

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 39

(SENATE AUTHORS: HOFFMAN, Rest, Brown, Eken and Rosen)

DATE	D-PG	OFFICIAL STATUS
01/08/2015	43	Introduction and first reading
		Referred to Health, Human Services and Housing
02/12/2015		Comm report: To pass as amended and re-refer to Judiciary

1.1 A bill for an act
1.2 relating to human services; establishing accounts for certain persons with
1.3 disabilities; amending Minnesota Statutes 2014, section 13.461, by adding a
1.4 subdivision; proposing coding for new law as Minnesota Statutes, chapter 256Q.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2014, section 13.461, is amended by adding a
1.7 subdivision to read:

1.8 Subd. 32. **ABLE accounts, account owners, and beneficiaries.** Data on ABLE
1.9 accounts, ABLE account owners, and ABLE account beneficiaries are classified under
1.10 section 256Q.03, subdivision 8.

1.11 Sec. 2. **[256Q.01] CITATION AND PURPOSE.**

1.12 This chapter may be cited as the "Achieving a Better Life Experience Act" or
1.13 "ABLE Act." The purposes of this act are to encourage and assist individuals and families
1.14 in saving private funds for the purpose of supporting individuals with disabilities to
1.15 maintain health, independence, and quality of life, and to provide secure funding for
1.16 disability-related expenses on behalf of designated beneficiaries with disabilities that will
1.17 supplement, but not supplant, benefits provided through private insurance, federal and
1.18 state medical and disability insurance, the beneficiary's employment, and other sources.

1.19 Sec. 3. **[256Q.02] DEFINITIONS.**

1.20 Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this
1.21 section have the meanings given them.

2.1 Subd. 2. **ABLE account and account.** "ABLE account" and "account" means an
2.2 account established for the purpose of financing certain qualified expenses of persons with
2.3 disabilities as specifically provided in this chapter.

2.4 Subd. 3. **ABLE account plan and plan.** "ABLE account plan" and "plan" means
2.5 the savings account plan provided for in this chapter.

2.6 Subd. 4. **Account administrator.** "Account administrator" means the person
2.7 selected by the commissioner and the board to administer the daily operations of the
2.8 ABLE account plan and provide marketing, record keeping, investment management,
2.9 and other services for the plan.

2.10 Subd. 5. **Beneficiary.** "Beneficiary" means the ABLE account owner, or the person
2.11 entitled to apply the savings accrued in an ABLE account, if not the account owner.

2.12 Subd. 6. **Board.** "Board" means the State Board of Investment.

2.13 Subd. 7. **Commissioner.** "Commissioner" means the commissioner of human
2.14 services.

2.15 Subd. 8. **Department.** "Department" means the Department of Human Services.

2.16 Subd. 9. **Disability certification.** "Disability certification" means a verification by
2.17 the beneficiary or the parent or guardian of the beneficiary that states the diagnosis of the
2.18 individual with a disability, as defined under subdivision 11, and is signed by a physician
2.19 meeting the criteria of section 1861(r)(1) of the Social Security Act. The verification must
2.20 be made to the commissioner or account administrator in a form and manner prescribed by
2.21 the commissioner or account administrator.

2.22 Subd. 10. **Executive director.** "Executive director" means the executive director of
2.23 the State Board of Investment.

2.24 Subd. 11. **Individual with a disability.** "Individual with a disability" means an
2.25 individual who, before the date on which the individual attains age 26:

2.26 (1) has a medically determinable physical or mental impairment, which results in
2.27 marked and severe functional limitations and which can be expected to result in death
2.28 or which has lasted or can be expected to last for a continuous period of not less than
2.29 12 months; or

2.30 (2) is blind.

2.31 Subd. 12. **Member of the family.** "Member of the family" means an individual who
2.32 is related to the beneficiary as defined in section 529(e)(2) of the Internal Revenue Code.

2.33 Subd. 13. **Participation agreement.** "Participation agreement" means an agreement
2.34 to participate in the ABLE account plan between an account owner and the state, through
2.35 its agencies, the office, and the board.

3.1 Subd. 14. **Qualified disability expense.** "Qualified disability expense" means an
3.2 expense made for the benefit of an individual with a disability who is the beneficiary,
3.3 including the following expenses: education, housing, transportation, employment training
3.4 and support, assistive technology and personal support services, health, prevention and
3.5 wellness, financial management and administrative services, legal fees, expenses for
3.6 oversight and monitoring, funeral and burial expenses, and other expenses consistent with
3.7 the purposes of this chapter that are approved by the commissioner and provided for in
3.8 duly adopted administrative rules.

