

## HOUSE BILL NO. HB0105

ABLE Act.

Sponsored by: Representative(s) Throne, Berger, Freeman,  
Harvey, Kirkbride, Northrup, Petroff and  
Schwartz and Senator(s) Christensen, Coe,  
Craft and Peterson

A BILL

for

1 AN ACT relating to welfare; creating the achieving a better  
2 life experience program for individuals with disabilities;  
3 specifying program requirements; establishing a trust;  
4 specifying the state treasurer as trustee; providing for  
5 general powers of the trustee; providing rulemaking  
6 authority; excluding the program from benefit eligibility  
7 determinations as specified; providing limitations;  
8 providing for appointment of financial institutions as  
9 managers of the program; providing duties of managers of  
10 the program; providing definitions; requiring a report; and  
11 providing for an effective date.

12

13 *Be It Enacted by the Legislature of the State of Wyoming:*

14

1           **Section 1.** W.S. 42-9-101 through 42-9-110 is created  
2 to read:

3

4

CHAPTER 9

5

ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM

6

7

**42-9-101. Short title.**

8

9 This chapter shall be known and may be cited as the  
10 "Wyoming ABLE Program Act".

11

12

**42-9-102. Legislative declaration.**

13

14 The legislature hereby declares that the establishment of  
15 an ABLE program will assist individuals and families in  
16 saving money for the purpose of supporting individuals with  
17 disabilities to maintain health, independence and quality  
18 of life. It is the intent of the legislature to achieve  
19 this purpose through the establishment of an ABLE program  
20 pursuant to 26 U.S.C. § 529A to be administered through the  
21 office of the state treasurer as provided in this chapter.

22

23

**42-9-103. Definitions.**

1

2 (a) As used in this chapter:

3

4 (i) "ABLE" means achieving a better life  
5 experience;

6

7 (ii) "Account" means an individual trust account  
8 or savings account established as prescribed in this  
9 chapter;

10

11 (iii) "Contracting state" means a contracting  
12 state as defined in section 529A of the Internal Revenue  
13 Code;

14

15 (iv) "Designated beneficiary" means an eligible  
16 individual who is a resident of the state of Wyoming or a  
17 resident of a contracting state and who is the owner of the  
18 account;

19

20 (v) "Eligible individual" means an eligible  
21 individual as defined in section 529A of the Internal  
22 Revenue Code;

23

1           (vi) "Financial institution" means as defined in  
2 W.S. 21-16-810(a)(vi);

3

4           (vii) "Program" means an ABLE program which may  
5 be established under this chapter;

6

7           (viii) "Qualified disability expenses" means  
8 qualified disability expenses as defined under section 529A  
9 of the Internal Revenue Code;

10

11           (ix) "Treasurer" means the state treasurer  
12 acting in the capacity as administrator of the program;

13

14           (x) "Trust" means the ABLE trust of any program  
15 established under this chapter;

16

17           (xi) "Trustee" means the state treasurer acting  
18 in his capacity as trustee of the trust.

19

20           **42-9-104. Wyoming ABLE program trust.**

21

1           (a) If a program is established pursuant to this  
2 chapter the treasurer shall establish a trust to be  
3 operated as an instrumentality of the state.

4

5           (b) The treasurer shall be the sole trustee of the  
6 trust.

7

8           (c) The assets of the trust shall be held in trust  
9 for designated beneficiaries. Property rights shall not  
10 exist in the trust in favor of the state of Wyoming.

11

12           **42-9-105. General powers of treasurer.**

13

14           (a) This chapter shall be administered through the  
15 office of the state treasurer acting in accordance with  
16 this chapter.

