

BILL ANALYSIS

C.S.S.B. 1664
By: Perry
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recently, Congress passed the Achieving a Better Life Experience Act, or ABLE Act, to assist individuals with disabilities and their families in creating a tax-free ABLE savings account to cover qualified expenses such as education, housing, transportation, employment training and support, health care, assistive technology and personal support services, funeral and burial, and other expenses. Through these accounts, eligible individuals with disabilities will be able to save earned income and plan for the future without the fear of losing eligibility for Medicaid, allowing these individuals an opportunity to live more independent, self-directed, and meaningful lives. Although Congress passed the ABLE Act, interested parties assert that states must also pass legislation to enact ABLE accounts. C.S.S.B. 1664 seeks to provide for the creation of ABLE accounts at the state level.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Prepaid Higher Education Tuition Board in SECTION 2 of this bill.

ANALYSIS

C.S.S.B. 1664 amends the Education Code to create the Texas Achieving a Better Life Experience (ABLE) Program and to establish the Texas ABLE savings plan account as a trust fund outside of the state treasury. The bill requires the Prepaid Higher Education Tuition Board to administer the program and establishes that the board, the office of the comptroller of public accounts, and any manager or other contractor that contracts with the board to provide services under the program are not covered entities for purposes of Health and Safety Code provisions relating to medical records privacy. The bill requires the board to develop and implement the program; to adopt rules and establish policies and procedures to implement the program to permit the program to qualify as a qualified ABLE program under federal law, to make changes to the program as necessary for program participants to obtain or maintain federal income tax benefits or treatment provided by federal law and exemptions under federal securities laws, and to make changes to the program as necessary to ensure the program's compliance with all other applicable laws and regulations; to develop and provide information for participants and their families necessary to establish and maintain an ABLE account, either directly or through a contractual arrangement for investment or plan manager services with a financial institution or plan manager or another qualified entity; to enter into agreements with any financial institution or any state or federal agency or contractor or other entity as required to administer the program; to enter into participation agreements with participants; to solicit and accept any gifts, grants, legislative appropriations, and other funds from the state, any unit of federal, state, or local

government, or any other person, firm, partnership, or corporation; to invest participant funds in appropriate investment instruments; and to make provision for the payment of costs of administering the program. The bill includes the ABLE program, the prepaid tuition unit undergraduate education program, and the Texas Save and Match Program among the programs required to be administered by the board.

C.S.S.B. 1664 grants the board all powers necessary or proper to carry out its duties and to effectuate the purposes of the ABLE program. The bill requires the board to collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program in amounts not exceeding the amount necessary to recover the cost of establishing and maintaining the program. The bill provides for the investment of funds, the treatment of program assets, the exclusion of ABLE account assets from certain benefit eligibility determinations, exemption from securities laws, and participation agreements. The bill prohibits an ABLE account from being assigned for the benefit of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge and establishes that the state is a permissible creditor upon the death of a designated beneficiary for the purposes set forth in federal law. The bill limits the use of ABLE program assets to making distributions to designated beneficiaries; paying the costs of program administration and operations; making refunds for cancellations, excess contributions, liquidation, and death, in accordance with a computation method determined by the board; rolling over funds to another ABLE account to the extent authorized by federal law; and making distributions to the state as authorized by federal law.

C.S.S.B. 1664 establishes that a program participant is the designated beneficiary and owner of the ABLE account and authorizes the parent or custodian or other fiduciary of the beneficiary, if the beneficiary is a minor or has a custodian or other fiduciary appointed for purpose of managing the minor's financial affairs, to serve as the participant if that form of ownership is permitted or not prohibited by federal law. The bill establishes that a beneficiary may only own one ABLE account and that each ABLE account may have only one owner, except as otherwise provided by federal law. The bill authorizes the board to require a participant to verify under oath the participant's certification as an eligible individual, the participant's selection to change a designated beneficiary, the participant's selection to cancel a participation agreement, and any other information the board may require. The bill authorizes a participant to cancel a participation agreement at will and requires each participation agreement to provide that the agreement may be cancelled on the terms and conditions and on payment of applicable fees and costs as provided by rule.