3.9 Subd. 15. **Qualified withdrawal.** "Qualified withdrawal" means a withdrawal
3.10 from an ABLE account to pay the qualified disability expenses of the beneficiary of the
3.11 account. A qualified withdrawal may be made by an agent of the beneficiary who has the
3.12 power of attorney or by the beneficiary's legal guardian.

3.13 Subd. 16. **Total account balance.** "Total account balance" means the amount in an
3.14 account on a particular date or the fair market value of an account on a particular date.

3.15 **Sec. 4. [256Q.03] ABLE ACCOUNT PLAN ESTABLISHED; PLAN**
3.16 **REQUIREMENTS.**

3.17 Subdivision 1. **Plan established.** The ABLE account plan is hereby created and
3.18 shall be administered by the department or account administrator. Under the plan, a person
3.19 may make contributions to an ABLE account to meet the qualified disability expenses of
3.20 the designated beneficiary of the account, who must be a resident of Minnesota.

3.21 Subd. 2. **Accounts-type plan.** The plan must be operated as an accounts-type plan
3.22 that permits persons to save for qualified disability expenses incurred by or on behalf of an
3.23 individual with a disability. A separate account must be maintained for each beneficiary
3.24 for whom contributions are made, and no more than one account shall be established
3.25 per beneficiary.

3.26 Subd. 3. **Consultation with State Board of Investment.** In designing and
3.27 establishing the plan's requirements and in negotiating or entering into contracts with third
3.28 parties under subdivision 5, the commissioner shall consult with the executive director.
3.29 The commissioner and the executive director shall establish an annual fee, equal to a
3.30 percentage of the average daily net assets of the plan, to be imposed on participants to
3.31 recover the costs of administration, record keeping, and investment management as
3.32 provided in subdivision 7, and section 256Q.04, subdivision 4.

3.33 Subd. 4. **Marketing.** The commissioner shall promote awareness of the availability
3.34 and advantages of the ABLE account plan as a way to assist individuals and families in

4.1 saving private funds for the purpose of supporting individuals with disabilities. The cost
4.2 of these promotional efforts shall not be funded with fees imposed on participants.

4.3 Subd. 5. **Administration.** The department shall administer the plan, including
4.4 accepting and processing applications, maintaining account records, making payments,
4.5 and undertaking any other necessary tasks to administer the plan. Notwithstanding
4.6 other requirements of this chapter, the department shall adopt rules for purposes of
4.7 implementing and administering the plan. The department may contract with one or more
4.8 third parties to carry out some or all of these administrative duties, including providing
4.9 incentives and marketing the plan. The department and the board may jointly contract
4.10 with third-party providers, if the department and board determine that it is desirable to
4.11 contract with the same entity or entities for administration and investment management.

4.12 Subd. 6. **Contribution and account requirements.** Contributions to an ABLE
4.13 account are subject to the requirements of section 529A(b) of the Internal Revenue Code.
4.14 The maximum balance of an ABLE account may not exceed the limit imposed under
4.15 section 136G.09, subdivision 8.

4.16 Subd. 7. **Authority to impose fees.** The department may impose annual fees, as
4.17 provided in subdivision 3, on participants in the plan to recover the costs of administration.
4.18 The department must use its best efforts to keep these fees as low as possible, consistent
4.19 with efficient administration, so that the returns on savings invested in the plan will be
4.20 as high as possible.

4.21 Subd. 8. **Data.** Account owner data, account data, and data on beneficiaries of
4.22 accounts are private data on individuals or nonpublic data as defined in section 13.02.

4.23 **Sec. 5. [256Q.04] INVESTMENT OF ABLE ACCOUNTS.**

4.24 Subdivision 1. **State Board of Investment to invest.** The State Board of
4.25 Investment shall invest the money deposited in accounts in the plan. Except as permitted
4.26 by the Internal Revenue Code, neither persons making contributions to an account nor
4.27 beneficiaries may direct the investment of contributions to the plan or plan earnings.

4.28 Subd. 2. **Permitted investments.** The board may invest the accounts in any
4.29 permitted investment under section 11A.24, except that the accounts may be invested
4.30 without limit in investment options from open-ended investment companies registered
4.31 under the federal Investment Company Act of 1940, United States Code, title 15, sections
4.32 80a-1 to 80a-64.

4.33 Subd. 3. **Contracting authority.** The board may contract with one or more third
4.34 parties for investment management, record keeping, or other services in connection with
4.35 investing the accounts. The board and department may jointly contract with third-party

5.1 providers, if the department and board determine that it is desirable to contract with the
5.2 same entity or entities for administration and investment management.

5.3 Subd. 4. **Fees.** The board may impose annual fees, as provided in section 256Q.03,
5.4 subdivision 3, on participants in the plan to recover the cost of investment management
5.5 and related tasks for the plan. The board must use its best efforts to keep these fees as low
5.6 as possible, consistent with high quality investment management, so that the returns on
5.7 savings invested in the plan will be as high as possible.

