

## HOUSE BILL No. 2100

By Committee on Children and Seniors

1-23

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1 AN ACT concerning the state treasurer; relating to financial institutions;  
2 creating tax deferred savings accounts for individuals with disabilities.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. There is hereby established an enabling savings program  
6 and such program shall be known and may be cited as the Kansas ABLE  
7 savings program. The purpose of the Kansas ABLE savings program is to  
8 authorize the establishment of savings accounts empowering individuals  
9 with a disability and their families to save private funds to support the  
10 individual with a disability and to provide guidelines for the maintenance  
11 of such accounts.

12 Sec. 2. As used in this act:

13 (a) "Account" or "ABLE savings account" means an individual  
14 savings account established in accordance with the provisions of this act.

15 (b) "Account owner" means the person who enters into an ABLE  
16 savings agreement pursuant to the provisions of this act. The account  
17 owner must also be the designated beneficiary. A trustee or guardian may  
18 be appointed as an account owner for a designated beneficiary who is a  
19 minor or lacks capacity to enter into an agreement.

20 (c) "Designated beneficiary" means a Kansas resident whose qualified  
21 disability expenses may be paid from the account. The designated  
22 beneficiary must be an eligible individual at the time the account is  
23 established. The account owner may change the designated beneficiary.

24 (d) "Eligible individual" means an individual who is entitled to benefits  
25 based on blindness or disability under 42 U.S.C. § 401 et seq. or 42 U.S.C.  
26 § 1381 et seq., as amended, and such blindness or disability occurred  
27 before the date on which the individual attained age 26, or an individual  
28 who filed a disability certification, to the satisfaction of the secretary, with  
29 the secretary for such taxable year.

30 (e) "Financial organization" means an organization authorized to do  
31 business in the state of Kansas and is:

- 32 (1) Licensed or chartered by the commissioner of insurance;
- 33 (2) licensed or chartered by the state bank commissioner;
- 34 (3) chartered by an agency of the federal government; or
- 35 (4) subject to the jurisdiction and regulation of the securities and  
36 exchange commission of the federal government.

1 (f) "Management contract" means the contract executed by the  
2 treasurer and a financial organization selected to act as a depository and  
3 manager of the program.

4 (g) "Member of the family" has the meaning ascribed thereto in  
5 section 529A of the federal internal revenue code of 1986, as amended.

6 (h) "Nonqualified withdrawal" means a withdrawal from an account  
7 which is not:

8 (1) A qualified withdrawal; or

9 (2) a rollover distribution.

10 (i) "Program" means the Kansas ABLE savings program established  
11 pursuant to this act.

12 (j) "Program manager" means a financial organization selected by the  
13 treasurer to act as a depository and manager of the program.

14 (k) "Qualified disability expense" means any qualified disability  
15 expense included in section 529A of the federal internal revenue code of  
16 1986, as amended.

17 (l) "Qualified withdrawal" means a withdrawal from an account to  
18 pay the qualified disability expenses of the designated beneficiary of the  
19 account.

20 (m) "Rollover distribution" means a rollover distribution as defined in  
21 section 529A of the federal internal revenue code of 1986, as amended.

22 (n) "Savings agreement" means an agreement between the program  
23 manager or the treasurer and the account owner.

24 (o) "Secretary" means the secretary of the United States treasury.

25 (p) "Treasurer" means the state treasurer.

26 Sec. 3. (a) The treasurer shall implement and administer the program  
27 under the terms and conditions established by this act. In furtherance of  
28 such implementation and administration, the treasurer shall have the  
29 authority and responsibility to:

30 (1) Develop and implement the program in a manner consistent with  
31 the provisions of this act;

32 (2) engage the services of consultants on a contract basis for  
33 rendering professional and technical assistance and advice;

34 (3) seek rulings and other guidance from the secretary and the federal  
35 internal revenue service relating to the program;

36 (4) make changes to the program required for the participants in the  
37 program to obtain the federal income tax benefits or treatment provided by  
38 section 529A of the federal internal revenue code of 1986, as amended;

39 (5) charge, impose and collect administrative fees and service charges  
40 in connection with any agreement, contract or transaction relating to the  
41 program;

42 (6) develop marketing plans and promotion material;

43 (7) establish the methods by which the funds held in accounts shall be

1 dispersed;

2 (8) establish the method by which funds shall be allocated to pay for  
3 administrative costs;

4 (9) do all things necessary and proper to carry out the purposes of this  
5 act;

6 (10) promulgate rules and regulations necessary to effectuate the  
7 provisions of this act;

8 (11) make an annual evaluation of the ABLE savings program and  
9 prepare an annual report of such evaluation to be provided to the governor,  
10 the senate and the house of representatives; and

11 (12) notify the secretary when an account has been opened for a  
12 designated beneficiary and submit other reports concerning the program  
13 required by the secretary.

