I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN

2018 (SECOND) Regular Session

LEGISLATIVE SESSION VOTING RECORD

Bill No. 42-34 (COR)	**Speaker Antonio R. Unpingco Legislative Session Hall November 30, 2018**					
NAME	**Aye**	**Nay**	**Not Voting/ Abstained**	**Out During Roll Call**	**Absent**	**Excused**
Senator Thomas C. **ADA**	✓					
Senator FRANK B. **AGUON, JR.**					✓	✓
Senator William M. **CASTRO**	✓					
Senator James V. **ESPALDON**	✓					
Senator Fernando Barcinas **ESTEVES**	✓					
Senator Régine Biscoe **LEE**	✓					
Senator Tommy **MORRISON**	✓					
Senator Louise B. **MUÑA**	✓					
Senator Telena Cruz **NELSON**	✓					
Senator Dennis G. **RODRIGUEZ, Jr.**					✓	✓
Senator Joe S. San **AGUSTIN**	✓					
Senator Michael F.Q. **SAN NICOLAS**					✓	✓
Acting Speaker Therese M. **TERLAJE**	✓					
Senator Mary Camacho **TORRES**	✓					

TOTAL:	**11**				**3**	**3**
	Aye	**Nay**	**Not Voting/ Abstained**	**Out During Roll Call**	**Absent**	**Excused**

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

I = Pass

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 42-34 (COR)

*****

Introduced by: Dennis G. Rodriguez, Jr.
Joe S. San Agustin

AN ACT TO *ADD* A NEW CHAPTER 53 TO DIVISION 2 OF TITLE 11 AND A NEW § 23111(p) TO ARTICLE 1 OF CHAPTER 23, TITLE 7, BOTH OF GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE GUAM ABLE SAVINGS PROGRAM FOR THE BENEFIT OF PERSONS WITH DISABILITIES AND TO EXEMPTING MONIES CONTAINED IN ABLE SAVINGS ACCOUNTS FROM EXECUTION.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Short Title. This Act *shall* be cited as the "Guam ABLE Savings Program Act."

Section 2. Legislative Findings and Intent. *I Liheslaturan Guåhan* intends to establish a qualified tax exempt savings program to encourage and assist individuals and families to save private funds to support individuals with disabilities pursuant to § 529A of the Internal Revenue Code of 1986, as amended, or successor legislation, and any regulations promulgated thereunder. *I Liheslaturan Guåhan* further intends that the program established by this legislation be and remain in conformance with the Stephen Beck, Jr. *Achieving a Better Life Experience (ABLE) Act of 2014*, Division B of U.S. Public Law No. 113-295.

The ABLE accounts are designed to provide secure funding for disability-related expenses on behalf of the designated beneficiaries with disabilities and will supplement, but not supplant, benefits provided through private insurances, the Medicaid program, the supplemental security income program (if applicable), the beneficiary's employment, and other sources.

The ABLE savings accounts are modeled on the requirements and regulations of a traditional 529 qualified tuition program. The accounts are easy to open, available in every state, the same annual contributions apply with gift tax rules applying after Thirteen Thousand Dollars ($13,000), income and withdrawals from the accounts are tax-free, and rollovers are allowed to another family member with an ABLE or 529 account, or to a 529 account if the beneficiary is no longer disabled.

Although the purpose of an ABLE account is to provide for qualified disability expenses, the definition of these expenses is quite broad. These qualified expenses are:

(a) *education*, including preschool to post-secondary, with books, materials, tutors, and special education classes;

(b) *housing*, including a primary residence, rent, purchase, and mortgage payments, home improvements and modifications, maintenance, repairs, taxes, and utilities;

(c) *transportation*, including mass transit, purchase or modification of vehicles, and moving expenses;

(d) *employment support*, including expenses related to obtaining and maintaining employment, job training, assistive technology, and personal assistance supports; and

(e) *health prevention and wellness*, including premiums for health insurance, mental health, medical, vision, and dental, rehabilitation, durable medical equipment, therapy, respite care, long-term service and supports,

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

There is no effect on other programs for persons with an ABLE account. The existence of the account or the amount in the account has no effect on other benefits that can be received by the beneficiary. A beneficiary may have up to One Hundred Thousand Dollars ($100,000) in an ABLE savings account.