C.S.S.B. 1664 requires the board to comply with the reporting requirements established in federal law, to report financial information related to the ABLE program in an annual financial report in accordance with the comptroller's requirements and guidelines for state agencies, to include financial information for the ABLE program in the board's annual report posted on the board's website, and to prepare any other reports required by state or federal rules and regulations. The bill establishes that all information relating to the program is public and subject to disclosure under state public information law and that information relating to a prospective or current participant or designated beneficiary or to a participation agreement, including any personally identifiable information, is confidential except that the board may disclose that information to a participant regarding the participant's account or a state or federal agency as necessary to administer the program or as required by federal law or federal or state requirements. The bill establishes that nothing in its provisions or in any participation agreement may be construed to guarantee that amounts saved under the program will be sufficient to cover the qualified disability expenses of a designated beneficiary or to create any obligation of the state, any agency or instrumentality of the state, or a plan manager to guarantee for the benefit of a participant the return of any amount contributed to an account, the rate of interest or other return on an account, or the payment of interest or other return on an account. The bill requires the board by rule to require that informational materials used in connection with a contribution to an ABLE account clearly indicate that the account is not insured by the state and that neither the

principal deposited nor the investment return is guaranteed by the state.

C.S.S.B. 1664 requires the comptroller to notify the governor and the legislature and recommend that the board not administer an ABLÉ program or that the program be modified or terminated if the comptroller determines that the ABLÉ program is not financially feasible and authorizes the board to adjust the terms of participation agreements as necessary to ensure the financial feasibility of the program on such determination. The bill requires the balance of each ABLÉ account to be paid to the participant, to the extent possible, if the ABLÉ program is terminated. The bill establishes the ABLÉ program advisory committee to review rules and procedures related to the ABLÉ program, to provide guidance, suggest changes, and make recommendations for the administration of the program, and to provide assistance as needed to the board and the comptroller during the creation of the program. The bill sets out the composition of the advisory committee, all of whom must be appointed by the comptroller not later than December 1, 2015, and requires the comptroller to appoint a presiding officer of the committee. The bill provides for committee meetings, establishes that a committee member is not entitled to compensation or reimbursement for travel expenses, and exempts the committee from Government Code provisions relating to state agency advisory committees. The bill's provisions relating to the ABLÉ program advisory committee expire and the advisory committee is abolished December 1, 2019. The bill authorizes the board to begin enrollment in the ABLÉ program as soon as reasonably practical to allow sufficient time for successful development and implementation of the program.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1664 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Section 54.602(b), Education Code, is amended to read as follows:

(b) The board shall administer the prepaid higher education tuition program established under this subchapter, ~~and~~ the higher education savings plan established under Subchapter G, and the Texas Achieving a Better Life Experience Program created under Chapter 162, Human Resources Code.

SECTION 2. The heading to Section 54.634, Education Code, is amended to read as follows:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 54.602(b), Education Code, is amended to read as follows:

(b) The board shall administer the following programs:

(1) the prepaid higher education tuition program established under this subchapter;
~~and~~

(2) the higher education savings plan established under Subchapter G;

(3) the prepaid tuition unit undergraduate education program established under Subchapter H;

(4) the Texas Save and Match Program established under Subchapter I; and

(5) the Texas Achieving a Better Life Experience Program established under Subchapter J.

No equivalent provision.

Sec. 54.634. ESTABLISHMENT OF TRUST FUND; COLLEGE SAVINGS PLAN ACCOUNT; TEXAS ABLE SAVINGS PLAN ACCOUNT.

