

CS FOR HOUSE BILL NO. 188(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES SADDLER, Millett, Gara, Hughes, Muñoz

A BILL**FOR AN ACT ENTITLED**

1 "An Act establishing a program for financial accounts for individuals with disabilities;
2 exempting the procurement of contracts for the program from the State Procurement
3 Code; exempting certain information on participants in the program from being subject
4 to inspection as a public record; providing that an account under the program for an
5 individual with a disability is not a security; allowing a state to file a claim against an
6 individual's financial account under the program to recover Medicaid payments after
7 the individual's death; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
10 to read:

11 SHORT TITLE. AS 06.65, enacted by sec. 2 of this Act, may be cited as the Alaska
12 ABLE Savings Program Act.

13 * **Sec. 2.** AS 06 is amended by adding a new chapter to read:

Chapter 65. Alaska Savings Program for Eligible Individuals.

Sec. 06.65.010. Program authorized. The Alaska savings program for eligible individuals is created in the department. The department shall implement and administer the program under this chapter and as required by the federal authorizing law.

Sec. 06.65.020. General department duties. To implement and administer the program, the department shall, in addition to the other powers and duties provided to the department under this chapter,

(1) develop, set, and approve the terms and conditions of the program, consistent with this chapter and the federal authorizing law, including limiting the nature and amount of contributions that may be made to a program account;

(2) supervise the decisions about the investment of contributions to a program account;

(3) seek required federal, state, and other regulatory agency rulings and exemptions;

(4) arrange for the timely filing of required regulatory notices, disclosure documents, and reports;

(5) arrange for the program to be audited annually; and

(6) take other action that is not specifically identified in this section but that is necessary to

(A) obtain and maintain the tax benefits allowed under the federal authorizing law; and

(B) maintain favorable treatment for designated beneficiaries under state and federal programs that use a means test for eligibility.

Sec. 06.65.030. Modification of program. Consistent with this chapter and the federal authorizing law, the department may modify the terms and conditions of the program as the department considers necessary or desirable for the effective and efficient operation of the program.

Sec. 06.65.040. Additional department powers. The department may

(1) set fees the department considers necessary or desirable for program transactions and services; and

(2) develop marketing plans and materials to promote the benefits of the program that are available to contributors under the program and to beneficiaries under the program.

Sec. 06.65.050. Contracting authority; procurement exemption. (a) The department may contract with a person to advise and assist in the implementation and operation of the program.

(b) The department may contract with a person to provide services for the program.

(c) The department may enter into a contract with other states to obtain or provide the services for implementing the program. The contract may include cooperative procurement by the states of a person to provide services for the program, including investment and record-keeping services.

(d) Notwithstanding the other provisions of this chapter, the department may enter into a contract with another state to allow the residents of

(1) this state to participate in a program established by another state under the federal authorizing law, instead of establishing the program in this state;

(2) that contracting state to participate in the program in this state.

(e) The procurement of contracts for the program, including procurement of services under a contract with other states, is exempt from AS 36.30.

Sec. 06.65.060. Investment oversight. The department shall

(1) oversee and approve the selection of investment managers and advisors for the program;

(2) oversee all aspects of the program's investments and investment performance and decisions regarding the investment of program assets; and

(3) oversee all investment disclosure documents and regulatory filings related to program investments.

Sec. 06.65.070. Financial contractor obligations. In addition to any other obligations imposed by the contract with the department, if the department enters into a contract with a person to provide program accounts, the financial contractor shall

(1) provide program accounts that comply with the federal authorizing law;

(2) take the action necessary to keep the program in compliance with the requirements of this chapter and to manage the program accounts in compliance with the federal authorizing law;

(3) keep adequate records of each program account and keep each program account segregated from other program accounts;

(4) as requested by the department, compile the information contained in statements required to be prepared under AS 06.65.210 and provide the statements and the compiled material to the department;

(5) provide the department with access to the books and records of the financial contractor to the extent needed to determine compliance with the contract, this chapter, and the federal authorizing law;

(6) hold program accounts for the benefit of the program account owner;

(7) be audited at least annually by a firm of certified public accountants acceptable to the department and provide the results of the audits to the department;

(8) upon request of the department, provide the department with copies of all filings and reports related to the program made by the financial contractor during the contract or while the financial contractor holds program accounts;

(9) upon request of the department, make available to the department for review the results of periodic examinations of the financial contractor by a state or federal banking, insurance, or securities agency, except to the extent that the report is confidential under state or federal law; and

(10) ensure that the descriptions of the program in the media that the financial contractor uses to promote the program are consistent with a marketing plan developed for the program.

Sec. 06.65.080. Additional audits. In addition to the annual audit required by AS 06.65.020(5), the department may require a financial contractor to have an audit conducted of the financial contractor's operations and financial position when the department is concerned about the financial position, the record-keeping practices, or the status of the program accounts of the financial contractor.