Section 3. A new Chapter 53 is *added* to Division 2 of Title 11, Guam Code Annotated, to read:

"**CHAPTER 53**

GUAM ABLE SAVINGS PROGRAM

§ 53101. Definitions. As used in this Chapter, unless the context otherwise requires:

(a) *Account* or *ABLE savings account* means an individual savings account established in accordance with this Chapter.

(b) *Account owner* means the person who enters into a savings agreement pursuant to this Chapter.

(c) *Designated beneficiary* means a resident of Guam whose qualified disability expenses may be paid from the account.

(d) *Director* means the Director of the Guam Department of Revenue and Taxation.

(e) *Eligible individual* means an individual who is entitled to benefits based on blindness or disability under 42 U.S.C. § 401 *et seq*. or 42 U.S.C. § 1381 *et seq*., as amended, and for whom blindness or disability occurred before the date on which the individual attained the age of twenty-six (26), or an individual who filed for the taxable year, a disability certification with and to the satisfaction of the Director, or the Secretary, if required.

(f) *Financial organization* means an organization authorized to do business on Guam that is:

(1) licensed or chartered under the banking and insurance laws of Guam;

(2) licensed or chartered under the savings and loan association laws of Guam;

(3) chartered by an agency of the federal government; or

(4) subject to the jurisdiction and regulation of the federal Securities and Exchange Commission.

(g) *Management contract* means the contract executed by the Director and a financial organization selected to act as a depository and manager of the Program.

(h) *Member of the family* has the same meaning defined in § 529A of the Internal Revenue Code of 1986, as amended.

(i) *Non-qualified withdrawal* means a withdrawal from an account that is not:

(1) a qualified withdrawal; or

(2) a rollover distribution.

(j) *Program* means the Guam ABLE Savings Program established under this Chapter.

(k) *Program manager* means a financial organization selected by the Director to act as a depository and manager of the Program.

(l) *Qualified disability expense* means any qualified disability expense included in § 529A of the Internal Revenue Code of 1986, as amended.

(m) *Qualified withdrawal* means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(n) *Rollover distribution* means a rollover distribution as defined in § 529A of the Internal Revenue Code of 1986, as amended.

(o) *Savings agreement* means an agreement between the program manager or the Director and the account owner.

(p) *Secretary* means the Secretary of the United States Department of the Treasury.

§ 53102. Guam ABLE Savings Program; Establishment. The Director *shall* establish the Guam ABLE Savings Program to provide for individual savings accounts that empower individuals with a disability and their families to save private funds to support an individual with a disability.

§ 53103. Functions and Powers of the Director.

(a) The Director *shall* implement and administer the program under the terms and conditions established by this Chapter and in conformity with federal law, including the Stephen Beck, Jr. *Achieving a Better Life Experience (ABLE) Act of 2014*, Division B of U.S. Public Law No. 113-295, as amended. The Director *shall* have the authority to:

(1) develop and implement the program in a manner consistent with this Chapter;

(2) engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

(3) seek rulings and other guidance from the Secretary and the Internal Revenue Service relating to the program;

(4) make any changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided

by § 529A of the Internal Revenue Code of 1986, as amended, and as provided under this Chapter;

(5) charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program;

(6) develop marketing plans and promotional material;

(7) establish the methods by which the funds held in accounts shall be disbursed;

(8) establish the method by which funds shall be allocated to pay for administrative costs;

(9) notify the Secretary, if required, when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the Secretary; and

(10) adopt rules pursuant to the Administrative Adjudication Act as necessary to carry out the purposes of this Chapter.

(b) The Director may enter into agreements with various states and territories to either allow residents of Guam to participate in a comparable program operated by another state or territory or allow residents of other states and territories to participate in the Guam ABLE Savings Program.

