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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 161

01/14/2015 Authored by Zerwas, Uglem, Hamilton, Liebling, Schomacker and others

The bill was read for the first time and referred to the Committee on Health and Human Services Reform

02/12/2015 Adoption of Report: Amended and re-referred to the Committee on Civil Law and Data Practices

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 and designated beneficiaries of ABLE accounts are classified under section
1.10 256Q.05, subdivision 8.

1.11 **Sec. 2. [256Q.01] PLAN ESTABLISHED.**

1.12 A savings plan known as the Minnesota ABLE plan is established. In establishing
1.13 this plan, the legislature seeks to encourage and assist individuals and families in saving
1.14 private funds for the purpose of supporting individuals with disabilities to maintain health,
1.15 independence, and quality of life, and to provide secure funding for disability-related
1.16 expenses on behalf of designated beneficiaries with disabilities that will supplement, but
1.17 not supplant, benefits provided through private insurance, federal and state medical and
1.18 disability insurance, the beneficiary's employment, and other sources.

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

1.20 This chapter may be cited as the "Minnesota Achieving a Better Life Experience
1.21 Act" or "Minnesota ABLE Act."

2.1 Sec. 4. **[256Q.03] DEFINITIONS.**

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

2.4 **Subd. 2. ABLE account.** "ABLE account" has the meaning given in section
2.5 529A(e)(6) of the Internal Revenue Code.

2.6 **Subd. 3. ABLE account plan or plan.** "ABLE account plan" or "plan" means the
2.7 qualified ABLE program, as defined in section 529A(b) of the Internal Revenue Code,
2.8 provided for in this chapter.

2.9 **Subd. 4. Account.** "Account" means the formal record of transactions relating to an
2.10 ABLE plan beneficiary.

2.11 **Subd. 5. Account owner.** "Account owner" means the designated beneficiary
2.12 of the account.

2.13 **Subd. 6. Annual contribution limit.** "Annual contribution limit" has the meaning
2.14 given in section 529A(b)(2) of the Internal Revenue Code.

2.15 **Subd. 7. Application.** "Application" means the form executed by a prospective
2.16 account owner to enter into a participation agreement and open an account in the plan.
2.17 The application incorporates by reference the participation agreement.

2.18 **Subd. 8. Board.** "Board" means the State Board of Investment.

2.19 **Subd. 9. Commissioner.** "Commissioner" means the commissioner of human
2.20 services.

2.21 **Subd. 10. Contribution.** "Contribution" means a payment directly allocated to
2.22 an account for the benefit of a beneficiary.

2.23 **Subd. 11. Department.** "Department" means the Department of Human Services.

2.24 **Subd. 12. Designated beneficiary and beneficiary.** "Designated beneficiary" and
2.25 "beneficiary" have the meaning given in section 529A(e)(3) of the Internal Revenue Code
2.26 and further defined through regulations issued under that section.

2.27 **Subd. 13. Earnings.** "Earnings" means the total account balance minus the
2.28 investment in the account.

2.29 **Subd. 14. Eligible individual.** "Eligible individual" has the meaning given in
2.30 section 529A(e)(1) of the Internal Revenue Code and further defined through regulations
2.31 issued under that section.

2.32 **Subd. 15. Executive director.** "Executive director" means the executive director of
2.33 the State Board of Investment.

2.34 **Subd. 16. Internal Revenue Code.** "Internal Revenue Code" means the Internal
2.35 Revenue Code of 1986, as amended.

3.1 Subd. 17. **Investment in the account.** "Investment in the account" means the sum
3.2 of all contributions made to an account by a particular date minus the aggregate amount
3.3 of contributions included in distributions or rollover distributions, if any, made from the
3.4 account as of that date.

3.5 Subd. 18. **Member of the family.** "Member of the family" means an individual
3.6 who is related to the designated beneficiary as defined in section 529A(e)(4) of the
3.7 Internal Revenue Code.

