

AN ACT relating to care for persons with developmental or intellectual disabilities.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 10 of this Act:*

- (1) "Account" or "ABLE Account" means an individual account established pursuant to Section 4 of this Act;*
- (2) "Account holder" means the person who establishes and maintains an account within the Kentucky ABLE Trust, for the purpose of paying the qualified disability expenses of a beneficiary;*
- (3) "Achieving a Better Life Experience Act" or "ABLE Act" means the provisions of 26 U.S.C. sec. 529A;*
- (4) "Administrative fund" means the funds used to administer the Kentucky ABLE Trust;*
- (5) "Beneficiary" means:*
  - (a) An eligible individual designated to benefit from payments from an account; or*
  - (b) A new beneficiary, in the case of a change of beneficiaries pursuant to Sections 4 and 6 of this Act;*
- (6) "Benefits" means the payment of qualified expenses on behalf of a beneficiary by the trust;*
- (7) "Board" means the board of directors of the Kentucky ABLE trust;*
- (8) "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities;*
- (9) "Eligible individual" means a person who qualifies as an eligible individual pursuant to 26 U.S.C. sec. 529A;*
- (10) "Kentucky Achieving a Better Life Experience Trust," "ABLE trust," or "trust"*

means the trust created pursuant to Section 2 of this Act;

(11) "Program administrator" means the administrator of the trust appointed by the board to administer and manage the trust;

(12) "Program fund" means the program fund established by Section 5 of this Act, which shall be held as a separate fund within the trust;

(13) "Qualified disability expenses" means expenses described in 26 U.S.C. sec. 529A, that are expenses of an eligible individual; and

(14) "Qualified withdrawal" means a withdrawal from an account to pay the qualified disability expenses of a beneficiary of the account.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created within the Department for Behavioral Health, Developmental and Intellectual Disabilities the Kentucky Achieving a Better Life Experience Trust.

(2) The trust shall be administratively attached to the department, and shall be under the direction and control of a board of directors, consisting of the following members:

(a) The secretary, who shall be the chairperson of the board;

(b) The commissioner of the department;

(c) The Treasurer of the Commonwealth of Kentucky; and

(d) Two (2) citizens of Kentucky, who shall be familiar with:

1. Banking, finance, or accounting; or

2. Advocacy for the disabled community;

to be appointed by the Governor.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The board, as trustee, shall have all powers necessary to carry out and implement the

purposes, objectives, and provisions of Sections 1 to 10 of this Act pertaining to the trust, including but not limited to the power to:

- (1) Sue and be sued;
- (2) Make and enter into contracts necessary for the administration of the trust pursuant to Sections 1 to 10 of this Act;
- (3) Engage investment advisors to assist in the investment of trust assets, and invest moneys in any investments determined by the board to be appropriate, notwithstanding any other statutory limitations contained in the Kentucky Revised Statutes, which are specifically determined to be inapplicable to the trust;
- (4) Accept any grants, gifts, legislative appropriations, and other moneys from the Commonwealth, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation for deposit to the administrative fund;
- (5) Enter into agreements with account holders to open accounts for beneficiaries;
- (6) Make refunds to account holders upon the termination of accounts pursuant to the provisions, limitations, and restrictions set forth in Sections 4 to 6 of this Act;
- (7) Appoint a program administrator and determine the duties of the program administrator, in coordination with the department;
- (8) Administer the funds of the trust, and make provision for the payment of costs of administration and operation of the trust;
- (9) Carry out the duties and obligations of the trust pursuant to Sections 1 to 10 of this Act, and have any and all other powers as may be reasonably necessary to accomplish the purposes of the trust;
- (10) Take actions necessary to ensure that the Kentucky ABLÉ trust is in compliance with the requirements of the ABLÉ Act;
- (11) Contract, in accordance with KRS Chapter 45A, for goods and services, and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and

technical assistance and advice, and pay for any of these from any moneys of the administrative fund of the trust;

(12) Participate in any other way in any federal, state, or local governmental program for the benefit of the trust;

(13) Impose and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges;

(14) Procure insurance against any loss in connection with the property, assets, or activities of the trust;

(15) Procure insurance indemnifying any member of the board from personal loss or accountability arising from liability resulting from a member's action or inaction as a member of the board; and

(16) Promulgate administrative regulations for the administration of the trust.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The trust shall have the authority to enter into agreements to establish accounts with account holders on behalf of beneficiaries pursuant to the following terms and conditions:

(1) Each account shall be for the benefit of a specific beneficiary;

(2) Beneficiaries may be changed as permitted by administrative regulations of the board upon written request of the account holder, provided, however, that the substitute beneficiary shall be an eligible individual;

(3) An account may be canceled under the terms and conditions, including payment of the fees and costs, set forth in administrative regulations promulgated by the board;