SECTION 3. Section 54.634, Education Code, is amended by adding Subsection (e) to read as follows:

(e) The Texas ABLE savings plan account is created within the Texas tomorrow constitutional trust fund and is financed through administrative fees and service charges as authorized by Section 162.004, Human Resources Code.

SECTION 4. Title 11, Human Resources Code, is amended by adding Chapter 162 to read as follows:

CHAPTER 162. TEXAS ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM

Sec. 162.001. PURPOSES OF PROGRAM. The purposes of this chapter are as follows:

- (1) to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life; and
- (2) to provide secure funding for qualified disability expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under Title XIX of the Social Security Act, the supplemental security income program under Title XVI of the Social Security Act, the beneficiary's employment, and other sources.

Sec. 162.002. DEFINITIONS. In this chapter:

- (1) "ABLE account" has the meaning assigned by Section 529A, Internal Revenue Code.
- (2) "ABLE program" or "program" means the Texas Achieving a Better Life Experience Program created under this chapter.
- (3) "Benefits" means the payment of qualified disability expenses on behalf of a designated beneficiary from an ABLE account.
- (4) "Board" means the Prepaid Higher

No equivalent provision.

SECTION 2. Chapter 54, Education Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. TEXAS ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM

Sec. 54.901. PURPOSES OF PROGRAM. The purposes of this subchapter are as follows:

- (1) to encourage and assist individuals and families in saving funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life; and
- (2) to provide secure funding for qualified disability expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under Title XIX of the Social Security Act, the supplemental security income program under Title XVI of the Social Security Act, the beneficiary's employment, and other sources.

Sec. 54.902. DEFINITIONS. In this subchapter:

- (1) "ABLE account" has the meaning assigned by Section 529A, Internal Revenue Code.
- (2) "ABLE program" or "program" means the Texas Achieving a Better Life Experience Program created under this subchapter.
- (3) "Board" means the Prepaid Higher

Education Tuition Board established under Section 54.602, Education Code.

(5) "Designated beneficiary" and "eligible individual" have the meanings assigned by Section 529A, Internal Revenue Code.

(6) "Financial institution" means a bank, trust company, an insurance company, or a registered investment company.

(7) "Internal Revenue Code" means the Internal Revenue Code of 1986.

(8) "Participant" means a person who has entered into a participation agreement under this chapter.

(9) "Participation agreement" means an agreement between a participant and the board under this chapter that conforms to the requirements prescribed by this chapter.

(10) "Qualified disability expenses" has the meaning assigned by Section 529A, Internal Revenue Code.

(11) "Texas ABLE savings plan account" means the Texas ABLE savings plan account created under Section 54.634(e), Education Code.

Sec. 162.003. CREATION; ADMINISTRATION.

(a) The Texas Achieving a Better Life Experience (ABLE) Program is created under this chapter.

Education Tuition Board established under Section 54.602.

(4) "Designated beneficiary" means a resident of this state with a disability who is an eligible individual and named as the designated beneficiary of an ABLE account.

(5) "Eligible individual" means a person who has certified to the board that the person is eligible to participate in the ABLE program.

(6) "Financial institution" means a bank, a trust company, a depository trust company, an insurance company, a broker-dealer, a registered investment company or investment manager, the Texas Safekeeping Trust Company, or another similar financial institution authorized to transact business in this state.

(7) "Internal Revenue Code" means the Internal Revenue Code of 1986.

(8) "Participant" means a designated beneficiary or the parent or custodian or other fiduciary of the beneficiary who has entered into a participation agreement under this subchapter.

(9) "Participation agreement" means an agreement between a participant and the board under this subchapter that conforms to the requirements prescribed by this subchapter.

(10) "Qualified disability expenses" means 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, and includes expenses for education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, oversight and monitoring, a funeral and burial, and other expenses approved under federal regulations adopted under Section 529A, Internal Revenue Code.

(11) "Texas ABLE savings plan account" means the Texas ABLE savings plan account created under Section 54.903.

