

Senate File 490 - Introduced

SENATE FILE 490

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 439)

(SUCCESSOR TO SSB 1210)

A BILL FOR

1 An Act creating an Iowa ABLE savings plan trust, providing for
2 participation in another state's qualified ABLE program,
3 providing deductions and exclusions from the individual
4 income tax and inheritance tax relating to the trust or
5 program, and including implementation and applicability
6 provisions.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 12I.1 Purpose and definitions.

2 1. The general assembly finds that the general welfare
3 and well-being of the state are directly related to the
4 health, maintenance, independence, and quality of life of its
5 disabled residents, and that a vital and valid public purpose
6 is served by the creation and implementation of programs that
7 encourage and make possible savings to secure funding for
8 disability-related expenses on behalf of individuals with
9 disabilities that will supplement, but not supplant, other
10 benefits provided by various federal, state, and private
11 sources. The creation of the means of encouragement for
12 citizens to invest in such a program represents the carrying
13 out of a vital and valid public purpose. In order to make
14 available to the citizens of the state an opportunity to fund
15 future disability-related expenses of individuals, it is
16 necessary that a public trust be established in which moneys
17 may be invested for payment of future disability-related
18 expenses of an individual.

19 2. As used in this chapter, unless the context otherwise
20 requires:

21 a. "Account balance limit" means the maximum allowable
22 aggregate balance of an account established for a designated
23 beneficiary. Account earnings, if any, are included in the
24 account balance limit.

25 b. "Account owner" means an individual who enters into a
26 participation agreement under this chapter for the payment
27 of qualified disability expenses on behalf of a designated
28 beneficiary.

29 c. "Contracting state" means the same as defined in section
30 529A of the Internal Revenue Code.

31 d. "Designated beneficiary" means an individual who is a
32 resident of this state or a resident of a contracting state and
33 who meets the definition of "eligible individual" in section
34 529A of the Internal Revenue Code.

35 e. "Internal Revenue Code" means the Internal Revenue Code

1 of 1986, as amended, and regulations promulgated thereunder.

2 *f. "Iowa ABLE savings plan trust" or "trust" means the trust*
3 *created under section 12I.2.*

4 *g. "Participation agreement" means an agreement between the*
5 *account owner and the trust entered into under this chapter.*

6 *h. "Qualified ABLE program" means the same as defined in*
7 *section 529A of the Internal Revenue Code.*

8 *i. "Qualified disability expenses" means the same as defined*
9 *in section 529A of the Internal Revenue Code.*

10 *j. "Resident" shall be defined by rules adopted by the*
11 *treasurer of state. The rules shall determine residency in*
12 *such manner as may be required or permitted under section*
13 *529A of the Internal Revenue Code, or, in the absence of any*
14 *guidance under federal law, as the treasurer of state deems*
15 *advisable for the purpose of satisfying the requirements of*
16 *section 529A of the Internal Revenue Code.*

17 **Sec. 2. NEW SECTION. 12I.2 Creation of Iowa ABLE savings**
18 **plan trust.**

19 An Iowa ABLE savings plan trust is created. The treasurer of
20 state is the trustee of the trust, and has all powers necessary
21 to carry out and effectuate the purposes, objectives, and
22 provisions of this chapter pertaining to the trust, including
23 the power to do all of the following:

24 1. Make and enter into contracts necessary for the
25 administration of the trust created under this chapter.

26 2. Enter into agreements with this state or any other
27 state, or any federal or other state agency, or other entity as
28 required to implement this chapter.

29 3. Carry out the duties and obligations of the trust
30 pursuant to this chapter.

31 4. Accept any grants, gifts, legislative appropriations,
32 and other moneys from the state, any unit of federal, state, or
33 local government, or any other person, firm, partnership, or
34 corporation which the treasurer of state shall deposit into the
35 administrative fund or program fund.