14 (b) The treasurer may enter into agreements with other states to either  
15 allow Kansas residents to participate in a plan operated by another state or  
16 to allow residents of other states to participate in the Kansas ABLE  
17 program.

18 Sec. 4. (a) The treasurer may implement the program through use of  
19 financial organizations as account depositories and managers. The  
20 treasurer may solicit proposals from financial organizations to act as  
21 depositories and managers of the program. Financial organizations  
22 submitting proposals shall describe the investment instruments which will  
23 be held in accounts. The treasurer may select more than one financial  
24 organization and investment instrument for the program. The treasurer  
25 shall select as program depositories and managers the financial  
26 organization, from among the bidding financial organizations, that  
27 demonstrates the most advantageous combination, both to potential  
28 program participants and this state, of the following factors:

29 (1) Financial stability and integrity of the financial organization;

30 (2) the safety of the investment instrument being offered;

31 (3) the ability of the financial organization to satisfy recordkeeping  
32 and reporting requirements;

33 (4) the financial organization's plan for promoting the program and  
34 the investment the organization is willing to make to promote the program;

35 (5) the fees, if any, proposed to be charged to the account owners;

36 (6) the minimum initial deposit and minimum contributions that the  
37 financial organization will require;

38 (7) the ability of the financial organization to accept electronic  
39 withdrawals, including payroll deduction plans; and

40 (8) other benefits to the state or its residents included in the proposal,  
41 including fees payable to the state to cover expenses of operation of the  
42 program.

43 (b) The treasurer may enter into any contracts with a financial

1 organization necessary to effectuate the provisions of this act. Any  
2 management contract shall include, at a minimum, terms requiring the  
3 financial organization to:

4 (1) Take any action required to keep the program in compliance with  
5 requirements of this act and any actions not contrary to its contract to  
6 manage the program to qualify as a "qualified ABLE program" as defined  
7 in section 529A of the federal internal revenue code of 1986, as amended;

8 (2) keep adequate records of each account, keep each account  
9 segregated from each other account and provide the treasurer with the  
10 information necessary to prepare the statements required by section 5, and  
11 amendments thereto;

12 (3) compile and total information contained in statements required to  
13 be prepared under section 5, and amendments thereto, and provide such  
14 compilations to the treasurer;

15 (4) if there is more than one program manager, provide the treasurer  
16 with such information as is necessary to determine compliance with  
17 section 5, and amendments thereto;

18 (5) provide the treasurer with access to the books and records of the  
19 program manager to the extent needed to determine compliance with the  
20 contract, this act, and section 529A of the federal internal revenue code of  
21 1986, as amended;

22 (6) hold all accounts for the benefit of the account owner or owners;

23 (7) be audited at least annually by a firm of certified public  
24 accountants selected by the program manager and provide the results of  
25 such audit to the treasurer;

26 (8) provide the treasurer with copies of all regulatory filings and  
27 reports made by the financial organization during the term of the  
28 management contract or while the financial organization is holding any  
29 accounts, other than confidential filings or reports that will not become  
30 part of the program. The program manager shall make available for review  
31 by the treasurer the results of any periodic examination of such manager  
32 by any state or federal banking, insurance or securities commission, except  
33 to the extent that such report or reports may not be disclosed under law;  
34 and

35 (9) ensure that any description of the program, whether in writing or  
36 through the use of any media, is consistent with the marketing plan  
37 developed pursuant to the provisions of this act.

38 (c) The treasurer may:

39 (1) Enter into such contracts as it deems necessary and proper for the  
40 implementation of the program;

41 (2) require that an audit be conducted of the operations and financial  
42 position of the program depository and manager at any time if the treasurer  
43 has any reason to be concerned about the financial position, the

1 recordkeeping practices or the status of accounts of such program  
2 depository and manager; and

3 (3) terminate or not renew a management agreement. If the treasurer  
4 terminates or does not renew a management agreement, the treasurer shall  
5 take custody of accounts held by such program manager and shall seek to  
6 promptly transfer such accounts to another financial organization that is  
7 selected as a program manager or depository and into investment  
8 instruments as similar to the original instruments as possible.

9 (d) The treasurer, the department for children and families, the  
10 department of health and environment and the department of aging and  
11 disability services are authorized to exchange data regarding eligible  
12 individuals to carry out the purposes of this act.

13 Sec. 5. (a) Any ABLE savings accounts established pursuant to the  
14 provisions of this act shall be opened by a designated beneficiary or a  
15 trustee or guardian of a designated beneficiary who lacks capacity to enter  
16 into a contract and each beneficiary may have only one account. The  
17 treasurer may establish a nonrefundable application fee. An application for  
18 such account shall be in the form prescribed by the treasurer and contain  
19 the:

20 (1) Name, address and social security number of the account owner;  
21 (2) name, address and social security number of the designated  
22 beneficiary, if the account owner is the beneficiary's trustee or guardian;

23 (3) certification relating to no excess contributions; and

24 (4) additional information as the treasurer may require.