Sec. 54.903. CREATION OF PROGRAM AND ACCOUNT; ADMINISTRATION.

(a) The Texas Achieving a Better Life Experience (ABLE) Program is created under this subchapter. The Texas ABLE

(b) The board shall administer the ABLÉ program.

Sec. 162.004. POWERS AND DUTIES OF BOARD. (a) To establish and administer the ABLÉ program, the board shall:

(1) develop and implement the program;
(2) adopt reasonable rules and establish policies and procedures to implement this chapter to:

(A) permit the program to qualify as a qualified ABLÉ program under Section 529A, Internal Revenue Code; and

(B) ensure the program's compliance with all applicable laws;

(3) either directly or through a contractual arrangement with a financial institution for investment services, develop and implement educational programs and related informational materials for participants and their families, including special programs and materials to inform individuals with disabilities regarding methods for financing the qualified disability expenses of individuals with disabilities to enable those individuals to maintain health, independence, and quality of life;

(4) enter into agreements with any financial institution or any state or federal agency or entity as required to administer the program under this chapter;

(5) enter into participation agreements with participants;

(6) solicit and accept any gifts, grants, legislative appropriations, and other funds from the state, any unit of federal, state, or local government, or any other person, firm,

savings plan account is established as a trust fund outside of the state treasury.

(b) The board shall administer the ABLÉ program.

(c) The board, the office of the comptroller, and any manager or other contractor that contracts with the board to provide services under this subchapter are not covered entities for purposes of Chapter 181, Health and Safety Code.

Sec. 54.904. POWERS AND DUTIES OF BOARD. (a) To establish and administer the ABLÉ program, the board shall:

(1) develop and implement the program;
(2) adopt rules and establish policies and procedures to implement this subchapter to:

(A) permit the program to qualify as a qualified ABLÉ program under Section 529A, Internal Revenue Code;

(B) make changes to the program as necessary for the participants in the program to obtain or maintain federal income tax benefits or treatment provided by Section 529A, Internal Revenue Code, and exemptions under federal securities laws; and

(C) make changes to the program as necessary to ensure the program's compliance with all other applicable laws and regulations;

(3) either directly or through a contractual arrangement for investment or plan manager services with a financial institution or plan manager or another qualified entity, develop and provide information for participants and their families necessary to establish and maintain an ABLÉ account;

(4) enter into agreements with any financial institution or any state or federal agency or contractor or other entity as required to administer the program under this subchapter;

(5) enter into participation agreements with participants;

(6) solicit and accept any gifts, grants, legislative appropriations, and other funds from the state, any unit of federal, state, or local government, or any other person, firm,

partnership, or corporation for deposit to the Texas ABLE savings plan account;

(7) invest participant funds in appropriate investment instruments;

(8) appoint members to an advisory committee who are stakeholders from the disability community;

(9) make provision for the payment of costs of administering the program; and

(10) procure insurance, guarantees, or other protections against any loss in connection with the assets or activities of the program.

(b) The board has all powers necessary or proper to carry out its duties under this chapter and to effectuate the purposes of this chapter, including the power to:

(1) enter into contracts and other necessary instruments;

(2) enter into agreements or other transactions with the United States, state agencies, and other entities as necessary;

(3) appear on its own behalf before governmental agencies;

(4) contract for necessary goods and services, including specifying in the contract duties to be performed by the provider of a good or service that are a part of or are in addition to the person's primary duties under the contract;

(5) engage the services of private consultants, actuaries, trustees, records administrators, managers, legal counsel, and auditors for administrative or technical assistance;

(6) participate in any government program;

(7) impose charges and fees;

(8) contract with a person to market the program;

(9) make reports;

(10) purchase liability insurance covering the board and employees and agents of the board; and

partnership, or corporation;

(7) invest participant funds in appropriate investment instruments; and

(8) make provision for the payment of costs of administering the program.