3.8 Subd. 19. **Participation agreement.** "Participation agreement" means an agreement
3.9 to participate in the Minnesota ABLE plan between an account owner and the state,
3.10 through its agencies, the commissioner, and the board.

3.11 Subd. 20. **Person.** "Person" means an individual, trust, estate, partnership,
3.12 association, company, corporation, or the state.

3.13 Subd. 21. **Plan administrator.** "Plan administrator" means the person selected by
3.14 the commissioner and the board to administer the daily operations of the ABLE account
3.15 plan and provide marketing, record keeping, investment management, and other services
3.16 for the plan.

3.17 Subd. 22. **Qualified disability expense.** "Qualified disability expense" has the
3.18 meaning given in section 529A(e)(5) of the Internal Revenue Code and further defined
3.19 through regulations issued under that section.

3.20 Subd. 23. **Qualified distribution.** "Qualified distribution" means a withdrawal from
3.21 an ABLE account to pay the qualified disability expenses of the beneficiary of the account.
3.22 A qualified withdrawal may be made by the beneficiary, by an agent of the beneficiary
3.23 who has the power of attorney, or by the beneficiary's legal guardian.

3.24 Subd. 24. **Rollover distribution.** "Rollover distribution" means a transfer of funds
3.25 made:

3.26 (1) from one account in another state's qualified ABLE program to an account for
3.27 the benefit of the same designated beneficiary or an eligible individual who is a family
3.28 member of the former designated beneficiary; or

3.29 (2) from one account to another account for the benefit of an eligible individual who
3.30 is a family member of the former designated beneficiary.

3.31 Subd. 25. **Total account balance.** "Total account balance" means the amount in an
3.32 account on a particular date or the fair market value of an account on a particular date.

3.33 Sec. 5. **[256Q.04] ABLE PLAN REQUIREMENTS.**

4.1 Subdivision 1. **State residency requirement.** The designated beneficiary of any
4.2 ABLE account must be a resident of Minnesota, or the resident of a state that has entered
4.3 into a contract with Minnesota to provide its residents access to the Minnesota ABLE plan.

4.4 Subd. 2. **Single account requirement.** No more than one ABLE account shall be
4.5 established per beneficiary, except as permitted under section 529A(c)(4) of the Internal
4.6 Revenue Code.

4.7 Subd. 3. **Accounts-type plan.** The plan must be operated as an accounts-type
4.8 plan. A separate account must be maintained for each designated beneficiary for whom
4.9 contributions are made.

4.10 Subd. 4. **Contribution and account requirements.** Contributions to an ABLE
4.11 account are subject to the requirements of section 529A(b)(2) of the Internal Revenue
4.12 Code prohibiting noncash contributions and contributions in excess of the annual
4.13 contribution limit. The total account balance may not exceed the maximum account
4.14 balance limit imposed under section 136G.09, subdivision 8.

4.15 Subd. 5. **Limited investment direction.** Designated beneficiaries may not direct
4.16 the investment of assets in their accounts more than twice in any calendar year.

4.17 Subd. 6. **Security for loans.** An interest in an account must not be used as security
4.18 for a loan.

4.19 **Sec. 6. [256Q.05] ABLE PLAN ADMINISTRATION.**

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

4.25 Subd. 2. **Plan rules and procedures.** (a) The commissioner shall establish the
4.26 rules, terms, and conditions for the plan, subject to the requirements of this chapter and
4.27 section 529A of the Internal Revenue Code.

4.28 (b) The commissioner shall prescribe the application forms, procedures, and other
4.29 requirements that apply to the plan.

4.30 Subd. 3. **Consultation with other state agencies.** In designing and establishing
4.31 the plan's requirements and in negotiating or entering into contracts with third parties
4.32 under subdivision 5, the commissioner shall consult with the executive director of the
4.33 State Board of Investment and the commissioner of the Office of Higher Education.
4.34 The commissioner and the executive director shall establish an annual fee, equal to a
4.35 percentage of the average daily net assets of the plan, to be imposed on account owners

5.1 to recover the costs of administration, record keeping, and investment management as
5.2 provided in subdivision 6, and section 256Q.07, subdivision 4.