Sec. 06.65.090. Contract termination; nonrenewal. The department may terminate or fail to renew a financial contract. If the department terminates or does not renew a contract with a financial contractor, the department shall take custody of the program accounts held by the financial contractor and transfer the program accounts to another financial contractor as soon as possible and into program accounts that are as similar as possible to the types of program accounts being transferred.

Sec. 06.65.100. Eligible individuals. To be eligible for a program account, when an individual or the individual's representative establishes the program account or makes a distribution to another program account under AS 06.65.200, the individual shall be an individual

(1) who is entitled to benefits based on blindness or disability under 42 U.S.C. 401 - 434 or 42 U.S.C. 1381 - 1383f, and the blindness or disability occurred before the date on which the individual reached 26 years of age; or

(2) for whom a disability certification that satisfies the secretary and the federal authorizing law is filed with the secretary for the calendar year in which the eligible individual or the eligible individual's representative opens the program account.

Sec. 06.65.110. Representative of eligible individual. (a) A person may act as the representative of an eligible individual under this chapter if the eligible individual is a minor or lacks decision-making capacity and if the person is

(1) a parent, guardian, or conservator of the eligible individual; in this paragraph,

(A) "conservator" has the meaning given in AS 13.06.050;

(B) "guardian" has the meaning given in AS 13.06.050;

(C) "parent" includes a stepparent; or

(2) a trustee of the property of the eligible individual.

(b) The representative of an eligible individual may establish a program account for the eligible individual, and the eligible individual is the designated beneficiary of the program account. The representative shall manage the program account for the benefit of the designated beneficiary.

(c) In this section, "decision-making capacity" means the ability to understand

1 and appreciate the nature and consequences of a decision and the ability to reach and
2 communicate an informed decision.

3 **Sec. 06.65.120. Program account ownership.** (a) The owner of a program
4 account is the designated beneficiary of the program account.

5 (b) If a representative of an eligible individual establishes a program account
6 for an eligible individual, the representative is not an owner of the program account
7 and does not have or acquire an interest in the assets of the program account.

8 **Sec. 06.65.130. Number of program accounts.** An eligible individual may
9 not be the designated beneficiary on more than one program account.

10 **Sec. 06.65.140. Program account application.** The application for a program
11 account must be in the form established by the department and contain

12 (1) the name, address, and social security number of the program
13 account owner and, if applicable, the representative who opens the program account
14 for the eligible individual; and

15 (2) additional information that the department and the secretary
16 determine is necessary.

17 **Sec. 06.65.150. Program account establishment fee.** The financial contractor
18 may charge an eligible individual a nonrefundable fee for establishing a program
19 account. The department shall establish the amount of the fee by contract with the
20 financial contractor or by regulation.

21 **Sec. 06.65.160. Program account contributions.** (a) As provided by the
22 federal authorizing law, a person may make a contribution to a program account for
23 the designated beneficiary.

24 (b) A person may not make a contribution to open or add to a program account
25 unless the person makes the contribution by using a method of payment acceptable to
26 the department.

27 (c) Any person may make a contribution to a program account, but the amount
28 that the person may contribute is subject to the limits set by the federal authorizing law
29 or the department.

30 (d) The department or the financial contractor shall reject or withdraw from a
31 program account

(1) that part of a contribution that exceeds the limit established under
(c) of this section; or

(2) the total amount of a contribution, if the department or the financial contractor determines that the

(A) value of the program account without the contribution is equal to or greater than the maximum limit established by the federal authorizing statute for the program account; or

(B) designated beneficiary is not an eligible individual during the calendar year in which the contribution is made.

(e) If a person makes a distribution from a program account during a calendar year, the financial contractor shall report the distribution to the federal Internal Revenue Service and to the account owner or the representative of the account owner.

(f) The report under (e) of this section must include the distribution information required by state and federal law.

Sec. 06.65.170. Limited investment direction. A designated beneficiary or the designated beneficiary's representative may not, directly or indirectly, direct the investment of a program account, including the earnings on the program account, more than twice in one calendar year.

Sec. 06.65.180. Change of designated beneficiary. A designated beneficiary or the designated beneficiary's representative may change the designated beneficiary of a program account to an eligible individual who is a member of the family of the previous designated beneficiary.

Sec. 06.65.190. Distributions for qualified expenses. Except as allowed under AS 06.65.200, a designated beneficiary or the representative of the designated beneficiary may not make a withdrawal or other distribution from a program account unless the withdrawal or other distribution is used to pay for the qualified expenses of the designated beneficiary.

Sec. 06.65.200. Rollover distribution. (a) Subject to the restrictions in the federal authorizing law for rollover distributions, a designated beneficiary or the designated beneficiary's representative may make a distribution of the money in a program account to another program account if the designated beneficiary of the

1 program account to which the distribution is being made is
2 (1) the same eligible individual; or
3 (2) an eligible individual who is a member of the family of the
4 designated beneficiary from whom the distribution is made.