- 1 5. Participate in any federal, state, or local governmental
2 program for the benefit of the trust.
- 3 6. Procure insurance against any loss in connection with the
4 property, assets, or activities of the trust.
- 5 7. Enter into participation agreements with account owners.
- 6 8. Make payments to designated beneficiaries pursuant to
7 participation agreements.
- 8 9. Make refunds to account owners upon the termination
9 of participation agreements, and partial nonqualified
10 distributions to account owners, pursuant to this chapter and
11 the limitations and restrictions set forth in this chapter.
- 12 10. Invest moneys from the program fund in any investments
13 that are determined by the treasurer of state to be
14 appropriate.
- 15 11. Engage investment advisors, if necessary, to assist in
16 the investment of trust assets.
- 17 12. Contract for goods and services and engage personnel
18 as necessary, including consultants, actuaries, managers,
19 legal counsel, and auditors for the purpose of rendering
20 professional, managerial, and technical assistance and advice
21 to the treasurer of state regarding trust administration and
22 operation.
- 23 13. Establish, impose, and collect administrative fees
24 and charges in connection with transactions of the trust, and
25 provide for reasonable service charges, including penalties for
26 cancellations and late payments with respect to participation
27 agreements.
- 28 14. Administer the funds of the trust.
- 29 15. Prepare and file reports and notices.
- 30 16. Enter into agreements with contracting states to permit
31 residents of the contracting state to participate in the Iowa
32 ABLE savings plan trust.
- 33 17. Adopt rules pursuant to chapter 17A for the
34 administration of this chapter.
- 35 Sec. 3. NEW SECTION. 12I.3 Participation agreements for

1 trust.

2 The trust may enter into participation agreements with
3 account owners pursuant to the following terms and agreements:

4 1. a. Unless otherwise permitted under section 529A of the
5 Internal Revenue Code, the treasurer of state shall allow only
6 one participation agreement per designated beneficiary.

7 b. Unless otherwise permitted under section 529A of the
8 Internal Revenue Code, the account owner must also be the
9 designated beneficiary of the account. However, a trustee or
10 legal guardian may be designated as custodian of an account for
11 a designated beneficiary who is a minor or who lacks capacity
12 to enter into a participation agreement if such designation is
13 not prohibited under section 529A of the Internal Revenue Code.

14 c. The treasurer of state shall set an annual contribution
15 limit and account balance limit to maintain compliance with
16 section 529A of the Internal Revenue Code. A contribution
17 shall not be permitted to the extent it exceeds the annual
18 contribution limit or causes the aggregate balance of the
19 account established for the designated beneficiary to exceed
20 the applicable account balance limit.

21 d. The maximum amount that may be deducted for Iowa income
22 tax purposes shall not exceed the maximum deductible amount
23 determined for the year pursuant to section 12D.3, subsection
24 1, paragraph "a". This maximum amount applies per designated
25 beneficiary that is a resident of this state per year.

26 e. Participation agreements may be amended to provide
27 for adjusted levels of contributions based upon changed
28 circumstances or changes in disability-related expenses.

29 f. Any person may make contributions pursuant to a
30 participation agreement on behalf of a designated beneficiary
31 under rules adopted by the treasurer of state.

32 2. The execution of a participation agreement by the trust
33 shall not guarantee in any way that future disability-related
34 expenses will be equal to projections and estimates provided by
35 the trust or that the account owner or designated beneficiary

1 is guaranteed any of the following:

2 *a.* A return of principal.

3 *b.* A rate of interest or other return from the trust.

4 *c.* Payment of interest or other return from the trust.

5 3. *a.* A designated beneficiary under a participation
6 agreement may be changed as permitted under rules adopted by
7 the treasurer of state upon written request of the account
8 owner as long as such change would be permitted by section 529A
9 of the Internal Revenue Code.

10 *b.* Participation agreements may otherwise be freely amended
11 throughout their terms in order to enable account owners to
12 increase or decrease the level of participation, change the
13 designated beneficiary, and carry out similar matters as
14 authorized by rule.

15 4. Each participation agreement shall provide that the
16 participation agreement may be canceled upon the terms and
17 conditions, and upon payment of applicable fees and costs set
18 forth and contained in the rules adopted by the treasurer of
19 state.

20 **Sec. 4. NEW SECTION. 12I.4 Program and administrative funds**
21 **— investment and payment.**

22 1. *a.* The treasurer of state shall segregate moneys
23 received by the trust into two funds: the program fund and the
24 administrative fund.