5.3 Subd. 4. **Marketing.** The commissioner shall promote awareness of the availability
5.4 and advantages of the ABLE account plan as a way to assist individuals and families in
5.5 saving private funds for the purpose of supporting persons with disabilities. The cost of
5.6 these promotional efforts shall not be funded with fees imposed on account owners.

5.7 Subd. 5. **Administration.** The commissioner shall administer the plan, including
5.8 accepting and processing applications, verifying state residency, verifying eligibility,
5.9 maintaining account records, making payments, and undertaking any other necessary
5.10 tasks to administer the plan. Notwithstanding other requirements of this chapter, the
5.11 commissioner shall adopt rules for purposes of implementing and administering the plan.
5.12 The commissioner may contract with one or more third parties to carry out some or all
5.13 of these administrative duties, including providing incentives and marketing the plan.
5.14 The commissioner and the board may jointly contract with third-party providers, if the
5.15 commissioner and board determine that it is desirable to contract with the same entity or
5.16 entities for administration and investment management.

5.17 Subd. 6. **Authority to impose fees.** The commissioner may impose annual fees,
5.18 as provided in subdivision 3, on account owners to recover the costs of administration.
5.19 The commissioner must keep the fees as low as possible, consistent with efficient
5.20 administration, so that the returns on savings invested in the plan are as high as possible.

5.21 Subd. 7. **Federally mandated reporting.** (a) As required under section 529A(d) of
5.22 the Internal Revenue Code, the commissioner or the commissioner's designee shall submit
5.23 a notice to the Secretary of the Treasury upon the establishment of each ABLE account.
5.24 The notice must contain the name and state of residence of the designated beneficiary and
5.25 other information as the secretary may require.

5.26 (b) As required under section 529A(d) of the Internal Revenue Code, the
5.27 commissioner or the commissioner's designee shall submit electronically on a monthly
5.28 basis to the Commissioner of Social Security, in a manner specified by the Commissioner
5.29 of Social Security, statements on relevant distributions and account balances from all
5.30 ABLE accounts.

5.31 Subd. 8. **Data.** (a) Data on ABLE accounts and designated beneficiaries of ABLE
5.32 accounts are private data on individuals or nonpublic data as defined in section 13.02.

5.33 (b) The commissioner may share or disseminate data classified as private or
5.34 nonpublic in this subdivision as follows:

5.35 (1) to the subject of the data, as provided in section 13.04;

5.36 (2) according to a court order;

6.1 (3) with other state or federal agencies, only to the extent necessary to verify
6.2 identity of, determine the eligibility of, or process applications for an eligible individual
6.3 participating in the Minnesota ABLE plan; and

6.4 (4) with a nongovernmental person or entity, only to the extent necessary to carry
6.5 out the functions of the Minnesota ABLE plan, provided the commissioner has entered
6.6 into a data-sharing agreement with the person or entity, as provided in section 13.05,
6.7 subdivision 6 or 11, prior to sharing data under this clause.

6.8 Sec. 7. **[256Q.06] PLAN ACCOUNTS.**

6.9 Subdivision 1. **Contributions to an account.** Any person may make contributions
6.10 to an ABLE account on behalf of a designated beneficiary. Contributions to an account
6.11 made by persons other than the account owner become the property of the account owner.
6.12 A person does not acquire an interest in an ABLE account by making contributions
6.13 to an account. Contributions to an account must be made in cash, by check, or other
6.14 commercially acceptable means, as permitted by the United States Internal Revenue
6.15 Service and approved by the plan administrator in cooperation with the commissioner
6.16 and the board.

