

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 354

(Delegate Chang, *et al.*)

Health and Government Operations

Rules

Maryland Achieving a Better Life Experience (ABLE) Program - Account
Establishment - Procedures

This bill generally conforms statute to Internal Revenue Service (IRS) regulations governing Achieving a Better Life Experience (ABLE) programs by specifying conditions under which Maryland ABLE Program accounts may be opened by and distributions made to individuals other than an eligible individual. The Maryland 529 Board may adopt regulations to carry out the bill. **The bill takes effect June 1, 2023.**

Fiscal Summary

State Effect: No effect in FY 2023. State general fund revenues decrease, potentially significantly, beginning as early as FY 2024 to the extent the bill results in additional subtraction modifications claimed against the personal income tax for contributions to and distributions from new ABLE accounts. Maryland 529 nonbudgeted revenues increase, potentially significantly, from fees associated with new accounts, while nonbudgeted expenditures likewise increase for distributions. To the extent additional fee revenue from accounts obviates the need for State funding of the Maryland ABLE Program, currently \$300,000 annually, State general fund expenditures for the program may decrease. Maryland 529 can implement changes to ABLE eligibility using existing resources.

Local Effect: Potential significant decrease in revenue to the extent more individuals claiming subtraction modifications for contributions to ABLE accounts decrease taxable income. Local expenditures are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, an ABLÉ account may be established only for an eligible individual by the eligible individual or a person selected by the eligible individual. If the eligible individual is unable to establish an ABLÉ account, the eligible individual's agent under power of attorney may establish an account. If the eligible individual does not have a power of attorney, in priority order, an ABLÉ account may be opened for the eligible individual by the individual's (1) conservator or legal guardian; (2) spouse; (3) parent; (4) sibling; (5) grandparent; or (6) representative payee appointed by the Social Security Administration (SSA).

The Maryland 529 Board may accept a certification, made under the penalties of perjury, from the person seeking to establish an ABLÉ account that indicates the basis of the person's authority to establish an ABLÉ account and that there is no other person with a higher priority to establish the ABLÉ account.

Minors, individuals against whom the eligible individual has obtained a peace or protective order, an individual held civilly or criminally liable for financial exploitation, or an individual who is the subject of a civil or criminal order prohibiting contact with the eligible individual may not establish an ABLÉ account on behalf of an eligible individual.

Current Law: The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 established a new § 529A of the Internal Revenue Code that permits a state (or a state agency or instrumentality) to establish and maintain another type of tax-advantaged savings program, a qualified ABLÉ program, under which contributions may be made to an account that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account. Chapter 39 of 2016 required the Maryland 529 Board, in consultation with the Maryland Department of Disabilities, to establish, administer, manage, and promote the Maryland ABLÉ Program. State programs must adhere to minimum federal guidelines to be considered qualified ABLÉ programs under federal law. Individuals with disabilities for whom the onset of the disability occurred prior to age 26 are considered "eligible individuals" under IRS regulations. Eligible individuals who establish an ABLÉ account and are the owner of such account are "designated beneficiaries" under IRS regulations.

The assets and income of ABLÉ accounts are exempt from State and local taxation. Money and assets in the accounts established under the Maryland ABLÉ Program or an ABLÉ program in any other state may not be considered for the purpose of determining eligibility to receive, or the amount of, any assistance or benefits from local or State means-tested programs. The money and assets in each ABLÉ account must be less than federal limits.

Each *contributor* to an ABLE account may subtract up to \$2,500 per year, per designated beneficiary, from Maryland taxable income for contributions to an ABLE account. Each spouse on a joint tax return is treated separately for this limited purpose. Contributions exceeding \$2,500 may be carried over for 10 successive tax years.

Federal law limits total contributions to a single ABLE account in a year to the amount allowed for tax-free gifts. The board must refund to an ABLE account contributor any amount contributed to an ABLE account over this limit. There is also an addition modification for expenses that do not meet program requirements and ABLE account refunds.