(b) The board has all powers necessary or proper to carry out its duties under this subchapter and to effectuate the purposes of this subchapter, including the power to:

(1) sue and be sued;

(2) enter into contracts and other necessary instruments;

(3) enter into agreements or other transactions with the United States, state agencies, and other entities as necessary;

(4) appear on its own behalf before governmental agencies;

(5) contract for necessary goods and services, including specifying in the contract duties to be performed by the provider of a good or service that are a part of or are in addition to the person's primary duties under the contract;

(6) contract with another state that administers a qualified ABLE program as authorized by Section 529A, Internal Revenue Code, to provide residents of this state with access to a qualified ABLE program;

(7) engage the services of private consultants, trustees, records administrators, managers, legal counsel, auditors, and other appropriate parties or organizations for administrative or technical assistance;

(8) participate in any government program;

(9) impose fees and charges;

(10) develop marketing plans or promotional materials or contract with a consultant to market the program;

(11) make reports;

(12) purchase liability insurance covering the board and employees and agents of the board;

(13) make changes to the program as necessary for the participants in the program to obtain or maintain federal income tax benefits or treatment provided by Section 529A, Internal Revenue Code, and

(11) establish other policies, procedures, and eligibility criteria to implement this chapter.

No equivalent provision.

Sec. 162.005. INVESTMENT OF FUNDS.

(a) All money paid by a participant in connection with a participation agreement shall be:

- (1) deposited into an individual ABLE account held on behalf of that participant in the Texas ABLE savings plan account; and
- (2) promptly invested by the board.

(b) For new contracts entered into after December 1, 2015, board members shall study investment plans of other states and contract with or negotiate to provide benefit options that are the same as or similar to other states' qualified plans for the purpose of offering additional options for participants.

(c) The board may delegate to duly appointed investment counselors authority to act on behalf of the board in the investment and reinvestment of all or part of the funds and may also delegate to those counselors the authority to act on behalf of the board in the holding, purchasing, selling, assigning, transferring, or disposing of any or all of the securities and investments in which the funds in the Texas ABLE savings plan account have been invested, as well as the proceeds from the investment of those funds. The investment counselors must be registered as investment advisors with the United States Securities and Exchange Commission.

exemptions under federal securities laws; and

(14) establish other policies, procedures, and eligibility criteria to implement this subchapter.

Sec. 54.9045. COLLECTION OF FEES.

The board shall collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program in amounts not exceeding the amount necessary to recover the cost of establishing and maintaining the program.

Sec. 54.905. INVESTMENT OF FUNDS.

(a) All money paid by a participant in connection with a participation agreement shall be:

- (1) deposited into an individual ABLE account held on behalf of that participant in the Texas ABLE savings plan account; and
- (2) promptly invested by the board.

(b) The board at least annually shall establish and review the asset allocation and selection of the underlying investments of the ABLE program.

(c) The board may delegate to duly appointed financial institutions authority to act on behalf of the board in the investment and reinvestment of all or part of the funds and may also delegate to those financial institutions the authority to act on behalf of the board in the holding, purchasing, selling, assigning, transferring, or disposing of any or all of the securities and investments in which the funds in the Texas ABLE savings plan account have been invested, as well as the proceeds from the investment of those funds.

(d) In delegating investment authority to financial institutions, the board may authorize the pooling of funds from the ABLE accounts with other funds administered by the board to maximize returns for participants. If funds from the ABLE accounts are pooled with other funds administered by the board, the board shall track, monitor, report, and record separately

(d) In exercising or delegating its investment powers and authority, members of the board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. A member of the board is not liable for any action taken or omitted with respect to the exercise of, or delegation of, those powers and authority if the member discharged the duties of the member's position in good faith and with the degree of diligence, care, and skill that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(e) A company or firm in which a member of the board has a substantial interest may not handle an investment transaction authorized by the board. A member of the board may not profit directly or indirectly from an investment transaction authorized by the board.