(c) The Director may implement the program through use of financial organizations as account depositories and managers. The Director may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations that submit proposals *shall* describe the investment instruments which will be held in accounts. The Director may select more than one (1) financial organization and investment instrument for the program. The Director *shall* select as program depositories and managers of the financial organization or organizations, from among the financial organizations seeking the contract, that

demonstrate the most advantageous combination, both to potential program participants and to Guam, of the following factors:

(1) financial stability and integrity of the financial organization;

(2) the safety of the investment instrument being offered;

(3) the ability of the financial organization to satisfy record-keeping and reporting requirements;

(4) the financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) the fees, if any, proposed to be charged to the account of owners;

(6) the minimum initial deposit and minimum contributions that the financial organization will require;

(7) the ability of the financial organization to accept electronic withdrawals, including payroll deduction plans; and

(8) other benefits to Guam or its residents included in the proposal, including fees payable to Guam to cover expenses of operation of the program.

(d) The Director may enter into contracts and agreements with a financial organization or organizations necessary to implement this Chapter.

§ 53104. Management Contract; Terms.

(a) A management contract *shall* include, at a minimum, terms requiring the financial organization to:

(1) take any action required to keep the program in compliance with the requirements of this Chapter and take any action not contrary to the management contract to qualify as a qualified ABLE program as defined in § 529A of the Internal Revenue Code of 1986, as amended;

(2) keep accurate records of each account, keep each account segregated from other accounts, and provide the Director with the information necessary to prepare the statements required by § 53105 of this Chapter;

(3) compile total information contained in statements required to be prepared under § 53105 of this Chapter, and provide the compilations to the Director;

(4) if there is more than one (1) program manager, provide the Director with the information necessary to determine compliance with § 53105 of this Chapter;

(5) provide the Director with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this Chapter, and § 529A of the Internal Revenue Code of 1986, as amended;

(6) hold all accounts for the benefit of the account owner or owners;

(7) be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of the audit to the Director;

(8) provide the Director with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager *shall* make available for review by the Director the results of any periodic examination of the program manager by any state, territory or federal banking, insurance, or securities commission, except to the extent that the report or reports may not be disclosed under law; and

(9) ensure that any description of the program, whether in writing or through the use of any media, is consistent with a marketing plan developed pursuant to this Chapter.

(b) The Director may:

(1) enter into contracts as the Director deems necessary and proper for the implementation of the program;

(2) require that an audit be conducted of the operations and financial position of the program manager at any time if the Director has any reason to be concerned about the financial position, the record-keeping practices, or the status of accounts of the program manager; and

(3) terminate or not renew a management agreement. If the Director terminates or does not renew a management agreement, the Director *shall* take custody of accounts held by the program manager and *shall* seek to promptly transfer the accounts to another financial organization that is selected as a program manager and into investment instruments as similar to the original instruments as possible.

(c) The Department of Revenue and Taxation, the Department of Public Health and Social Services, and the Department of Integrated Services for Individuals with Disabilities are authorized to exchange data regarding eligible individuals to carry out the purposes of this Chapter.

§ 53105. Guam ABLE Savings Accounts; Terms and Conditions.

(a) An ABLE savings account established pursuant to this Chapter *shall* be opened by a designated beneficiary or by a trustee or guardian of a designated beneficiary who lacks capacity to enter into a contract; provided, that the designated beneficiary *shall* be an eligible individual at the time the account is established. Each beneficiary may hold only one (1) account. The Director may establish a nonrefundable application fee and an annual fee for

each account. An application for an account *shall* be in the form specified by the Director and *shall* contain:

(1) the name, address, and social security number of the account owner;

(2) the name, address, and social security number of the designated beneficiary, if the account owner is the beneficiary's trustee or guardian;

(3) certification relating to no excess contributions; and

(4) additional information as the Director may require.

(b) Any person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by § 529A of the Internal Revenue Code of 1986, as amended, or any rules and regulations adopted by the Secretary and applicable to this Chapter.