State Fiscal Effect:

Income Tax Subtraction Modifications

Maryland 529 advises there are 5,204 ABLE accounts in the State with a combined \$59.2 million in assets. The number of new accounts that may be opened due to the bill is difficult to quantify, particularly given the program's requirement that disability onset before age 26. According to [SSA](#), as of December 2021, there were 102,088 individuals in Maryland receiving Supplemental Security Income (SSI) with blindness or a disability. Although SSA does not disaggregate by age of disability onset, given the number of individuals receiving SSI, the pool of eligible individuals for an ABLE account is likely significantly larger than the current 5,204 open accounts. Therefore, to the extent the bill facilitates new accounts and contributors to those accounts claim income tax subtraction modifications, general fund revenues decrease.

The Comptroller's Office advises that, for tax year 2021, 1,231 tax filers claimed about \$4.0 million in income subtraction modifications for contributions to ABLE accounts, which resulted in a decrease of \$167,034 in State tax revenue. Assuming State tax revenues continue to decrease by about 4.2% of the total amount of subtraction modifications claimed and each tax filer continues to subtract an average of \$3,257 in contributions, for every 1,000 additional filers claiming the subtraction modification, State revenues decrease by approximately \$135,700. Given the bill's June 1, 2023 effective date, new accounts can be opened in 2023 and subtraction modifications claimed when 2023 taxes are filed in 2024; therefore, any revenue impacts of the bill could begin as early as fiscal 2024.

Distributions from ABLE accounts are likewise tax-advantaged. An eligible individual receiving a distribution from a Maryland ABLE account may also claim a subtraction modification when used for eligible disability-related expenses. The exact effect of the bill on the number of distributions being made is similarly difficult to quantify, but to the extent more eligible individuals receive distributions from the savings and earnings in an ABLE account, State revenues further decrease by a potentially significant amount.

Other Effects of New Accounts

Maryland 529 is a nonbudgeted State agency and operates using fee revenue from the savings plans it offers. Accordingly, nonbudgeted revenues increase with additional ABLE accounts. Likewise, additional ABLE accounts result in an increase in nonbudgeted expenditures for more distributions.

Means-tested Programs: New ABLE accounts created as a result of the bill would have their assets excluded from means testing for State programs such as Medicaid and, therefore, could increase the number of eligible individuals in those programs. However, given the size of the Medicaid budget, the impact is not likely to significantly affect the program. Any such impact has not been accounted for in this analysis.

State Grants to the Maryland ABLE Program: Even though Maryland 529 is nonbudgeted, a portion of the Maryland ABLE Program's expenses come from a \$300,000 annual State grant. To the extent additional ABLE accounts are opened beginning in fiscal 2024, new fee revenues may allow the program to become more or fully self-sufficient and, therefore, general fund expenditures for the program to decrease.

Local Revenues: Although an exact estimate of the total impact of new ABLE subtraction modifications on local governments is not feasible, local revenues decrease beginning as early as fiscal 2024 to the extent additional individuals claim an income subtraction modification as a result of the bill. The Comptroller's Office advises that, for tax year 2021, 1,231 tax filers claimed about \$4.0 million in income subtraction modifications for contributions to ABLE accounts, which resulted in a decrease of \$167,034 in State tax revenue. Therefore, assuming local tax revenues continue to decrease by about 2.7% of the total amount of subtraction modifications claimed and each tax filer continues to subtract an average of \$3,257 in contributions, for every 1,000 additional filers claiming the subtraction modification, local revenues decrease by approximately \$88,400.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 343 (Senator Zucker, *et al.*) - Education, Energy, and the Environment.

Information Source(s): Maryland Department of Disabilities; Maryland Department of Health; Comptroller's Office; Maryland 529; U.S. Social Security Administration; Department of Legislative Services

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Analysis by: Michael E. Sousane

Direct Inquiries to:
(410) 946-5510
(301) 970-5510