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Legislative Document

No. 1421

H.P. 967

House of Representatives, May 19, 2015

**An Act To Establish a Tax-free Savings Program for Individuals
with Disabilities**

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative POULIOT of Augusta.
Cosponsored by Senator LIBBY of Androscoggin and
Representatives: BICKFORD of Auburn, CHACE of Durham, Speaker EVES of North
Berwick, GOODE of Bangor, MOONEN of Portland, SEAVEY of Kennebunkport, TEPLER
of Topsham, Senator: DAVIS of Piscataquis.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §156** is enacted to read:

3 **§156. ABLE ME Savings Program**

4 **1. Short title.** This section may be known and cited as "the ABLE ME Savings
5 Program Act."

6 **2. Definitions.** As used in this section, unless the context otherwise indicates, the
7 following terms have the following meanings.

8 A. "Account" or "ABLE ME savings account" means an individual savings account
9 established in accordance with the provisions of this section that is used for qualified
10 disability expenses.

11 B. "Account owner" means the person who enters into an ABLE ME savings account
12 agreement pursuant to the provisions of this section. The account owner must also be
13 the designated beneficiary, except that a conservator or guardian may be appointed as
14 an account owner for a designated beneficiary who is a minor or lacks capacity to
15 enter into an agreement.

16 C. "Code" means the United States Internal Revenue Code of 1986, as amended.

17 D. "Conservator" means a person appointed by the court pursuant to Title 18-A,
18 section 5-410.

19 E. "Depository" means the treasurer or a financial organization selected by the
20 treasurer to hold accounts.

21 F. "Designated beneficiary" means a resident of this State whose qualified disability
22 expenses may be paid from the account.

23 G. "Eligible individual" means an individual who is entitled to benefits based on
24 blindness or disability under 42 United States Code, Section 401 et seq. or 42 United
25 States Code, Section 1381 et seq., as amended, and whose blindness or disability
26 occurred before the date on which the individual attained 26 years of age, or an
27 individual who filed a disability certification with the secretary to the secretary's
28 satisfaction for the taxable year.

29 H. "Financial organization" means a credit union or financial institution authorized
30 to do business in this State under Title 9-B that meets standards established by the
31 treasurer, including an organization chartered by an agency of the Federal
32 Government or subject to the jurisdiction and regulation of the United States
33 Securities and Exchange Commission.

34 I. "Guardian" means a person who has qualified pursuant to court appointment to
35 make decisions regarding the support, care, education, health and welfare of an
36 eligible individual or designated beneficiary.

37 J. "Management contract" means the contract executed by the treasurer with a
38 financial organization selected to act as a depository or program manager.

39 K. "Member of the family" has the same meaning as in the Code, Section 529A.

1 L. "Nonqualified withdrawal" means a withdrawal from an account that is not a
2 qualified withdrawal or rollover distribution.

3 M. "Program" means the ABLE ME Savings Program established pursuant to this
4 section.

5 N. "Program manager" means the treasurer or a financial organization selected by the
6 treasurer to act as a manager of the program.

7 O. "Qualified disability expense" means any qualified disability expense included in
8 the Code, Section 529A.

9 P. "Qualified withdrawal" means a withdrawal from an account to pay the qualified
10 disability expenses of the designated beneficiary of the account.

11 Q. "Rollover distribution" means a rollover distribution as defined in the Code,
12 Section 529A.

13 R. "Secretary" means the Secretary of the Treasury of the United States.

14 S. "Treasurer" means the Treasurer of State.

15 **3. ABLE ME Savings Program established; implementation.** There is established
16 the ABLE ME Savings Program pursuant to the federal Achieving a Better Life
17 Experience Act of 2014 to allow an individual with a disability and the individual's
18 family to save private funds to support the individual and to provide guidelines for the
19 maintenance of individual savings accounts under the program.

20 A. The treasurer shall implement and administer the program under the terms and
21 conditions specified in this section and shall do all things necessary and proper to
22 carry out the purpose of this section. The treasurer:

23 (1) May engage the services of consultants on a contract basis for rendering
24 professional and technical assistance and advice;

25 (2) May seek rulings and other guidance from the secretary and the federal
26 Internal Revenue Service relating to the program;

27 (3) Shall develop marketing plans and promotional material to advertise and
28 promote the program;

29 (4) Shall, by February 15th annually, evaluate the program and provide a report
30 to the Governor and the Legislature;

31 (5) Shall notify the secretary when an account has been opened for a designated
32 beneficiary and submit other reports concerning the program required by the
33 secretary;

34 (6) May enter into agreements with other states either to allow residents of the
35 State to participate in a plan operated by another state or to allow residents of
36 other states to participate in the ABLE ME Savings Program;

37 (7) Shall, through rulemaking:

