

113TH CONGRESS
1ST SESSION

S. 313

To amend the Internal Revenue Code of 1986 to provide for the tax treatment of ABLE accounts established under State programs for the care of family members with disabilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2013

Mr. CASEY (for himself, Mr. BURR, Mr. HARKIN, Mr. CARDIN, Mr. RUBIO, Mr. FRANKEN, Mr. MORAN, Mr. REED, Mr. LEAHY, Mrs. BOXER, Mr. BROWN, Mr. SANDERS, Mr. BLUMENTHAL, Ms. BALDWIN, Mr. BLUNT, Mr. COONS, Mr. JOHANNES, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for the tax treatment of ABLE accounts established under State programs for the care of family members with disabilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Achieving a Better
5 Life Experience Act of 2013” or the “ABLE Act of
6 2013”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are as follows:

3 (1) To encourage and assist individuals and
 4 families in saving private funds for the purpose of
 5 supporting individuals with disabilities to maintain
 6 health, independence, and quality of life.

7 (2) To provide secure funding for disability-re-
 8 lated expenses on behalf of designated beneficiaries
 9 with disabilities that will supplement, but not sup-
 10 plant, benefits provided through private insurance,
 11 the Medicaid program under title XIX of the Social
 12 Security Act, the supplemental security income pro-
 13 gram under title XVI of such Act, the beneficiary's
 14 employment, and other sources.

15 **SEC. 3. ABLE ACCOUNTS.**

16 (a) ESTABLISHMENT.—

17 (1) IN GENERAL.—Section 529 of the Internal
 18 Revenue Code of 1986 is amended by redesignating
 19 subsection (f) as subsection (g) and by inserting
 20 after subsection (e) the following new subsection:

21 “(f) ABLE ACCOUNTS.—

22 “(1) GENERAL RULES.—For purposes of any
 23 other provision of law with respect to a qualified
 24 ABLE program and an ABLE account, except as
 25 otherwise provided in this subsection—

1 “(A) a qualified ABLE program and an
2 ABLE account shall be treated in the same
3 manner as a qualified tuition program and an
4 account described in subsection (b)(1)(A)(ii),
5 respectively, are treated,

6 “(B) qualified disability expenses with re-
7 spect to a program or account described in sub-
8 paragraph (A) shall be treated in the same
9 manner as qualified higher education expenses
10 are treated, and

11 “(C) maximum contributions shall be no
12 higher than the limit established by the State
13 for their regular 529 account.

14 “(2) QUALIFIED ABLE PROGRAM.—For pur-
15 poses of this subsection, the term ‘qualified ABLE
16 program’ means a program established and main-
17 tained by a State or agency or instrumentality there-
18 of—

19 “(A) under which a person may make con-
20 tributions to an ABLE account which is estab-
21 lished for the purpose of meeting the qualified
22 disability expenses of the designated beneficiary
23 of the account,

24 “(B) which meets the requirements of the
25 preceding subsections of this section (as modi-

fied by this subsection), determined by substituting—

“(i) ‘qualified ABLE program’ for ‘qualified tuition program’, and

“(ii) ‘ABLE account’ for ‘account’, and

“(C) which meets the other requirements of this subsection.

“(3) QUALIFIED DISABILITY EXPENSES.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘qualified disability expenses’ means any expenses which are made for the benefit of an individual with a disability who is a designated beneficiary.

“(B) EXPENSES INCLUDED.—The following expenses shall be qualified disability expenses if such expenses are made for the benefit of an individual with a disability who is a designated beneficiary and are related to such disability:

“(i) EDUCATION.—Expenses for education, including tuition for preschool through post-secondary education, which shall include higher education expenses (as defined by subsection (e)(3)) and expenses

1 for books, supplies, and educational mate-
2 rials related to preschool and secondary
3 education, tutors, and special education
4 services.

5 “(ii) HOUSING.—Expenses for a pri-
6 mary residence, including rent, purchase of
7 a primary residence or an interest in a pri-
8 mary residence, mortgage payments, real
9 property taxes, and utility charges.

10 “(iii) TRANSPORTATION.—Expenses
11 for transportation, including the use of
12 mass transit, the purchase or modification
13 of vehicles, and moving expenses.

14 “(iv) EMPLOYMENT SUPPORT.—Ex-
15 penses related to obtaining and maintain-
16 ing employment, including job-related
17 training, assistive technology, and personal
18 assistance supports.