25 *b.* All moneys paid by account owners or other persons
26 on behalf of a designated beneficiary in connection with
27 participation agreements shall be deposited as received into
28 separate accounts for each designated beneficiary within the
29 program fund.

30 *c.* Contributions to the trust made on behalf of designated
31 beneficiaries may only be made in the form of cash.

32 *d.* An account owner or designated beneficiary is
33 not permitted to provide investment direction regarding
34 contributions or earnings held by the trust.

35 2. Moneys accrued by account owners in the program fund

1 of the trust may be used for payments of qualified disability
2 expenses.

3 3. Moneys in the account of a designated beneficiary may
4 be claimed by the Iowa Medicaid program as provided in section
5 529A(f) of the Internal Revenue Code and subject to limitations
6 imposed by the treasurer of state.

7 4. The trust shall comply with Pub. L. No. 113-295, §103,
8 regarding treatment of ABLE accounts under certain federal
9 programs.

10 Sec. 5. NEW SECTION. **12I.5 Cancellation of agreements.**

11 An account owner may cancel a participation agreement at
12 will. Upon cancellation of a participation agreement, an
13 account owner shall be entitled to the return of the account
14 owner's account balance.

15 Sec. 6. NEW SECTION. **12I.6 Repayment and ownership of
16 payments and investment income — transfer of ownership rights.**

17 1. *a.* An account owner retains ownership of all
18 contributions made on behalf of a designated beneficiary under
19 a participation agreement up to the date of utilization for
20 payment of qualified disability expenses of the designated
21 beneficiary.

22 *b.* All income derived from the investment of the
23 contributions made on behalf of a designated beneficiary shall
24 be considered to be held in trust for the benefit of the
25 designated beneficiary.

26 2. In the event the trust is terminated prior to payment of
27 qualified disability expenses for the designated beneficiary,
28 the account owner is entitled to a refund of the account
29 owner's account balance.

30 3. Any amounts which may be paid to any person or persons
31 pursuant to the Iowa ABLE savings plan trust but which are not
32 listed in this section are owned by the trust.

33 4. An account owner may transfer ownership rights to
34 another designated beneficiary, including a gift of the
35 ownership rights to a designated beneficiary who is a minor, in

1 accordance with rules adopted by the treasurer of state and the
2 terms of the participation agreement, so long as the transfer
3 would be permitted by section 529A of the Internal Revenue
4 Code.

5 5. An account owner or designated beneficiary shall not be
6 entitled to utilize any interest in the trust as security for
7 a loan.

8 Sec. 7. NEW SECTION. 12I.7 Reports — annual audited
9 financial report — reports under federal law.

10 1. *a.* The treasurer of state shall submit an annual
11 audited financial report, prepared in accordance with generally
12 accepted accounting principles, on the operations of the trust
13 by November 1 to the governor and the general assembly.

14 *b.* The annual audit shall be made either by the auditor
15 of state or by an independent certified public accountant
16 designated by the auditor of state and shall include direct and
17 indirect costs attributable to the use of outside consultants,
18 independent contractors, and any other persons who are not
19 state employees.

20 2. The annual audit shall be supplemented by all of the
21 following information prepared by the treasurer of state:

22 *a.* Any related studies or evaluations prepared in the
23 preceding year.

24 *b.* A summary of the benefits provided by the trust,
25 including the number of account owners and designated
26 beneficiaries in the trust, or, if the trust has caused this
27 state to become a contracting state pursuant to section 12I.10,
28 a summary of the benefits provided to Iowa residents by the
29 contracted qualified ABLE program, including the number of
30 account owners and designated beneficiaries in the contracted
31 qualified ABLE program who are Iowa residents.

32 *c.* Any other information deemed relevant by the treasurer of
33 state in order to make a full, fair, and effective disclosure
34 of the operations of the trust or the contracted qualified ABLE
35 program if applicable.

1 3. The treasurer of state shall prepare and submit to the
2 secretary of the United States treasury or other required party
3 any reports, notices, or statements required under section 529A
4 of the Internal Revenue Code.