17

18           (b) The treasurer may:

19

20                   (i) Establish a program as provided in this  
21 chapter. Any program established shall be developed,  
22 implemented and maintained in a manner consistent with this  
23 chapter and section 529A of the Internal Revenue Code to

1 obtain the benefits provided thereunder for the program and  
2 its participants;

3

4 (ii) Retain professional services, if necessary,  
5 including accountants, auditors, consultants and other  
6 experts;

7

8 (iii) Make and enter into any and all contracts,  
9 agreements or arrangements necessary to implement this  
10 chapter;

11

12 (iv) Retain, employ and contract for the  
13 services of financial institutions and research, technical  
14 and other services necessary to implement this chapter;

15

16 (v) Contract with any other ABLE program  
17 established pursuant to section 529A of the Internal  
18 Revenue Code in order to provide similar benefits for  
19 Wyoming residents;

20

21 (vi) Seek rulings and other guidance from the  
22 United States department of the treasury, the internal

1 revenue service and the United States securities and  
2 exchange commission relating to the program;

3

4 (vii) Make changes to the program required to  
5 obtain and maintain:

6

7 (A) Program status as a qualified ABLE  
8 program under section 529A of the Internal Revenue Code;

9

10 (B) Any exemptions under federal and state  
11 security laws.

12

13 (viii) Select the financial institution or  
14 financial institutions to act as the recipient of  
15 contributions, serve as managers of the program and invest  
16 the contributions to the accounts.

17

18 (c) The treasurer shall:

19

20 (i) Adopt rules and regulations as necessary to  
21 administer this chapter and to ensure any program  
22 established pursuant to this chapter is in compliance with  
23 section 529A of the Internal Revenue Code;

1

2 (ii) Maintain, invest and reinvest the funds  
3 credited to the trust in accordance with the investment  
4 restrictions established by the treasurer and the standard  
5 of care described in the Wyoming Uniform Prudent Investor  
6 Act; and

7

8 (iii) Interpret, in rules, policies, guidelines  
9 and procedures, the provisions of this chapter broadly in  
10 light of its purpose and objectives.

11

12 **42-9-106. Financial institutions.**

13

14 (a) The treasurer may implement the program through  
15 the use of one (1) or more financial institutions to act as  
16 managers of the program.

17

18 (b) If a program is established pursuant to this  
19 chapter the treasurer shall solicit proposals from  
20 financial institutions to act as the recipients of  
21 contributions and managers of the program.

22

1           (c) If a program is established pursuant to this  
2 chapter the treasurer shall select as the managers of the  
3 program the financial institution or financial institutions  
4 from among bidding financial institutions that demonstrate  
5 the most advantageous combination, to potential program  
6 participants, of the following factors:

7

8           (i) Financial stability and integrity;

9

10           (ii) The ability of the financial institutions,  
11 directly or through a subcontract, to satisfy record  
12 keeping and reporting requirements;

13

14           (iii) The financial institution's plan for  
15 promoting the program and the investment it is willing to  
16 make to promote the program;

17

18           (iv) The commercially reasonable fees, if any,  
19 proposed to be charged to persons for maintaining accounts;

20

21           (v) The minimum initial cash contribution and  
22 minimum contributions that the financial institution will  
23 require, and the willingness of the financial institution

1 to accept contributions through payroll deduction plans or  
2 systematic deposit plans; and

3

4 (vi) Any other benefits to the state or its  
5 residents included in the proposal, including an account  
6 opening fee payable to the treasurer by the owner of the  
7 account.

8

9 (d) The treasurer may select more than one (1)  
10 financial institution for the program if the internal  
11 revenue service has provided guidance or the treasurer has  
12 received a legal opinion to the effect that giving a  
13 contributor a choice of two (2) or more financial  
14 institutions will not cause the plan to fail to qualify for  
15 favorable tax treatment under section 529A of the Internal  
16 Revenue Code, and the treasurer concludes that the choice  
17 of two (2) or more financial institutions is in the best  
18 interest of program participants and will not interfere  
19 with the promotion of the program.

20

21 (e) A program manager shall:

22

1           (i) Take all actions required to keep the  
2 program in compliance with the requirements of this chapter  
3 and manage the program so that it is treated as a qualified  
4 ABLE program under section 529A of the Internal Revenue  
5 Code;

6  
7           (ii) Keep adequate records of each account, keep  
8 each account segregated from every other account and  
9 provide the treasurer with the information necessary to  
10 prepare the reports required by section 529A of the  
11 Internal Revenue Code or file the reports on behalf of the  
12 treasurer;

13  
14           (iii) Provide representatives of the treasurer,  
15 including other contractors or other state agencies, access  
16 to the books and records of the program manager to the  
17 extent needed to determine compliance with the contract;  
18 and

19  
20           (iv) Hold all accounts in trust for the benefit  
21 of the designated beneficiary.