19 “(v) HEALTH, PREVENTION, AND
20 WELLNESS.—Expenses for health and
21 wellness, including premiums for health in-
22 surance, mental health, medical, vision,
23 and dental expenses, habilitation and reha-
24 bilitation services, durable medical equip-
25 ment, therapy, respite care, long-term serv-

ices and supports, nutritional management, communication services and devices, adaptive equipment, assistive technology, and personal assistance.

“(vi) MISCELLANEOUS EXPENSES.—Financial management and administrative services; legal fees; expenses for oversight; monitoring; home improvements, and modifications, maintenance and repairs, at primary residence; or funeral and burial expenses.

“(vii) ASSISTIVE TECHNOLOGY AND PERSONAL SUPPORT SERVICES.—Expenses for assistive technology and personal support with respect to any item described in clauses (i) through (vi).

“(viii) OTHER APPROVED EXPENSES.—Any other expenses which are approved by the Secretary under regulations and consistent with the purposes of this section.

“(C) INDIVIDUAL WITH A DISABILITY.—

“(i) IN GENERAL.—Except as provided in clause (ii), an individual is an in-

dividual with a disability for a year if the
individual (regardless of age)—

“(I) has a medically determinable
physical or mental impairment, which
results in marked and severe func-
tional limitations, and which can be
expected to result in death or which
has lasted or can be expected to last
for a continuous period of not less
than 12 month, or

“(II) is blind.

“(ii) DISABILITY CERTIFICATION RE-
QUIRED.—An individual shall not be treat-
ed as an individual with a disability for a
year unless the individual—

“(I) is receiving (or, for purposes
of title XIX of the Social Security
Act, is deemed to be, or treated as, re-
ceiving by the State Medicaid Agency)
benefits under the supplemental secu-
rity income program under title XVI
of such Act, or whose benefits under
such program are suspended other
than by reason of misconduct,

1 “(II) is receiving disability bene-
 2 fits under title II of such Act, or

3 “(III) files a disability certifi-
 4 cation with the Secretary for such
 5 year.

6 “(iii) DISABILITY CERTIFICATION DE-
 7 FINED.—The term ‘disability certification’
 8 means, with respect to an individual, a cer-
 9 tification to the satisfaction of the Sec-
 10 retary by the designated beneficiary or the
 11 parent or guardian of the designated bene-
 12 ficiary that—

13 “(I) the individual meets the cri-
 14 teria described in clause (i), and

15 “(II) includes a copy of the des-
 16 ignated beneficiary’s diagnosis, signed
 17 by a physician meeting the criteria of
 18 section 1861(r)(1) of the Social Secu-
 19 rity Act.

20 “(iv) RESTRICTION ON USE OF CER-
 21 TIFICATION.—No inference may be drawn
 22 from a disability certification for purposes
 23 of establishing eligibility for benefits under
 24 title II, XVI, or XIX of the Social Security
 25 Act.

1 “(4) ROLLOVERS FROM ABLE ACCOUNTS.—Sub-
 2 section (c)(3)(A) shall not apply to any amount paid
 3 or distributed from an ABLE account to the extent
 4 that the amount received is paid, not later than the
 5 60th day after the date of such payment or distribu-
 6 tion, into—

7 “(A) another ABLE account for the ben-
 8 efit of—

9 “(i) the same beneficiary, or

10 “(ii) an individual with a disability
 11 who is a family member of the beneficiary,

12 “(B) any trust which is described in sub-
 13 paragraph (A) or (C) of section 1917(d)(4) of
 14 the Social Security Act and which is for the
 15 benefit of an individual described in clause (i)
 16 or (ii) of subparagraph (A), or

17 “(C) a qualified tuition program—

18 “(i) for the benefit of the designated
 19 beneficiary, or

20 “(ii) to the credit of another des-
 21 ignated beneficiary under a qualified tui-
 22 tion program who is a member of the fam-
 23 ily of the designated beneficiary with re-
 24 spect to which the distribution was made.

1 The preceding sentence shall not apply to any pay-
2 ment or distribution if it applied to any prior pay-
3 ment or distribution during the 12-month period
4 ending on the date of the payment or distribution.