- 1 (a) Make changes to the program required for the participants in the program
2 to obtain the federal income tax benefits or treatment provided by the Code,
3 Section 529A;
- 4 (b) Establish, impose and collect administrative fees and service charges in
5 connection with any agreement, contract or transaction relating to the
6 program;
- 7 (c) Establish the methods by which the funds held in accounts are dispersed;
8 and
- 9 (d) Establish the method by which funds are allocated to pay for
10 administrative costs of the program.
- 11 Rules adopted pursuant to this subparagraph are routine technical rules pursuant
12 to chapter 375, subchapter 2-A;
- 13 (8) Shall select, if acting as the depository or program manager, one or more
14 investment instruments for the program; and
- 15 (9) Shall act as a depository or program manager or shall select one or more
16 financial organizations to act as depositories or program managers.
- 17 B. The treasurer may use financial organizations as depositories or program
18 managers pursuant to this subsection.
- 19 (1) The treasurer may solicit proposals from financial organizations to act as
20 depositories or program managers. A financial organization that submits a
21 proposal shall describe the investment instruments that will be held in accounts.
- 22 (2) The treasurer shall make the selection of a financial organization on the basis
23 of a proposal under subparagraph (1) that demonstrates the combination of the
24 following factors most favorable to both potential program participants and this
25 State:
- 26 (a) The financial stability and integrity of the financial organization;
- 27 (b) The safety of the investment instruments being offered;
- 28 (c) The ability of the financial organization to satisfy record-keeping and
29 reporting requirements;
- 30 (d) The financial organization's plan for promoting the program and the
31 investment the organization is willing to make to promote the program;
- 32 (e) The fees, if any, proposed to be charged to the account owners;
- 33 (f) The minimum initial deposit and minimum contributions that the
34 financial organization will require;
- 35 (g) The ability of the financial organization to accept electronic withdrawals,
36 including payroll deduction plans; and
- 37 (h) Other benefits to the State or its residents included in the proposal,
38 including fees payable to the State to cover expenses of operation of the
39 program.

1 The treasurer may select more than one financial organization to act as a
2 depository or program manager.

3 (3) The treasurer may enter into a contract with a financial organization selected
4 pursuant to subparagraph (2) to be a depository or program manager. A
5 management contract must include, at a minimum, terms requiring the financial
6 organization acting as a depository or program manager to, as relevant:

7 (a) Take any action required to keep the program in compliance with
8 requirements of this section and any action not contrary to its management
9 contract to maintain the program as a qualified ABLE program as defined in
10 the Code, Section 529A;

11 (b) Keep adequate records of each account, keep each account segregated
12 from each other account and provide the treasurer with the information
13 necessary to prepare the statements required by subsection 4, paragraph E;

14 (c) Compile information contained in statements required to be prepared
15 under subsection 4, paragraph E and provide the compilations to the
16 treasurer;

17 (d) Provide the treasurer with such information as is necessary to determine
18 compliance with subsection 4, paragraph E;

19 (e) Provide the treasurer with access to its books and records to the extent
20 needed to determine compliance with the management contract, this
21 subsection and the Code, Section 529A;

22 (f) Hold all accounts for the benefit of the account owner or owners;

23 (g) Be audited at least annually by a firm of certified public accountants
24 selected by the financial organization and provide the results of the audit to
25 the treasurer;

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

34 (i) Ensure that any description of the program, whether in writing or through
35 the use of any media, is consistent with the marketing plans developed by the
36 treasurer pursuant to paragraph A, subparagraph (3).

37 (4) As part of a management contract made pursuant to subparagraph (3), the
38 treasurer may:

39 (a) Require that an audit be conducted of the operations and financial
40 position of the depository or program manager at any time if the treasurer has
41 any reason to be concerned about the financial position, the record-keeping

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

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

9 (5) Every contract, application or other similar document that may be used in
10 connection with opening an account must clearly indicate that the account is not
11 insured by the State and that the principal deposited and the investment return are
12 not guaranteed by the State.

13 C. Notwithstanding any provision of law to the contrary, the treasurer and the
14 Department of Health and Human Services may exchange data regarding eligible
15 individuals to carry out the purposes of this section.

16 **4. ABLE ME Savings Accounts.** A designated beneficiary or a conservator or
17 guardian of a designated beneficiary who lacks capacity to enter into a contract may open
18 an ABLE ME savings account. A designated beneficiary may have only one account. A
19 designated beneficiary must be an eligible individual at the time the account is
20 established. The account owner may change the designated beneficiary pursuant to
21 paragraph C, subparagraph (1).

22 A. The treasurer shall establish the application for an ABLE ME savings account,
23 which must require, at a minimum, the following:

- 24 (1) The name, address and social security number of the account owner;
25 (2) The name, address and social security number of the designated beneficiary,
26 if the account owner is the designated beneficiary's conservator or guardian; and
27 (3) Certification relating to the prohibition against excess contributions as
28 specified in paragraph B.

29 B. Any person may make a contribution to an ABLE ME savings account after the
30 account is opened, subject to the limitations imposed by the Code, Section 529A and
31 any rules or regulations promulgated by the secretary.