5.8 **Sec. 6. [256Q.05] ABLE ACCOUNT PLAN REQUIREMENTS.**

5.9 Subdivision 1. **Plan to comply with federal law.** The commissioner shall ensure that
5.10 the plan meets the requirements for an ABLE account under section 529A of the Internal
5.11 Revenue Code. The commissioner may request a private letter ruling or rulings from the
5.12 Internal Revenue Service or Secretary of Health and Human Services and must take any
5.13 necessary steps to ensure that the plan qualifies under relevant provisions of federal law.

5.14 Subd. 2. **Contributions to an account.** A person may make contributions to an
5.15 ABLE account on behalf of a beneficiary. Contributions to an account made by persons
5.16 other than the account owner become the property of the account owner. A person does
5.17 not acquire an interest in an ABLE account by making contributions to an account.

5.18 Subd. 3. **Contribution and account limitations.** Contributions to an ABLE
5.19 account are subject to the requirements of section 529A(b) of the Internal Revenue Code.
5.20 The maximum balance of an ABLE account may not exceed the limit imposed under
5.21 section 136G.09, subdivision 8. A contribution to any account for a beneficiary must be
5.22 rejected if the contribution would cause the total account balance of the account to exceed
5.23 the limit imposed under section 136G.09, subdivision 8.

5.24 Subd. 4. **Authority of account owner.** Except as provided for minor trust accounts
5.25 in subdivision 9, an account owner is the only person entitled to:

5.26 (1) select or change a beneficiary or a contingent account owner; or

5.27 (2) request distributions or rollover distributions from an account.

5.28 Subd. 5. **Naming of beneficiary.** The account owner must designate the beneficiary
5.29 of an account, who has been certified as an individual with a disability, when the account
5.30 is established.

5.31 Subd. 6. **Change of beneficiary.** Except as provided for minor trust accounts in
5.32 subdivision 9, an account owner may change the beneficiary of an ABLE account to a
5.33 member of the family of the current beneficiary if the beneficiary to whom the ABLE
5.34 account is transferred has been certified as an individual with a disability.

6.1 Subd. 7. **Effect of plan changes on participation agreement.** Amendments to
6.2 this chapter automatically amend the participation agreement. Any amendments to the
6.3 operating procedures and policies of the plan shall automatically amend the participation
6.4 agreement after adoption by the department or the board.

6.5 Subd. 8. **Special account to hold plan assets in trust.** All assets of the plan,
6.6 including contributions to accounts, are held in trust for the exclusive benefit of account
6.7 owners and beneficiaries. Assets must be held in a separate account in the state treasury
6.8 to be known as the Minnesota ABLE plan account or in accounts with the third-party
6.9 provider selected pursuant to section 256Q.03, subdivision 5. Plan assets are not subject
6.10 to claims by creditors of the state, are not part of the general fund, and are not subject to
6.11 appropriation by the state. Payments from the Minnesota ABLE plan account shall be
6.12 made under this chapter.

6.13 Subd. 9. **Minor trust accounts.** In the case of a plan account in which funds of a
6.14 minor trust account are invested, the account owner may not be changed to any person
6.15 other than a successor custodian or the beneficiary, unless a court order directing the
6.16 change of ownership is provided to the account administrator. The custodian must sign all
6.17 forms and requests submitted to the account administrator in the custodian's representative
6.18 capacity. The custodian must notify the account administrator in writing if the beneficiary
6.19 becomes legally entitled to be the account owner. An account owner under this section
6.20 may not select a contingent account owner.

6.21 Sec. 7. **[256Q.06] ACCOUNT DISTRIBUTIONS.**

6.22 Subdivision 1. **Qualified distribution methods.** (a) Qualified distributions may
6.23 be made:

6.24 (1) directly to participating providers of goods and services that are qualified
6.25 disability expenses, if purchased for a beneficiary;

6.26 (2) in the form of a check payable to both the beneficiary and provider of goods or
6.27 services that are qualified disability expenses; or

6.28 (3) directly to the account owner or beneficiary, if the account owner or beneficiary
6.29 has already paid qualified disability expenses.

6.30 (b) Qualified distributions must be withdrawn proportionally from contributions and
6.31 earnings in an account owner's account on the date of distribution as provided in section
6.32 529A of the Internal Revenue Code.

6.33 Subd. 2. **Distributions upon death of a beneficiary.** Upon the death of a
6.34 beneficiary, the amount remaining in the beneficiary's account must be distributed pursuant
6.35 to section 529A(f) of the Internal Revenue Code.

7.1 Sec. 8. **EFFECTIVE DATE.**

7.2 Sections 1 to 7 are effective