6.17 Subd. 2. **Contribution and account limitations.** Contributions to an ABLE
6.18 account are subject to the requirements of section 529A(b) of the Internal Revenue Code.
6.19 The total account balance of an ABLE account may not exceed the maximum account
6.20 balance limit imposed under section 136G.09, subdivision 8. The plan administrator must
6.21 reject any portion of a contribution to an account that exceeds the annual contribution limit
6.22 or that would cause the total account balance to exceed the maximum account balance
6.23 limit imposed under section 136G.09, subdivision 8.

6.24 Subd. 3. **Authority of account owner.** An account owner is the only person
6.25 entitled to:

6.26 (1) request distributions;

6.27 (2) request rollover distributions; or

6.28 (3) change the beneficiary of an ABLE account to a member of the family of the
6.29 current beneficiary, but only if the beneficiary to whom the ABLE account is transferred
6.30 is an eligible individual.

6.31 Subd. 4. **Effect of plan changes on participation agreement.** Amendments to
6.32 this chapter automatically amend the participation agreement. Any amendments to the
6.33 operating procedures and policies of the plan automatically amend the participation
6.34 agreement after adoption by the commissioner or the board.

7.1 Subd. 5. **Special account to hold plan assets in trust.** All assets of the plan,
7.2 including contributions to accounts, are held in trust for the exclusive benefit of account
7.3 owners. Assets must be held in a separate account in the state treasury to be known as
7.4 the Minnesota ABLE plan account or in accounts with the third-party provider selected
7.5 pursuant to section 256Q.05, subdivision 5. Plan assets are not subject to claims by creditors
7.6 of the state, are not part of the general fund, and are not subject to appropriation by the
7.7 state. Payments from the Minnesota ABLE plan account shall be made under this chapter.

7.8 **Sec. 8. [256Q.07] INVESTMENT OF ABLE ACCOUNTS.**

7.9 Subdivision 1. **State Board of Investment to invest.** The State Board of Investment
7.10 shall invest the money deposited in accounts in the plan.

7.11 Subd. 2. **Permitted investments.** The board may invest the accounts in any
7.12 permitted investment under section 11A.24, except that the accounts may be invested
7.13 without limit in investment options from open-ended investment companies registered
7.14 under the federal Investment Company Act of 1940, United States Code, title 15, sections
7.15 80a-1 to 80a-64.

7.16 Subd. 3. **Contracting authority.** The board may contract with one or more third
7.17 parties for investment management, record keeping, or other services in connection with
7.18 investing the accounts. The board and commissioner may jointly contract with third-party
7.19 providers, if the commissioner and board determine that it is desirable to contract with the
7.20 same entity or entities for administration and investment management.

7.21 Subd. 4. **Fees.** The board may impose annual fees, as provided in section 256Q.05,
7.22 subdivision 3, on account owners to recover the cost of investment management and
7.23 related tasks for the plan. The board must use its best efforts to keep these fees as low
7.24 as possible, consistent with high quality investment management, so that the returns on
7.25 savings invested in the plan will be as high as possible.

7.26 **Sec. 9. [256Q.08] ACCOUNT DISTRIBUTIONS.**

7.27 Subdivision 1. **Qualified distribution methods.** (a) Qualified distributions may
7.28 be made:

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

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

7.33 (3) directly to the beneficiary, if the beneficiary has already paid qualified disability
7.34 expenses.

8.1 (b) Qualified distributions must be withdrawn proportionally from contributions and
8.2 earnings in an account owner's account on the date of distribution as provided in section
8.3 529A of the Internal Revenue Code.

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

8.7 Subd. 3. **Nonqualified distribution.** An account owner may request a nonqualified
8.8 distribution from an account at any time. Nonqualified distributions are based on the total
8.9 account balances in an account owner's account and must be withdrawn proportionally
8.10 from contributions and earnings as provided in section 529A of the Internal Revenue
8.11 Code. The earnings portion of a nonqualified distribution is subject to a federal additional
8.12 tax pursuant to section 529A of the Internal Revenue Code. For purposes of this
8.13 subdivision, "earnings portion" means the ratio of the earnings in the account to the total
8.14 account balance, immediately prior to the distribution, multiplied by the distribution.