(f) A member of the board or an employee or agent of the ABLE program may not receive any gain or profit from any funds or transactions of the ABLE program. A member's, employee's, or agent's acceptance of any gratuity or compensation for the purpose of influencing an action taken with respect to the investment or management of the funds of the ABLE program is grounds for removal or termination of the member, employee, or agent, as applicable.

Sec. 162.006. TREATMENT OF ASSETS.

(a) The assets of the ABLE program shall at all times be preserved, invested, and spent only for the purposes provided by this chapter and in accordance with the

all investment activity related to the ABLE accounts, including any earnings and fees associated with each individual ABLE account.

(e) The board may select one or more financial institutions to serve as custodian of all or part of the program's assets.

(f) In the board's discretion, the board may contract with one or more financial institutions to serve as plan manager and to invest the money in ABLE accounts.

(g) A contract between the board and a financial institution to act as plan manager under this subchapter may be for a term of up to five years and may be renewable.

(h) In exercising or delegating investment powers and authority, members of the board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. A member of the board is not liable for any action taken or omitted with respect to the exercise of, or delegation of, those powers and authority if the member discharged the duties of the member's position in good faith and with the degree of diligence, care, and skill that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(i) In administering this subchapter, the board is subject to the board's ethics policy adopted under Section 54.6085.

Sec. 54.906. TREATMENT OF ASSETS.

(a) The assets of the ABLE program shall at all times be preserved, invested, and spent only for the purposes provided by this subchapter and in accordance with the

participation agreements entered into under this chapter.
(b) The state does not have a property right in the assets of the ABLÉ program.

No equivalent provision.

No equivalent provision.

Sec. 162.007. PARTICIPATION AGREEMENTS. (a) Under the ABLÉ program, the board may enter into participation agreements with participants on behalf of designated beneficiaries.
(b) A participation agreement must:
(1) stipulate the terms and conditions of the ABLÉ program in which the participant makes contributions;
(2) specify the method for calculating the return on the contribution made by the participant;
(3) clearly and prominently disclose to participants the risk associated with depositing funds with the board;
(4) be organized and presented in a way and with language that is easily understandable by the general public; and
(5) clearly and prominently disclose to participants the existence of any load charge

participation agreements entered into under this subchapter.
(b) Except as provided by Section 529A, Internal Revenue Code, the state does not have a property right in the assets of the ABLÉ program.

Sec. 54.9065. EXCLUSION OF ABLÉ ACCOUNT ASSETS FROM CERTAIN BENEFIT ELIGIBILITY DETERMINATIONS. Notwithstanding any other provision of state law that requires consideration of the financial circumstances of an applicant for assistance or a benefit provided under that law, the agency making the determination of eligibility for the assistance or benefit may not consider the amount in the applicant's ABLÉ account, including earnings on that amount, and any distribution for qualified disability expenses in determining the applicant's eligibility to receive and the amount of the assistance or benefit with respect to the period during which the individual maintains the ABLÉ account.

Sec. 54.907. EXEMPTION FROM SECURITIES LAWS. An ABLÉ account is not a security within the meaning of the term as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), and is exempt from the provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

Sec. 54.908. PARTICIPATION AGREEMENTS. (a) Under the ABLÉ program, the board may enter into participation agreements with participants on behalf of designated beneficiaries.
(b) A participation agreement may include the following terms:
(1) the requirements and applicable restrictions for:
(A) opening an ABLÉ account;
(B) making contributions to an ABLÉ account; and
(C) directly or indirectly, directing the investment of the contributions or balance of the ABLÉ account;
(2) the eligibility requirements for a participant to enter into a participation agreement and the rights of that participant;
(3) the administrative fee and other fees and charges applicable to an ABLÉ account;

or similar charge assessed against the ABLE accounts of the participants for administration or services.

