

## Implementing the ABLE Act of 2014<sup>1</sup> in Arizona



**What?** The Achieving a Better Life Experience (ABLE) Act (H.R. 647), a bi-partisan bill passed on December 19, 2014,<sup>2</sup> amends the federal tax code to allow Section 529 tax-exempt savings accounts for disability-related expenses. This allows earnings to grow tax deferred and withdrawn tax free when used for qualified disability expenses. Account contributions are limited to \$14,000 per year, and would not count for AHCCCS eligibility; total account assets under \$100,000 are excluded from social security disability determination, but this varies by state. Some states are opting to cap assets at more than \$300,000. These accounts must be owned by the person with a disability with an age of onset of disability before 26.

**Why?** Millions of individuals with disabilities and their families depend on a wide variety of public benefits for income, health care, and food and housing assistance, but these individuals are ineligible for benefits if they have more than \$2,000 cash savings and retirement funds. However, the ABLE Act recognizes the significant costs of disability, including raising a child with significant disabilities, and the costs of accessible housing and transportation, personal assistance services, and assistive technology. Further, many caregivers worry about providing for the future of their children with disabilities.

The perceived inequity of the existence of tax-favored savings accounts permitting parents and others to save for children's higher education costs but not for the future expenses of children with disabilities produced an increasingly rare consensus in Congress on the enactment of this new tax benefit for individuals. As stated by one of the legislation's co-sponsors: "No longer would individuals with disabilities have to stand aside and watch others use IRS-sanctioned tools to lay the groundwork for a brighter future."

In Arizona, passage of this Act could potentially benefit over 80,000 individuals with developmental disabilities and their families.<sup>3,4</sup>

**Fiscal Impact?** A study was completed by the Kansas Treasurer's Office. The state's ABLE Act was found to have a minimal impact to state revenues/administrative costs.<sup>5</sup> A similar review will need to be done in Arizona, but the impacts are not expected to vary significantly.

---

<sup>1</sup> <https://www.congress.gov/bill/113th-congress/house-bill/647>

<sup>2</sup> With 454 cosponsors in the House and Senate (85% of Congress), the ABLE Act was the most bipartisan piece of legislation last session.

<sup>3</sup> This figure is based on a 1.8% estimated prevalence rate of developmental disabilities, and 70% of this population who live over the poverty line with access to money for savings.

<sup>4</sup> It is important to note that participation rates may vary substantially from number of people who are eligible, e.g. Kansas expects only 3% of the eligible population to participate in their ABLE program.

<sup>5</sup> [http://www.kslegislature.org/li/b2015\\_16/asures/documents/fisc\\_note\\_hb2100\\_00\\_0000.pdf](http://www.kslegislature.org/li/b2015_16/asures/documents/fisc_note_hb2100_00_0000.pdf)

**Arizona Actions?** An ABLE account may only be opened in the state in which the beneficiary resides, so Arizona will need to pass a state version of the bill. All state versions of ABLE bills should incorporate the following elements and principles at a minimum:<sup>6,7</sup>

- The definitions of terms in a state bill are at least as broad as the definitions found in the federal ABLE Act (H.R. 5771) and not narrower in scope.
- The ABLE accounts offered under the state's 529 program shall be given equal or better treatment as the conventional 529 accounts offered in that state.
- The state bill will clearly state that ABLE accounts do not count towards determining eligibility for state or local means-tested programs.
- The state bill will specify a mechanism whereby ABLE accounts opened will be tracked across the state, regardless of which entities administer the account.
- The state bill will contain an administrative provision that gives an entity within the state the authority to promulgate rules for proof of eligibility, administration, management and promotion of ABLE accounts.

Given the similarities between Section 529A (The ABLE Act) and Arizona's Section 529 Family College Savings Program, there may be efficiencies in consolidated administration through the Arizona Commission for Postsecondary Education (ACPE). However, disability advocates may prefer ABLE administration by state officials or boards with expertise in disability matters, or even a separate state entity. Individuals with disability expertise could also be included on the commission of ACPE to add disability expertise. Or, Arizona could opt instead to contract with another state that will be delivering this program. Regardless of which administrative option is considered, Arizona legislation is required to authorize ACPE or another state agency or instrumentality to establish and administer an ABLE program, or to enter into an interstate contract to deliver the program.<sup>8</sup>

**What Happens If Arizona Doesn't Act?** Currently, there are no penalties if Arizona does not act; however, individuals and families would be further delayed in benefitting from these savings accounts, and there are no similar options that currently exist. Currently, after a state's legislative passage, recipients are not expected to benefit until 2016 due to time needed to orchestrate the program.

**For more information on the ABLE Act, contact Larry Clausen, Executive Director, Arizona Developmental Disabilities Planning Council, 602-542-8977; [lclausen@azdes.gov](mailto:lclausen@azdes.gov)**

---

<sup>6</sup> Adapted from the National Down Syndrome Society ABLE legislation "look fors."

<sup>7</sup>Several states are currently drafting legislation this session: AK, CT, FL, KS, LA, MN, MO, NE, NY, ND, TN, VA; MA has the ABLE Act enacted.

<sup>8</sup> For more specifics regarding ABLE administration, visit

<http://www.publicfinancematters.com/2014/12/enactment-imminent-for-section-529a-tax-exempt-savings-programs-for-disabled-beneficiaries/>