

112TH CONGRESS
1ST SESSION

S. 1872

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

NOVEMBER 15, 2011

Mr. CASEY (for himself and Mr. BURR) 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 2011” or the “ABLE Act of
6 2011”.

7 **SEC. 2. PURPOSES.**

8 The purposes of this Act are as follows:

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

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

13 **SEC. 3. ABLE ACCOUNTS.**

14 (a) ESTABLISHMENT.—

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

19 “(f) ABLE ACCOUNTS.—

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

24 “(A) a qualified ABLE program and an
 25 ABLE account shall be treated in the same

1 manner as a qualified tuition program and an
2 account described in subsection (b)(1)(A)(ii),
3 respectively, are treated, and

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

9 “(2) QUALIFIED ABLE PROGRAM.—For pur-
10 poses of this subsection, the term ‘qualified ABLE
11 program’ means a program established and main-
12 tained by a State or agency or instrumentality there-
13 of—

14 “(A) under which a person may make con-
15 tributions to an ABLE account which is estab-
16 lished for the purpose of meeting the qualified
17 disability expenses of the designated beneficiary
18 of the account,

19 “(B) which meets the requirements of the
20 preceding subsections of this section (as modi-
21 fied by this subsection), determined by sub-
22 stituting—

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

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

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

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

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

11 “(B) EXPENSES INCLUDED.—The fol-
12 lowing expenses shall be qualified disability ex-
13 penses if such expenses are made for the benefit
14 of an individual with a disability who is a des-
15 ignated beneficiary and are related to such dis-
16 ability:

17 “(i) EDUCATION.—Expenses for edu-
18 cation, including tuition for preschool thru
19 post-secondary education, books, supplies,
20 and educational materials related to such
21 education, tutors, and special education
22 services.

23 “(ii) HOUSING.—Expenses for a pri-
24 mary residence, including rent, purchase of
25 a primary residence or an interest in a pri-

1 mary residence, mortgage payments, real
2 property taxes, and utility charges.

3 “(iii) TRANSPORTATION.—Expenses
4 for transportation, including the use of
5 mass transit, the purchase or modification
6 of vehicles, and moving expenses.

7 “(iv) EMPLOYMENT SUPPORT.—Ex-
8 penses related to obtaining and maintain-
9 ing employment, including job-related
10 training, assistive technology, and personal
11 assistance supports.

12 “(v) HEALTH, PREVENTION, AND
13 WELLNESS.—Expenses for health and
14 wellness, including premiums for health in-
15 surance, mental health, medical, vision,
16 and dental expenses, habilitation and reha-
17 bilitation services, durable medical equip-
18 ment, therapy, respite care, long term serv-
19 ices and supports, nutritional management,
20 communication services and devices, adapt-
21 ive equipment, assistive technology, and
22 personal assistance.

23 “(vi) MISCELLANEOUS EXPENSES.—
24 Financial management and administrative
25 services; legal fees; expenses for oversight;

1 monitoring; home improvements, and modi-
2 fications, maintenance and repairs, at pri-
3 mary residence; or funeral and burial ex-
4 penses.

5 “(vii) ASSISTIVE TECHNOLOGY AND
6 PERSONAL SUPPORT SERVICES.—Expenses
7 for assistive technology and personal sup-
8 port with respect to any item described in
9 clauses (i) through (vi).

10 “(viii) OTHER APPROVED EX-
11 PENSES.—Any other expenses which are
12 approved by the Secretary under regula-
13 tions and consistent with the purposes of
14 this section.

15 “(C) INDIVIDUAL WITH A DISABILITY.—

16 “(i) IN GENERAL.—Except as pro-
17 vided in clause (ii), an individual is an in-
18 dividual with a disability for a year if the
19 individual (regardless of age)—

20 “(I) has a medically determinable
21 physical or mental impairment, which
22 results in marked and severe func-
23 tional limitations, and which can be
24 expected to result in death or which
25 has lasted or can be expected to last

1 for a continuous period of not less
2 than 12 month, or

3 “(II) is blind.

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

8 “(I) is receiving (or, for purposes
9 of title XIX of the Social Security
10 Act, is deemed to be, or treated as, re-
11 ceiving) benefits under the supple-
12 mental security income program
13 under title XVI of such Act, or whose
14 benefits under such program are sus-
15 pended other than by reason of mis-
16 conduct,

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

19 “(III) files a disability certifi-
20 cation with the Secretary for such
21 year.

22 “(iii) DISABILITY CERTIFICATION DE-
23 FINED.—The term ‘disability certification’
24 means, with respect to an individual, a cer-
25 tification to the satisfaction of the Sec-

1 retary by the designated beneficiary or the
2 parent or guardian of the designated bene-
3 ficiary that—

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

6 “(II) includes a copy of the des-
7 ignated beneficiary’s diagnosis, signed
8 by a physician meeting the criteria of
9 section 1861(r)(1) of the Social Secu-
10 rity Act.

11 “(iv) RESTRICTION ON USE OF CER-
12 TIFICATION.—No inference may be drawn
13 from a disability certification for purposes
14 of establishing eligibility for benefits under
15 title II or XVI of the Social Security Act.

16 “(4) ROLLOVERS FROM ABLE ACCOUNTS.—The
17 limits on contributions pursuant to subsection (b)(6)
18 shall not apply to any amount paid or distributed
19 from an ABLE account to the extent that the
20 amount received is paid, not later than the 60th day
21 after the date of such payment or distribution,
22 into—

23 “(A) another ABLE account for the ben-
24 efit of—

25 “(i) the same beneficiary, or

1 “(ii) an individual who—

2 “(I) is the spouse of such indi-
3 vidual with a disability, or bears a re-
4 lationship to such individual with a
5 disability which is described in section
6 152(d)(2), and

7 “(II) is also an individual with a
8 disability,

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

14 “(C) a qualified tuition program—

15 “(i) for the benefit of the designated
16 beneficiary, or

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

22 The preceding sentence shall not apply to any pay-
23 ment or distribution if it applied to any prior pay-
24 ment or distribution during the 12-month period
25 ending on the date of the payment or distribution.

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

19 “(6) REGULATIONS.—Not later than 6 months
20 after the date of the enactment of this section, the
21 Secretary may prescribe such regulations or other
22 guidance as the Secretary determines necessary or
23 appropriate to carry out the purposes of this section,
24 including regulations to prevent fraud and abuse

1 with respect to amounts claimed as qualified dis-
2 ability expenses.”.

3 (2) CONFORMING AMENDMENT.—Paragraph (2)
4 of section 6693(a) of the Internal Revenue Code of
5 1986 such Code is amended by striking “and” at the
6 end of subparagraph (D), by striking the period at
7 the end of subparagraph (E) and inserting “and”,
8 and by inserting after subparagraph (E) the fol-
9 lowing new subparagraph:

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

12 (b) ANNUAL REPORTS.—

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

17 (2) CONTENTS OF REPORT.—Any report under
18 paragraph (1) shall include—

19 (A) the number of people with an ABLE
20 account,

21 (B) the total amount of contributions to
22 such accounts,

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

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

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

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

9 **SEC. 4. TREATMENT OF ABLE ACCOUNTS UNDER CERTAIN**
10 **FEDERAL PROGRAMS.**

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

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

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

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

20 (2) NO IMPACT ON MEDICAID ELIGIBILITY.—An
21 individual who would be receiving payment of such
22 supplemental security income benefits but for the
23 application of the previous sentence shall be treated
24 for purposes of title XIX of the Social Security Act

1 as if the individual continued to be receiving pay-
2 ment of such benefits.

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