(c) Consistent with Section 529A, Internal Revenue Code, the board shall establish:

(1) the maximum annual amount that a participant may contribute with respect to a designated beneficiary; and

(2) a total contribution limit for ABLE accounts established under the ABLE program with respect to a designated beneficiary.

(d) The board may establish other requirements that the board considers appropriate to provide adequate safeguards to prevent contributions on behalf of a designated beneficiary from exceeding the amount that is necessary to provide for the qualified disability expenses of the beneficiary.

(4) the terms and conditions under which an ABLE account or participation agreement may be modified, transferred, or terminated;

(5) the method of disposition of abandoned ABLE accounts; and

(6) any other terms and conditions the board considers necessary or appropriate, including those necessary to conform the ABLE account to the requirements of Section 529A, Internal Revenue Code, or other applicable federal law.

(c) The participation agreement may be amended throughout the term of the agreement, including to allow a participant to increase or decrease the level of participation and to change the designated beneficiary or other matters authorized by this section and Section 529A, Internal Revenue Code.

(d) If the board finds a participant has made a material misrepresentation in the application for a participation agreement or in any communication regarding the ABLE program, the board may liquidate the participant's ABLE account. If the board liquidates an ABLE account under this subsection, the participant is entitled to a refund, subject to any charges or fees provided by the participation agreement and the Internal Revenue Code.

Sec. 162.008. QUALIFIED DISABILITY EXPENSES. Contributions to an ABLE account and the earnings on those contributions may be used, as provided in the participation agreement, to pay the qualified disability expenses of a designated beneficiary.

No equivalent provision.

No equivalent provision.

Sec. 54.9085. ENCUMBRANCE OR TRANSFER OF ACCOUNT PROHIBITED. (a) An ABLÉ account may not be assigned for the benefit of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge.

(b) Notwithstanding Subsection (a), the state is a permissible creditor upon the death of a designated beneficiary for the purposes set forth in Section 529A, Internal Revenue Code.

No equivalent provision.

Sec. 54.909. USE OF FUND ASSETS. The assets of the program may only be used to:

(1) make distributions to designated beneficiaries;

(2) pay the costs of program administration and operations;

(3) make refunds for cancellations, excess contributions, liquidation under Section 54.908(d), and death, in accordance with a computation method determined by the board;

(4) roll over funds to another ABLÉ account to the extent authorized by Section 529A, Internal Revenue Code; and

(5) make distributions to the state as authorized by Section 529A, Internal Revenue Code.

Sec. 162.009. DESIGNATED BENEFCIARY. (a) The participant is the designated beneficiary of the ABLÉ account except as described by Subsection (b) and as otherwise permitted by Section 529A, Internal Revenue Code.

(b) If the designated beneficiary of the account is a minor or has a custodian or other fiduciary appointed for the purpose of managing the minor's financial affairs, the parent or custodian or other fiduciary of the beneficiary may serve as the participant if that form of ownership is permitted or not prohibited by Section 529A, Internal Revenue Code.

Sec. 54.910. DESIGNATED BENEFCIARY. (a) The participant is the designated beneficiary and the owner of the ABLÉ account except as described by Subsection (b) and as otherwise permitted by Section 529A, Internal Revenue Code.

(b) If the designated beneficiary of the account is a minor or has a custodian or other fiduciary appointed for the purpose of managing the minor's financial affairs, the parent or custodian or other fiduciary of the beneficiary may serve as the participant if that form of ownership is permitted or not prohibited by Section 529A, Internal Revenue Code.

(c) A designated beneficiary may own only one ABLÉ account, and each ABLÉ account may have only one owner, except as otherwise permitted by Section 529A, Internal Revenue Code.

No equivalent provision.

Sec. 54.911. VERIFICATION UNDER OATH. The board may require a participant to verify under oath:

- (1) the participant's certification as an eligible individual;
- (2) the participant's selection to change a designated beneficiary;
- (3) the participant's selection to cancel a participation agreement; and
- (4) any other information the board may require.