32 (1) A contribution to an ABLE ME savings account may be made only in cash.

33 (2) The treasurer, depository or program manager promptly shall reject or
34 withdraw from the ABLE ME savings account and return to the contributor:

35 (a) Contributions that are in excess of the limits established as specified in
36 this paragraph; or

37 (b) All contributions if:

38 (i) The value of the account is equal to or greater than the account
39 maximum established by the treasurer, which must be equal to the
40 account maximum for postsecondary education savings accounts under

1 the Maine College Savings Program established in Title 20-A, chapter
2 417-E; or

3 (ii) The designated beneficiary is not an eligible individual in the
4 calendar year in which the contribution is made.

5 C. The rights and duties of an account owner are described in this paragraph.

6 (1) An account owner may:

7 (a) Make qualified withdrawals from the account;

8 (b) Change the designated beneficiary of an account to an individual who is
9 a member of the family of the prior designated beneficiary in accordance
10 with procedures established by the treasurer; and

11 (c) Transfer all or a portion of an account to another ABLE ME savings
12 account, the designated beneficiary of which is a member of the family of the
13 prior designated beneficiary.

14 (2) An account owner may not use an interest in an account as security for a
15 loan. A pledge of an interest in an account in violation of this subparagraph has
16 no legal force or effect.

17 (3) Money withdrawn from an account by an account owner that is a
18 nonqualified withdrawal is subject to a penalty as established in the Code,
19 Section 529A.

20 D. When an account owner dies, the account must be transferred to the ownership of
21 the designated beneficiary or, if there is none or if the transfer is not possible, the
22 account must be transferred to the estate of the deceased.

23 E. In addition to the duties required pursuant to a contract entered into by the
24 treasurer and a depository or program manager, a depository or program manager
25 shall:

26 (1) Provide a statement to an account owner at least 4 times each year within 30
27 days after the end of the 3-month period to which a statement relates. The
28 statement must set out for the preceding 3-month period:

29 (a) Each individual contribution made to the account;

30 (b) The total contributions made to the account;

31 (c) The value of the account at the end of that period;

32 (d) Distributions made from the account; and

33 (e) Any other information that the treasurer requires to be reported to the
34 account owner.

35 Statements and information relating to accounts must be prepared and filed to the
36 extent required by this section and any other state or federal law;

37 (2) If there is a distribution from an account to an eligible individual or for the
38 benefit of an eligible individual during a calendar year, report the distribution to

1 the federal Internal Revenue Service and each account owner, the designated
2 beneficiary or the distributee, to the extent required by state or federal law; and

3 (3) Provide separate accounting for each designated beneficiary.

4 F. Fees may be charged pursuant to this paragraph.

5 (1) The treasurer may establish a nonrefundable application fee.

6 (2) The treasurer may charge a depository or program manager an administrative
7 fee as established by rule pursuant to subsection 3, paragraph A, subparagraph
8 (7).

9 (3) The depository or program manager may charge the account owner an annual
10 fee for the maintenance of an ABLE ME savings account only if the fee has been
11 set pursuant to the management contract entered into between the treasurer and
12 the depository or program manager.

13 All fees collected by the treasurer pursuant to subparagraphs (1) and (2) must be
14 deposited in the ABLE ME Savings Expense Fund established in subsection 8 and
15 used for the administrative expenses of the program.

16 G. A dispute between the account owner and the depository or program manager
17 may be appealed to the treasurer. An adverse decision of the treasurer may be
18 appealed to the Superior Court pursuant to chapter 375, subchapter 7.

19 **5. Treatment of funds in an ABLE ME savings account.** The treatment of funds
20 in an ABLE ME savings account is specified in this subsection.

21 A. Account balances and qualified withdrawals are exempt from taxation pursuant to
22 Title 36, chapter 803.

23 B. Account balances are exempt from attachment, execution or garnishment.

24 C. Account balances may be claimed by the Department of Health and Human
25 Services as an offset against MaineCare costs only after the death of the designated
26 beneficiary and subject to limitations imposed by the secretary.

27 **6. Obligation of the State.** This section may not be construed to create any
28 obligation of the treasurer, the State or any agency or instrumentality of the State to
29 guarantee for the benefit of any account owner or designated beneficiary the return of
30 principal, rate of interest or payment of interest or other return on any account.

31 **7. ABLE ME Savings Program Trust Fund.** The ABLE ME Savings Program
32 Trust Fund, referred to in this subsection as "the trust fund," is established in the office of
33 the treasurer. The treasurer may use the trust fund if the treasurer elects to accept deposits
34 from contributors rather than have deposits sent directly to the depository or program
35 manager. The trust fund consists of any money deposited by contributors in accordance
36 with this section that is not deposited directly with the depository or program manager.
37 All interest derived from the deposit and investment of money in the trust fund must be
38 credited to the trust fund. Unexpended and unencumbered balances do not lapse but must
39 be carried forward for the purposes of this section.