(4) Contributions to accounts shall only be made in cash;

(5) The account holder and the beneficiary shall not directly, indirectly, or otherwise control the investment of contributions or earnings on contributions; and

(6) Information obtained from an account holder or a beneficiary and other personally identifiable records made by the trust in the administration of Sections 1 to 10 of this Act shall not be published or be open for public inspection pursuant to KRS 61.870 to 61.884, except as provided below:

(a) An account holder or beneficiary or his or her legal representative shall be entitled to be advised of the aggregate balance of contributions and earnings for the beneficiary;

(b) Information may be made available to public employees in the performance of their duties, but the agency receiving the information shall ensure the confidentiality, as provided for in this section, of all information so released;

(c) Statistical information derived from information and records obtained or made by the trust may be published if it in no way reveals the identity of any account holder or beneficiary; and

(d) Nothing in this section shall preclude the program administrator or any employee of the department or board from testifying or introducing as evidence information or records obtained or made by the trust in any proceeding under Sections 1 to 10 of this Act in an action to which the trust is a party, or upon order of a court.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) The board, as trustee, shall segregate moneys received by the trust into two (2) funds, which shall be identified as the program fund and the administrative fund.

(2) The administrative fund shall receive fees and penalties from account holders as permitted by Sections 3, 4, and 6 of this Act, and from other sources, for the purpose of paying operating costs associated with administering the trust, and as required by Sections 1 to 10 of this Act. All moneys credited to the administrative

fund shall be deposited in accordance with KRS 41.070.

(3) All contributions paid by account holders in connection with Kentucky ABLE accounts shall be deposited as received into the program fund and shall be promptly invested and accounted for separately for each beneficiary. Contributions, earnings, and any other funds accumulated on behalf of beneficiaries may be used for payments of qualified disability expenses.

(4) No transfers to the administrative fund from individual accounts of the program fund shall be permitted except for fees or penalties assessed pursuant to Sections 3, 4, and 6 of this Act.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

For all purposes of Kentucky law, the following shall be applicable:

(1) The trust shall exercise ownership of all contributions made into any account and all interest derived from the investment of the contributions, up to the date of utilization for payment of qualified disability expenses for the beneficiary. All contributions made into any account and interest derived from the investment of the contributions shall be deemed to be held in trust for the benefit of the beneficiary;

(2) Any account holder may cancel an account at any time, and terminate the trust's ownership rights, by delivering an instrument in writing signed and delivered to the program administrator or his or her designee. If an account is terminated, the account holder may be required to pay a penalty in accordance with subsection (4) of this section;

(3) An account holder may transfer the balance of an account to another eligible individual, if that eligible individual is permitted to be the recipient of a transferred account pursuant to 26 U.S.C. sec. 529A;

(4) (a) Notwithstanding any other provision of 26 U.S.C. sec. 529A or the

Kentucky Revised Statutes to the contrary, if any earnings on contributions are refunded due to cancellation of the account, the board may charge a penalty to the account holder against the earnings on contributions.

(b) No penalty shall be charged when a refund is made due to the death of the beneficiary; and

(5) Notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, contributions and earnings on contributions held by the trust shall be exempt from levy of execution, attachment, garnishment, distress for rent, or fee bill by a creditor of the account holder or the beneficiary. No interest of the account holder or beneficiary in the trust shall be pledged or otherwise encumbered as security for a debt.

→SECTION 7. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

(1) On or before November 1 of each year, the board shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the trust, to the Governor, the Legislative Research Commission, and the Auditor of Public Accounts. The annual audit shall be made by an independent certified public accountant and shall include all activity attributable to the trust.

(2) The annual audit shall be supplemented by any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the trust.

→SECTION 8. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The property of the trust and its income from operations shall be exempt from all taxation by the Commonwealth of Kentucky and by any of its political subdivisions. Investment income earned on contributions paid by any account holder and used for

qualified disability expenses or refunded under subsection (4)(b) of Section 6 of this Act shall not be subject to Kentucky income tax to either an account holder or any beneficiary of an account. Earnings that are not used for qualified disability expenses and are refunded pursuant to subsection (4)(a) of Section 6 of this Act shall be subject to Kentucky income tax.

→SECTION 9. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

The assets of the trust shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the account holders and beneficiaries and no property rights therein shall exist in favor of the Commonwealth. The assets shall not be transferred or used by the Commonwealth for any purposes other than the purposes of the trust.

→SECTION 10. A NEW SECTION OF KRS CHAPTER 194A IS CREATED TO READ AS FOLLOWS:

Sections 1 to 10 of this Act shall be construed liberally in order to effectuate its legislative intent. All provisions of Sections 1 to 10 of this Act with respect to powers granted shall be broadly interpreted to effectuate the intent and purposes and not as to any limitation of powers.