5 **Sec. 8. NEW SECTION. 12I.8 Tax considerations.**

6 1. For federal income tax purposes, the Iowa ABLE savings
7 plan trust shall be considered a qualified ABLE program exempt
8 from taxation pursuant to section 529A of the Internal Revenue
9 Code and shall be operated so that it meets the requirements of
10 section 529A of the Internal Revenue Code.

11 2. State income tax treatment of the Iowa ABLE savings plan
12 trust shall be as provided in section 422.7, subsections 34 and
13 34A.

14 3. State inheritance tax treatment of interests in Iowa ABLE
15 savings plans shall be as provided in section 450.4, subsection
16 9.

17 **Sec. 9. NEW SECTION. 12I.9 Property rights to assets in
18 trust.**

19 1. The assets of the trust shall at all times be preserved,
20 invested, and expended solely and only for the purposes of the
21 trust and shall be held in trust for the account owners and
22 designated beneficiaries.

23 2. Except as provided in section 12I.4, subsection 3, no
24 property rights in the trust shall exist in favor of the state.

25 3. Except as provided in section 12I.4, subsection 3, the
26 assets of the trust shall not be transferred or used by the
27 state for any purposes other than the purposes of the trust.

28 **Sec. 10. NEW SECTION. 12I.10 Implementation as a
29 contracting state — tax considerations.**

30 1. The general assembly acknowledges that section 529A of
31 the Internal Revenue Code permits access to qualified ABLE
32 programs by residents of a state without such a program. The
33 general assembly finds that becoming a contracting state may
34 accomplish the public purpose set forth in section 12I.1,
35 subsection 1, in the same manner as if the qualified ABLE

1 program under the Iowa ABLE savings plan trust were to be
2 implemented and administered by this state. To that end,
3 the treasurer of state, as trustee of the trust, may defer
4 implementation of the qualified ABLE program under the trust
5 and alternatively cause this state to become a contracting
6 state by entering into an agreement with another state with a
7 qualified ABLE program to provide Iowa residents access to that
8 state's qualified ABLE program. The trust shall not enter into
9 an agreement pursuant to this section unless the treasurer,
10 as trustee of the trust, determines that all of the following
11 requirements are satisfied:

12 a. The program is a qualified ABLE program.

13 b. The qualified ABLE program provides comparable benefits
14 and protections to Iowa residents as would be provided under
15 the Iowa ABLE savings plan trust.

16 c. That entering into an agreement for access to the
17 qualified ABLE program would not result in increased costs to
18 the state or to account owners and designated beneficiaries as
19 compared to the costs of implementing and administering the
20 qualified ABLE program under the Iowa ABLE savings plan trust.

21 d. The qualified ABLE program will be audited annually by
22 an independent certified public accountant or by the state
23 auditor, or similar public official, of the state that has
24 implemented the qualified ABLE program.

25 e. The qualified ABLE program will provide information to
26 the treasurer of state as trustee of the trust so as to allow
27 the trustee to fulfill the reporting requirements in section
28 12I.7.

29 2. a. The maximum amount that may be deducted for Iowa
30 income tax purposes for contributions to the qualified ABLE
31 program with which the state has contracted pursuant to
32 this section shall not exceed the maximum deductible amount
33 determined for the year pursuant to section 12D.3, subsection
34 1, paragraph "a". This maximum amount applies per designated
35 beneficiary that is a resident of this state per year.

1 *b.* State income tax treatment of the qualified ABLE program
2 with which the state has contracted pursuant to this section
3 shall be as provided in section 422.7, subsections 34 and 34A.

4 3. State inheritance tax treatment of interests in the
5 qualified ABLE program with which the state has contracted
6 pursuant to this section shall be as provided in section 450.4,
7 subsection 9.

8 Sec. 11. NEW SECTION. 12I.11 **Construction.**

9 This chapter shall be construed liberally in order to
10 effectuate its purpose.

11 Sec. 12. Section 422.7, Code 2015, is amended by adding the
12 following new subsections:

13 NEW SUBSECTION. 34. *a.* Subtract the amount contributed
14 during the tax year on behalf of a designated beneficiary
15 that is a resident of this state to the Iowa ABLE savings
16 plan trust or to the qualified ABLE program with which the
17 state has contracted pursuant to section 12I.10, not to exceed
18 the maximum contribution level established in section 12I.3,
19 subsection 1, paragraph "d", or section 12I.10, subsection 2,
20 paragraph "a", as applicable.