(c) Contributions to an ABLE savings account may be made only in cash. The Director or program manager *shall* reject or promptly withdraw a contribution:

(1) if the contribution is in excess of the limits established pursuant to Subsection (b) of this Section;

(2) if total contributions cause the value of the account to be equal to or greater than the account maximum established by the Director. The account maximum must be equal to the account maximum for postsecondary education savings accounts established pursuant to § 529 of the Internal Revenue Code of 1986, as amended; or

(3) if the designated beneficiary is not an eligible individual in the current calendar year.

(d) An account owner may:

(1) change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary in accordance with procedures established by the Director; and

(2) transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in § 529A of the Internal Revenue Code of 1986, as amended.

No account owner *shall* use an interest in an account as security for a loan. Any pledge of an interest in an account *shall* be of no force and effect.

(e) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, the distribution *shall* be reported to the Department of Revenue and Taxation and to the account owner, designated beneficiary, or distributee to the extent required by Guam or federal law.

(f) Statements *shall* be provided to each account owner *at least* four (4) times each year within thirty (30) days after the end of the three (3)-month period to which a statement relates. The statement *shall* identify the contributions made during the preceding three (3)-month period, the total contributions made to the account through the end of the period, the value of the account at the end of the period, distributions made during the period, and any other information that the Director requires to be reported to the account owner. Statements and information relating to accounts *shall* be prepared and filed to the extent required by this Chapter and any other Guam or federal law.

(g) The program *shall* provide a separate accounting for each designated beneficiary.

§ 53106. Account Funds. Moneys in an ABLE savings account:

(a) *shall* be exempt from attachment, execution, or garnishment; and

(b) may be claimed by the MIP or Medicaid plan subject to limitations imposed by the Director or Secretary, as applicable.

§ 53107. Accounts Not Guaranteed by Guam.

(a) Nothing in this Chapter *shall* create or be construed to create any obligation of the Director, the government of Guam, or any agency or instrumentality

of the government of Guam to guarantee for the benefit of any account owner or designated beneficiary with respect to the:

(1) return of principal;

(2) rate of interest or other return on any account; or

(3) payment of interest or other return on any account.

(b) The Director *shall* adopt rules to provide that every contract, obligation, application, or other similar document that may be used in connection with opening an account clearly indicates that the account is not insured by the government of Guam, and that the principal deposited and the investment return are not guaranteed by the government of Guam.

§ 53108. Guam ABLE Savings Program Trust Fund.

(a) There is established the Guam ABLE Savings Program Trust Fund (Fund) within the Treasury of Guam. The Fund *shall* consist of monies received from an ABLE savings program manager, any governmental or private grants, and any General Fund appropriations for the program.

(b) The Fund *shall* be used if the Director elects to accept deposits from contributors, rather than have deposits sent directly to the program manager. The Fund *shall* consist of any monies deposited by contributors in accordance with this Chapter which are not deposited directly with the program manager.

(c) All interest derived from the deposit and investment of monies in the Guam ABLE Savings Program Trust Fund *shall* be credited to the Fund. At the end of any fiscal year, all unexpended and unencumbered monies in the Guam ABLE Savings Program Trust Fund *shall* remain in the Guam ABLE Savings Program Trust Fund and *shall not* be credited or transferred to the General Fund, or any other fund.

(d) All expenses incurred by the Director in developing and administering the ABLE savings program *shall* be payable from the Guam ABLE Savings Program Trust Fund."

Section 4. ABLE Savings Accounts Exempt from Execution or Attachment. A new § 23111(p) is *added* to Article 1 of Chapter 23, Title 7, Guam Code Annotated, to read:

"(p) All monies within an ABLE savings account set up in accordance with the *Achieving A Better Life Experience Act* or *ABLE Act*, Division B of U.S. Public Law No. 113-295, and in accordance with the Guam ABLE Savings Program Act in Chapter 53 of Division 2, Title 11, Guam Code Annotated."

Section 5. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act that can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

Section 6. Effective Date. This Act *shall* become effective upon enactment.