22

1           (f) If a contract executed by the treasurer and a  
2 financial institution pursuant to this section is not  
3 renewed, all of the following conditions apply at the end  
4 of the term of the contract that is not renewed, so long as  
5 applying these conditions does not disqualify the program  
6 as a qualified ABLE program under section 529A of the  
7 Internal Revenue Code:

8

9           (i) Accounts previously established at the  
10 financial institution shall not be terminated;

11

12           (ii) Additional contributions may be made to the  
13 accounts;

14

15           (iii) No new accounts may be placed with that  
16 financial institution; and

17

18           (iv) The accounts may be transferred to the  
19 successor financial institution on terms mutually  
20 acceptable to the original and successor financial  
21 institutions.

22

1           (g) The treasurer may terminate a contract with a  
2 financial institution at any time in accordance with terms  
3 of the contract or if the treasurer determines that the  
4 financial institution is in material breach of the contract  
5 and the breach has not been cured in accordance with the  
6 terms of the contract. If a contract is terminated pursuant  
7 to this subsection, the treasurer shall take custody of  
8 accounts held at that financial institution and shall seek  
9 to promptly transfer the accounts to another financial  
10 institution that is selected as a program manager or  
11 transfer the accounts to another ABLE program established  
12 pursuant to section 529A of the Internal Revenue Code.

13

14           **42-9-107. Program requirements.**

15

16           (a) If a program is established pursuant to this  
17 chapter, the program shall be operated through the use of  
18 accounts. Opening of accounts, the contents of account  
19 applications, contributions to accounts and distributions  
20 shall be governed by rule and regulation of the treasurer.  
21 Contributions to accounts shall be made in cash only unless  
22 otherwise permitted pursuant to section 529A of the  
23 Internal Revenue Code.

1

2 (b) An owner of the account may change the designated  
3 beneficiary of an account or direct the transfer or  
4 rollover of all or a portion of an account to another  
5 account in accordance with the provisions of section 529A  
6 of the Internal Revenue Code and the rules and regulations  
7 of the treasurer.

8

9 (c) A designated beneficiary is limited to one (1)  
10 account. Separate records and accounting shall be  
11 maintained for each designated beneficiary.

12

13 (d) A designated beneficiary shall not use an  
14 interest in an account as security for a loan. Any pledge  
15 of an interest in an account is of no force and effect.

16

17 (e) Upon the death of the designated beneficiary,  
18 funds in the account may be claimed by the Medicaid program  
19 of the state or the Medicaid program of another state in  
20 accordance with the provisions of section 529A of the  
21 Internal Revenue Code and the rules and regulations of the  
22 treasurer.

23

1           (f) If there is any distribution from an account to  
2 any person or for the benefit of any person during a  
3 calendar year, the distribution shall be reported to the  
4 internal revenue service and the designated beneficiary to  
5 the extent required by federal law.

6

7           (g) The financial institution shall provide  
8 statements to designated beneficiaries at least once each  
9 year.

10

11           (h) Statements and information returns relating to  
12 accounts shall be prepared and filed to the extent required  
13 by federal or state tax law.

14

15           **42-9-108. Exclusion from benefit eligibility**  
16 **determinations.**

17

18           (a) Notwithstanding any other provision of law, in  
19 determining an applicant's financial eligibility to receive  
20 public assistance or in determining the amount of public  
21 assistance an applicant is eligible to receive under a  
22 state or local funded program, an agency administering the

1 program shall not consider the following as it relates to  
2 the applicant's ABLE account:

3

4 (i) Amounts in the account, including earnings  
5 on the account;

6

7 (ii) Contributions to the account;

8

9 (iii) Distributions from the account for  
10 qualified disability expenses.