21 *b.* Add the amount resulting from the cancellation of a
22 participation agreement refunded to the taxpayer as an account
23 owner in the Iowa ABLE savings plan trust or the qualified
24 ABLE program with which the state has contracted pursuant to
25 section 12I.10 to the extent previously deducted pursuant
26 to this subsection by the taxpayer or any other person as a
27 contribution to the trust or qualified ABLE program.

28 *c.* Add the amount resulting from a withdrawal made by a
29 taxpayer from the Iowa ABLE savings plan trust or the qualified
30 ABLE program with which the state has contracted pursuant to
31 section 12I.10 for purposes other than the payment of qualified
32 disability expenses to the extent previously deducted pursuant
33 to this subsection by the taxpayer or any other person as a
34 contribution to the trust or qualified ABLE program.

35 NEW SUBSECTION. 34A. Subtract, to the extent included,

1 income from interest and earnings received from the Iowa ABLE
2 savings plan trust created in chapter 12I, or received by a
3 resident account owner from a qualified ABLE program with which
4 the state has contracted pursuant to section 12I.10.

5 Sec. 13. Section 450.4, Code 2015, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 9. On the value of any interest in the Iowa
8 ABLE savings plan trust created in chapter 12I, or any interest
9 held by a resident account owner in a qualified ABLE program
10 with which the state has contracted pursuant to section 12I.10.

11 Sec. 14. CONTINGENT IMPLEMENTATION. The implementation of
12 this chapter is subject to an appropriation with the stated
13 purpose of the Iowa ABLE Savings Plan Trust.

14 Sec. 15. APPLICABILITY. The section of this Act amending
15 section 450.4 applies to estates of decedents dying on or after
16 January 1, 2016.

17 Sec. 16. APPLICABILITY. The section of this Act amending
18 section 422.7 applies to tax years beginning on or after
19 January 1, 2016.

20 EXPLANATION

21 The inclusion of this explanation does not constitute agreement with
22 the explanation's substance by the members of the general assembly.

23 This bill creates an Iowa ABLE (Achieving A Better Life
24 Experience) savings plan trust and provides for various Iowa
25 individual income tax and inheritance tax benefits.

26 BACKGROUND. On December 19, 2014, the federal Achieving
27 A Better Life Experience Act of 2014 (ABLE Act) was enacted
28 as part of the federal Tax Increase Prevention Act of 2014
29 (Pub. L. No. 113-295). The ABLE Act allows states to create
30 programs to assist individuals in saving private funds for
31 the purpose of supporting individuals with disabilities.
32 Qualifying state programs will allow for the establishment
33 of accounts into which eligible disabled individuals or
34 others may make contributions for the payment of future
35 disability-related expenses of the eligible disabled

1 individual. Funds and earnings in accounts established
2 under qualifying state programs are afforded federal benefits
3 in certain circumstances, including federal tax exemption,
4 bankruptcy protection, and exclusion from consideration under
5 certain means-tested programs, such as Medicaid or supplemental
6 security income.

7 IOWA ABLE SAVINGS PLAN TRUST. The bill creates the Iowa
8 ABLE savings plan trust (trust) under the treasurer of state
9 (state treasurer) that will meet the requirements of §529A of
10 the Internal Revenue Code (federal ABLE program). The state
11 treasurer is the trustee of the trust and has numerous powers,
12 as specified in the bill, for the purpose of carrying out the
13 purpose of the trust.

14 The trust is authorized to enter into participation
15 agreements with individuals for the payment of future qualified
16 disability expenses, and to enter into contracts with other
17 states (contracting state) to allow these states' residents
18 access to the Iowa ABLE program. "Qualified disability
19 expenses" means the same as defined under the federal ABLE
20 program, which generally defines the term to include expenses
21 related to a designated beneficiary's education, housing,
22 transportation, employment training and support, assistive
23 technology and personal support services, health, prevention
24 and wellness, financial management and administrative services,
25 legal fees, expenses for oversight and monitoring, funeral and
26 burial expenses, and other expenses approved by the secretary
27 of the United States treasury (secretary).