5 “(5) TRANSFER TO STATE.—Subject to any
6 outstanding payments due for qualified disability ex-
7 penses, in the case that the designated beneficiary
8 dies or ceases to be an individual with a disability,
9 all amounts remaining in the qualified ABLE ac-
10 count not in excess of the amount equal to the total
11 medical assistance paid for the designated bene-
12 ficiary after the establishment of the account, net of
13 any premiums paid from the account or paid by or
14 on behalf of the beneficiary to a Medicaid Buy-In
15 program, under any State Medicaid plan established
16 under title XIX of the Social Security Act shall be
17 distributed to such State upon filing of a claim for
18 payment by such State. For purposes of this para-
19 graph, the State shall be a creditor of an ABLE ac-
20 count and not a beneficiary. Subsection (c)(3) shall
21 not apply to a distribution under the preceding sen-
22 tence.

23 “(6) REGULATIONS.—Not later than 6 months
24 after the date of the enactment of this section, the
25 Secretary may prescribe such regulations or other

1 guidance as the Secretary determines necessary or
 2 appropriate to carry out the purposes of this section,
 3 including regulations to prevent fraud and abuse
 4 with respect to amounts claimed as qualified dis-
 5 ability expenses.”.

6 (2) CONFORMING AMENDMENT.—Paragraph (2)
 7 of section 6693(a) of the Internal Revenue Code of
 8 1986 such Code is amended by striking “and” at the
 9 end of subparagraph (D), by striking the period at
 10 the end of subparagraph (E) and inserting “and”,
 11 and by inserting after subparagraph (E) the fol-
 12 lowing new subparagraph:

13 “(F) section 529(d) by reason of 529(f)
 14 (relating to ABLE accounts).”.

15 (b) ANNUAL REPORTS.—

16 (1) IN GENERAL.—The Secretary of the Treas-
 17 ury shall report annually to Congress on the usage
 18 of ABLE accounts under section 529(f) of the Inter-
 19 nal Revenue Code of 1986.

20 (2) CONTENTS OF REPORT.—Any report under
 21 paragraph (1) may include—

22 (A) the number of people with an ABLE
 23 account,

24 (B) the total amount of contributions to
 25 such accounts,

1 (C) the total amount and nature of dis-
 2 tributions from such accounts,

3 (D) issues relating to the abuse of such ac-
 4 counts, if any, and

5 (E) the amounts repaid from such ac-
 6 counts to State Medicaid programs established
 7 under title XIX of the Social Security Act.

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to taxable years beginning after
 10 the date of the enactment of this Act.

11 **SEC. 4. TREATMENT OF ABLE ACCOUNTS UNDER CERTAIN**
 12 **FEDERAL PROGRAMS.**

13 (a) ACCOUNT FUNDS DISREGARDED FOR PURPOSES
 14 OF CERTAIN OTHER MEANS-TESTED FEDERAL PRO-
 15 GRAMS.—Notwithstanding any other provision of Federal
 16 law that requires consideration of 1 or more financial cir-
 17 cumstances of an individual, for the purpose of deter-
 18 mining eligibility to receive, or the amount of, any assist-
 19 ance or benefit authorized by such provision to be provided
 20 to or for the benefit of such individual, any amount (in-
 21 cluding earnings thereon) in any ABLE account (as de-
 22 fined in section 529(f) of the Internal Revenue Code of
 23 1986) of such individual, and any distribution for qualified
 24 disability expenses (as defined in paragraph (3) of such
 25 section) shall be disregarded for such purpose with respect

1 to any period during which such individual maintains,
 2 makes contributions to, or receives distributions from such
 3 ABLE account, except that, in the case of the supple-
 4 mental security income program under title XVI of the
 5 Social Security Act, a distribution for housing expenses
 6 (as defined in subparagraph (B)(ii) of such paragraph)
 7 shall not be so disregarded, and in the case of such pro-
 8 gram, only the 1st \$100,000 of the amount (including
 9 such earnings) in such ABLE account shall be so dis-
 10 regarded.

11 (b) SUSPENSION OF SSI BENEFITS DURING PERI-
 12 ODS OF EXCESSIVE ACCOUNT FUNDS.—

13 (1) IN GENERAL.—The benefits of an individual
 14 under the supplemental security income program
 15 under title XVI of the Social Security Act shall not
 16 be terminated, but shall be suspended, by reason of
 17 excess resources of the individual attributable to an
 18 amount in the ABLE account (as defined in section
 19 529(f) of the Internal Revenue Code of 1986) of the
 20 individual not disregarded under subsection (a) of
 21 this section.

22 (2) NO IMPACT ON MEDICAID ELIGIBILITY.—An
 23 individual who would be receiving payment of such
 24 supplemental security income benefits but for the
 25 application of the previous sentence shall be treated

1 for purposes of title XIX of the Social Security Act
2 as if the individual continued to be receiving pay-
3 ment of such benefits.

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