of the transfer, the transferee must be an eligible individual and a member of the family of the transferor-account owner.

**781—20.13(12I) Qualified withdrawals.** This rule establishes the procedures for the payment of qualified withdrawals. A qualified withdrawal is a withdrawal from an account that is used to pay for any qualified disability expenses of the account owner.

**20.13(1)** The account owner must initiate withdrawal for qualified disability expenses. The account owner must file the appropriate form with the plan administrator.

**20.13(2)** Qualified withdrawals will be paid as provided in the plan disclosure documents.

**20.13(3)** Each qualified withdrawal will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings comprise the account owner’s account at the time of the withdrawal.

**20.13(4)** Funds that are distributed to an account owner shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The account owner will receive the 1099-Q for any withdrawals made to or as instructed by the account owner. The account owner receiving the 1099-Q must determine whether the withdrawal was made for a qualified disability expense or was a nonqualified withdrawal.

**781—20.14(12I) Nonqualified withdrawals and participation agreement cancellation.** An account owner may cancel a participation agreement at will. This rule establishes the criteria for nonqualified withdrawals from an account or for the cancellation of a participation agreement.

**20.14(1)** The earnings portion of a nonqualified withdrawal is subject to federal income taxation and the federal penalty tax except in certain limited circumstances.

**20.14(2)** An account owner may at any time make a nonqualified withdrawal of a portion of the amount in an account or cancel a participation agreement, without cause, by submitting the appropriate form to the plan administrator. A nonqualified withdrawal will be paid only to the account owner.

**20.14(3)** Upon cancellation of a participation agreement, an account owner shall be entitled to the return of the account owner's account balance. If the participation agreement is canceled, the account owner is entitled to the amount in the account, subject to any applicable fees and expenses. The balance shall be mailed or otherwise sent to the account owner after receipt of the appropriate form by the plan administrator.

**20.14(4)** Funds that are distributed to an account owner in a nonqualified withdrawal shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The account owner will receive the 1099-Q for any withdrawal. Nonqualified withdrawals may be subject to state and federal taxes and penalties. Withdrawals may be requested online or by calling the plan. In certain instances, additional documentation may be required before a withdrawal may be processed. Only the account owner may direct withdrawals from the account. Withdrawals will be sent as provided in the plan disclosure documents.

**781—20.15(12I) Account statements.** Account owners will receive quarterly account statements, which will include the total value of the account and a list of transactions within the account for that quarterly period. Account owners will receive account statements, transaction confirmations, and other personal correspondence in paper format unless the account owner signs up for electronic delivery.

**781—20.16(12I) State tax treatment.** The maximum amount that may be deducted per year for Iowa income tax purposes by an individual who is a resident of this state for contributions to an account shall not exceed the maximum deductible amount determined for the year pursuant to Iowa Code section 12D.3(1). State inheritance tax treatment of interests in the plan shall be as provided in Iowa Code section 450.4(9).

**781—20.17(12I) Security.** An account owner shall not be entitled to utilize any interest in the plan as security for a loan.

**781—20.18(12I) Garnishment.** Pursuant to Iowa Code section 642.2, funds held by the plan administrator under the plan are not subject to garnishment.

**781—20.19(12I) Reports—annual audited financial report—reports under federal law.**

**20.19(1)** The plan administrator shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the plan by November 1 to the governor and the general assembly. The annual audit shall be made either by the auditor of state or by an independent certified public accountant designated by the auditor of state and shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

**20.19(2)** The annual audit shall be supplemented by any of the following information prepared by the treasurer.

- a. Any related studies or evaluations prepared in the preceding year;
- b. A summary of the benefits provided by the plan, including the number of account owners in the plan; and
- c. Any other information deemed relevant by the plan administrator in order to make a full, fair, and effective disclosure of the operations of the plan.

**20.19(3)** The plan administrator or contractor shall prepare and submit to the Secretary or other required party any reports, notices, or statements required under Section 529A.

**781—20.20(12I) Federal tax treatment.** For federal income tax purposes, the plan shall be considered a qualified ABLE program exempt from taxation pursuant to Section 529A and shall be operated so that it meets the requirements of Section 529A.

**781—20.21(12I) Appeal of decisions.** An account owner may appeal any decision of the plan administrator under these rules and with respect to the plan.

**20.21(1)** An account owner may utilize the appeals process after receipt of the decision from the plan administrator.

**20.21(2)** Failure to submit the appeal request within 30 calendar days of receipt of the decision from the plan administrator shall constitute an acceptance of the decision.

**20.21(3)** The account owner shall submit to the plan administrator a written request for an appeal along with all supporting documentation.

**20.21(4)** The plan administrator shall contact the account owner and schedule an appeal meeting within 30 calendar days of receipt of the account owner's appeal request.

**20.21(5)** An appeal review shall be conducted, at which time the account owner shall present evidence supporting the account owner's basis for the appeal.

**20.21(6)** Based on the evidence and additional information presented during the appeal, the plan administrator will render a final decision. Such final decision will be written and sent to the account owner within 30 calendar days of the appeal meeting.

These rules are intended to implement Iowa Code chapter 12I.

[Filed 4/29/19, effective 6/26/19]

[Published 5/22/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.