28 Unless otherwise allowed under the federal ABLE program,
29 the person with whom the state treasurer enters into a
30 participation agreement must be both the account owner and
31 designated beneficiary. However, the bill allows a trustee
32 or legal guardian to be designated as custodian of an account
33 for a designated beneficiary who is a minor or who lacks
34 capacity to enter into a participation agreement, provided such
35 designation would be allowed under the federal ABLE program.

1 "Designated beneficiary" is defined in the bill as a person who
2 is a resident of Iowa or a contracting state and who qualifies
3 as an eligible individual under the federal ABLE program, which
4 includes individuals who are entitled to benefits based on
5 blindness or disability under Title II (disability insurance)
6 or Title XVI (supplemental security income) of the federal
7 Social Security Act if such blindness or disability occurred
8 before attaining 26 years of age, and if such individual files
9 a disability certification with the secretary.

10 The bill requires the state treasurer to maintain a separate
11 account in the trust for each designated beneficiary of a
12 participation agreement. Unless otherwise allowed under the
13 federal ABLE program, only one participation agreement shall be
14 allowed per designated beneficiary. Any person is allowed to
15 make contributions in the form of cash to an account on behalf
16 of a designated beneficiary. The trust is required to maintain
17 limits on the annual contributions to an account, and the
18 aggregate balance in an account, matching those set forth in
19 the federal ABLE program, which prohibits annual contributions
20 to an account from exceeding the annual gift tax exclusion
21 amount (\$14,000 for 2015), and prohibits an aggregate account
22 balance from exceeding the limit set by a state under its
23 qualified tuition program (currently \$320,000 for Iowa).

24 The bill also permits the treasurer of state to defer
25 implementation of the Iowa ABLE program and alternatively enter
26 into an agreement with another state's qualified ABLE program
27 to provide Iowa residents access to that state's program, if
28 certain requirements specified in the bill are satisfied.

29 The bill provides other various terms and conditions for
30 participation agreements, use and segregation of trust funds,
31 cancellation of agreements and refund of account balances,
32 and ownership rights in the trust. The bill provides that an
33 account may be claimed by the Iowa Medicaid program upon the
34 death of the designated beneficiary, in accordance with the
35 federal ABLE program. The bill requires the state treasurer to

1 prepare and submit audited financial reports to the governor
2 and general assembly, and further requires the state treasurer
3 to comply with any reporting requirements of the federal ABLE
4 program. The bill applies to qualified disability expenses
5 incurred on or after July 1, 2015.

6 IOWA TAX BENEFITS. The bill provides several tax benefits
7 under the trust. First, the value of any interest in the
8 trust or other contracted state's qualified ABLE program
9 of a decedent who was an Iowa resident dying on or after
10 January 1, 2016, is excluded from the Iowa inheritance tax.
11 Second, contributions to the trust or other contracted state's
12 qualified ABLE program made on or after January 1, 2016, on
13 behalf of a designated beneficiary who is an Iowa resident
14 are deductible from the Iowa individual income tax up to the
15 maximum amount allowed per beneficiary per year for purposes
16 of the Iowa educational savings plan trust in Code chapter
17 12D. For 2015, that amount is set at \$3,163. Any amounts
18 refunded to a taxpayer from the cancellation of a participation
19 agreement or that are withdrawn for purposes other than the
20 payment of qualified disability expenses of the designated
21 beneficiary must be included in Iowa net income to the extent
22 they were previously deducted by the taxpayer or any other
23 person as a contribution. Third, income and earnings from the
24 trust or received by resident account owners from a contracted
25 state's qualified ABLE program are exempt from the Iowa
26 individual income tax. The individual income tax benefits
27 apply to tax years beginning on or after January 1, 2016.

28 CONTINGENT IMPLEMENTATION. The implementation of the bill
29 is subject to an appropriation with the purpose of the trust
30 stated.