11

12 (b) Subsection (a) of this section applies only to  
13 applicants who are:

14

15 (i) The account owner or designated beneficiary  
16 of the account;

17

18 (ii) An individual whose eligibility for the  
19 public assistance is conditioned on the account's account  
20 owner or designated beneficiary disclosing the account  
21 owner's or designated beneficiary's income or other  
22 financial information to the agency administering the  
23 program.

1

2           **42-9-109. Limitations.**

3

4           (a) Nothing in this chapter shall be construed to:

5

6                   (i) Prevent the treasurer from complying with  
7 his duty to conform the program to federal requirements for  
8 a qualified ABLE program under section 529A of the Internal  
9 Revenue Code;

10

11                   (ii) Establish state residency for a person  
12 merely because the person is a designated beneficiary; or

13

14                   (iii) Guarantee that amounts saved pursuant to  
15 the program will be sufficient to cover the qualified  
16 disability expenses of a designated beneficiary.

17

18           (b) Nothing in this chapter establishes any  
19 obligation of the trust, the state or any agency or  
20 instrumentality of the state to guarantee for the benefit  
21 of any designated beneficiary or contributor to an account  
22 any of the following:

23

1           (i) The return of any amounts contributed to an  
2 account;

3  
4           (ii) The rate of interest or other return on any  
5 account;

6  
7           (iii) The payment of interest or other return on  
8 any account; or

9  
10           (iv) The cost of qualified disability expenses.

11  
12           (c) Under rules adopted by the treasurer, every  
13 contract, application, deposit slip or other similar  
14 document that may be used in connection with a contribution  
15 to an account shall clearly indicate that the account is  
16 not insured by the state and neither the principal  
17 deposited nor the investment return is guaranteed by the  
18 state.

19

20           **42-9-110. Limitations on liability.**

21

22           (a) Neither the program, the trust, the trustee, the  
23 treasurer nor the state shall be liable for any loss

1 incurred by any designated beneficiary as a result of  
2 participating in the program.

3

4 (b) The treasurer, the trustee and officials and  
5 employees of the treasurer are entitled to immunity from  
6 liability, defense and indemnification under the Wyoming  
7 Governmental Claims Act.

8

9 **Section 2.** W.S. 4-10-912 is amended to read:

10

11 **4-10-912. Application to Wyoming family college**  
12 **savings program trust and Wyoming ABLE program trust.**

13

14 This act does not apply to the Wyoming family college  
15 savings program trust created by W.S. 21-16-811(a) or the  
16 Wyoming ABLE program trust created by W.S. 42-9-104(a),  
17 except that this article shall continue to apply as  
18 required under W.S. 21-16-813(c) (iii) and 42-9-105(c) (ii).

19

20 **Section 3.**

21

22 (a) The office of the state treasurer, in  
23 consultation with the Wyoming governor's council on

1 developmental disabilities and the University of Wyoming  
2 institute for disabilities, shall report to the governor  
3 and the joint labor, health and social services interim  
4 committee on or before October 1, 2016 on the achieving a  
5 better life experience program authorized pursuant to  
6 section 1 of this act. The report shall include:

7

8 (i) A recommendation of the appropriate lead  
9 agency for the program;

10

11 (ii) An analysis of the appropriate  
12 instrumentality to invest the program account funds,  
13 including the relative cost-benefit of using a state  
14 sponsored program or privately run program;

15

16 (iii) A determination of the staffing and  
17 funding needs of the program;

18

19 (iv) A proposed implementation plan for a state  
20 sponsored program, including an implementation date for the  
21 program and communication with the public about investing  
22 in the program accounts;

23

1           (v) Any other issues considered useful in the  
2 planning and implementation of the program in the state.

3

4           (b) The joint labor, health and social services  
5 interim committee shall consider the recommendations of the  
6 office of the state treasurer and shall develop legislation  
7 it deems appropriate for consideration by the legislature  
8 in the 2017 general session.

9

10           **Section 4.** This act is effective July 1, 2016.

11

12

(END)