Sec. 162.010. CANCELLATION.

Sec. 54.912. CANCELLATION.

No equivalent provision.

Sec. 54.913. REPORTS. (a) The board shall comply with the reporting requirements in Section 529A, Internal Revenue Code.

(b) The board shall report financial information related to the ABLE program in an annual financial report in accordance with the comptroller's requirements and guidelines for state agencies.

(c) The board shall include financial information for the ABLE program in the board's annual report posted on the board's website.

(d) The board shall prepare any other reports required by state or federal rules and regulations.

No equivalent provision.

Sec. 54.914. CONFIDENTIALITY OF RECORDS. (a) Except as otherwise provided by this section, all information relating to the program is public and subject to disclosure under Chapter 552, Government Code.

(b) Information relating to a prospective or current participant or designated beneficiary or to a participation agreement, including any personally identifiable information, is confidential except that the board may disclose that information to:

- (1) a participant regarding the participant's account; or
- (2) a state or federal agency as necessary to administer the program or as required by Section 529A, Internal Revenue Code, or other federal or state requirements.

No equivalent provision.

Sec. 54.915. PROGRAM LIMITATIONS.

(a) Nothing in this subchapter or in any participation agreement entered into under this subchapter may be construed to guarantee that amounts saved under the

program will be sufficient to cover the qualified disability expenses of a designated beneficiary.

(b) Nothing in this subchapter or in any participation agreement entered into under this subchapter may be construed to create any obligation of the state, any agency or instrumentality of the state, or a plan manager to guarantee for the benefit of a participant:

(1) the return of any amount contributed to an account;

(2) the rate of interest or other return on an account; or

(3) the payment of interest or other return on an account.

(c) The board by rule shall require that informational materials used in connection with a contribution to an ABLE account clearly indicate that the account is not insured by this state and that neither the principal deposited nor the investment return is guaranteed by the state.

No equivalent provision.

Sec. 54.916. TERMINATION OR MODIFICATION OF PROGRAM. (a) If the comptroller determines that the ABLE program is not financially feasible, the comptroller shall notify the governor and the legislature and recommend that the board not administer an ABLE program or that the program be modified or terminated.

(b) If the comptroller determines that the ABLE program is not financially feasible, the board may adjust the terms of participation agreements as necessary to ensure the financial feasibility of the program.

(c) If the ABLE program is terminated, the balance of each ABLE account shall be paid to the participant, to the extent possible.

No equivalent provision.

Sec. 54.917. ABLE PROGRAM ADVISORY COMMITTEE. (a) The ABLE program advisory committee is established to review rules and procedures related to the ABLE program, to provide guidance, suggest changes, and make recommendations for the administration of the program, and to provide assistance as needed to the board and comptroller during the creation of the program.

(b) The comptroller shall appoint the members of the advisory committee, including:

- (1) persons with a disability who qualify for the program;
- (2) family members of a person with a disability who qualifies for the program;
- (3) representatives of disability advocacy organizations; and
- (4) representatives of the financial community.
- (c) The comptroller shall appoint a presiding officer.
- (d) The advisory committee shall meet quarterly or more frequently as the presiding officer determines is necessary to carry out the responsibilities of the committee.
- (e) A member of the advisory committee is not entitled to compensation or reimbursement for travel expenses.
- (f) Chapter 2110, Government Code, does not apply to this section.
- (g) This section expires and the advisory committee is abolished December 1, 2019.

No equivalent provision.

SECTION 3. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

No equivalent provision.

SECTION 4. The Prepaid Higher Education Tuition Board may begin enrollment in the ABLE program as soon as reasonably practical to allow sufficient time for successful development and implementation of the ABLE program.

No equivalent provision.

SECTION 5. Not later than December 1, 2015, the comptroller shall appoint the members of the ABLE program advisory committee as required by Section 54.917, Education Code, as added by this Act.

SECTION 5. This Act takes effect December 1, 2015.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.