25 (b) Any person may make contributions to an ABLE savings account  
26 after the account is opened, subject to the limitations imposed by section  
27 529A of the federal internal revenue code of 1986, as amended, or any  
28 rules and regulations promulgated by the secretary pursuant to this act.

29 (c) Contributions to ABLE savings accounts only may be made in  
30 cash. The treasurer or program manager shall reject or promptly withdraw  
31 contributions:

32 (1) In excess of the limits established pursuant to subsection (b); or

33 (2) the total contributions if the:

34 (A) Value of the account is equal to or greater than the account  
35 maximum established by the treasurer. Such account maximum must be  
36 equal to the account maximum for postsecondary education savings  
37 accounts established pursuant to K.S.A. 75-640 et seq., and amendments  
38 thereto; or

39 (B) designated beneficiary is not an eligible individual in the current  
40 calendar year.

41 (d) (1) An account owner may:

42 (A) Change the designated beneficiary of an account to an individual  
43 who is a member of the family of the prior designated beneficiary in

1 accordance with procedures established by the treasurer; and

2 (B) transfer all or a portion of an account to another ABLE savings  
3 account, the designated beneficiary of which is a member of the family as  
4 defined in section 529A of the federal internal revenue code of 1986, as  
5 amended.

6 (2) No account owner may use an interest in an account as security  
7 for a loan. Any pledge of an interest in an account shall be of no force and  
8 effect.

9 (e) (1) If there is any distribution from an account to any individual  
10 or for the benefit of any individual during a calendar year, such  
11 distribution shall be reported to the federal internal revenue service and  
12 each account owner, the designated beneficiary or the distributee to the  
13 extent required by state or federal law.

14 (2) Statements shall be provided to each account owner at least four  
15 times each year within 30 days after the end of the three-month period to  
16 which a statement relates. The statement shall identify the contributions  
17 made during the preceding three-month period, the total contributions  
18 made to the account through the end of the period, the value of the account  
19 at the end of such period, distributions made during such period and any  
20 other information that the treasurer shall require to be reported to the  
21 account owner.

22 (3) Statements and information relating to accounts shall be prepared  
23 and filed to the extent required by this act and any other state or federal  
24 law.

25 (f) (1) The program shall provide separate accounting for each  
26 designated beneficiary. An annual fee may be imposed upon the account  
27 owner for the maintenance of an account.

28 (2) Moneys in an ABLE savings account:

29 (A) Shall be exempt from attachment, execution or garnishment as  
30 provided by K.S.A. 60-2308, and amendments thereto; and

31 (B) may be claimed by the Kansas medicaid plan subject to  
32 limitations imposed by the secretary.

33 Sec. 6. (a) Nothing in this act shall create or be construed to create  
34 any obligation of the treasurer, the state or any agency or instrumentality  
35 of the state to guarantee for the benefit of any account owner or designated  
36 beneficiary with respect to the:

37 (1) Return of principal;

38 (2) rate of interest or other return on any account; or

39 (3) payment of interest or other return on any account.

40 (b) The treasurer may promulgate rules and regulations to provide  
41 that every contract, application or other similar document that may be used  
42 in connection with opening an account clearly indicates that the account is  
43 not insured by the state and that the principal deposited and the investment

1 return are not guaranteed by the state.

2 Sec. 7. (a) The Kansas ABLE savings program trust fund is hereby  
3 established in the state treasury. The fund shall be utilized if the treasurer  
4 elects to accept deposits from contributors rather than have deposits sent  
5 directly to the program manager. Such fund shall consist of any moneys  
6 deposited by contributors in accordance with this act which are not  
7 deposited directly with the program manager. All interest derived from the  
8 deposit and investment of moneys in such savings trust fund shall be  
9 credited to the fund. At the end of any fiscal year, all unexpended and  
10 unencumbered moneys in such savings trust fund shall remain therein and  
11 not be credited or transferred to the state general fund or to any other fund.

12 (b) (1) The Kansas ABLE savings expense fund is hereby established  
13 in the state treasury. The fund shall consist of moneys received from the  
14 ABLE savings program manager, or any governmental or private grants  
15 and any state general fund appropriations, if any, for the program.

16 (2) All expenses incurred by the treasurer in developing and  
17 administering the ABLE savings program shall be payable from the  
18 Kansas ABLE savings expense fund.

19 Sec. 8. This act shall take effect and be in force from and after its  
20 publication in the statute book.