5 (b) To qualify as a distribution allowed under (a) of this section, the
6 designated beneficiary or the designated beneficiary's representative shall make the
7 distribution to the other program account before the 60th day after the designated
8 beneficiary or the designated beneficiary's representative makes the distribution from
9 the program account.

10 **Sec. 06.65.210. Statements.** (a) A financial contractor shall provide program
11 account statements to the designated beneficiary, or the designated beneficiary's
12 representative, of each program account established with the financial contractor at
13 least four times each year and at the times the department establishes.

14 (b) A financial contractor shall provide the department with the reports and
15 information that the department requests that are related to the program account
16 statements.

17 **Sec. 06.65.220. Preparation and filing.** In addition to the other reporting
18 requirements of this chapter, a financial contractor shall prepare and file the
19 statements, program account information, and other information as required by state
20 and federal law and state and federal agencies.

21 **Sec. 06.65.230. Separate accounting.** A financial contractor shall provide
22 separate accounting for each program account established with the financial
23 contractor.

24 **Sec. 06.65.240. Annual fee.** A financial contractor may impose an annual fee
25 as may be established by the department on the program account owner for the
26 maintenance of a program account.

27 **Sec. 06.65.250. Use as security.** A person may not use a program account or
28 an interest in a program account as security for a loan. If a person pledges a program
29 account or an interest in a program account as security for a loan, the pledge is void.

30 **Sec. 06.65.260. No state obligation.** (a) This chapter may not be construed to
31 create an obligation of the state, the department, or an agency or instrumentality of the

1 state to guarantee for the benefit of a designated beneficiary
2 (1) the return of the principal deposited in the program account;
3 (2) a rate of interest or other return on the principal in a program
4 account; or
5 (3) the payment of interest or other return on the principal in a program
6 account.

7 (b) Every contract, application, and other document that may be used in
8 connection with opening a program account must clearly state that the state does not
9 insure a program account or guarantee the items described in (a) of this section.

10 **Sec. 06.65.270. Confidentiality.** The department, the Department of Health
11 and Social Services, and another state agency that receives information under
12 AS 06.65.280 shall maintain the confidentiality of the information they receive or
13 exchange under this chapter about eligible individuals, designated beneficiaries, and
14 program accounts as required by state and federal law.

15 **Sec. 06.65.280. Exchange of information.** The department may exchange
16 information with the Department of Health and Social Services and other state
17 agencies to determine whether an individual is an eligible individual.

18 **Sec. 06.65.290. Treatment under means test programs.** (a) Notwithstanding
19 a contrary provision of law, a state agency may not consider a program account
20 amount in this or another state when determining the eligibility of the designated
21 beneficiary of the program account to receive state assistance or state benefits or when
22 determining the amount of state assistance or state benefits to be received by the
23 designated beneficiary of the program account.

24 (b) In this section, "program account amount" means a contribution to a
25 program account, earnings on the contribution, or a distribution for a qualified
26 expense.

27 **Sec. 06.65.300. Deposit from permanent fund dividend.** A person who is
28 eligible under AS 43.23 to receive a permanent fund dividend may make a deposit into
29 the program account of a designated beneficiary from and up to the amount of the
30 person's permanent fund dividend.

31 **Sec. 06.65.310. Program expense fund.** (a) The program expense fund is

1 established as a separate fund of the state in the general fund.

2 (b) The program expense fund consists of money appropriated to the fund to
3 pay the expenses of the program.

4 (c) The department shall pay the expenses incurred by the department to
5 implement and administer the program from the program expense fund.

6 (d) The department shall manage the fund.

7 (e) Except as provided otherwise by the appropriation for the money, the
8 money remaining in the program expense fund at the end of a fiscal year does not
9 lapse and remains available for expenditure under this section in successive fiscal
10 years.

11 **Sec. 06.65.320. Medicaid claims.** This state or another state may file a claim
12 against the amount remaining in the program account of a deceased designated
13 beneficiary to recover medical assistance payments if the payments were made for the
14 designated beneficiary, were made under that state's Medicaid program authorized by
15 42 U.S.C. 1396 - 1396p (Title XIX, Social Security Act), and were made after the
16 program account of the designated beneficiary was established. The application of this
17 section is subject to the requirements of 26 U.S.C. 529A(f) (Internal Revenue Code).

18 **Sec. 06.65.330. Governing law.** If a provision of this chapter conflicts with
19 the requirements of the federal authorizing law for the program, the federal
20 authorizing law governs to the extent of the conflict.

21 **Sec. 06.65.340. Regulations.** The department may adopt regulations under
22 AS 44.62 (Administrative Procedure Act) to implement this chapter.

23 **Sec. 06.65.350. Annual report.** The department shall evaluate the program
24 each year. The department shall submit an annual report containing the evaluation to
25 the senate secretary and chief clerk of the house of representatives on or before the
26 first day of each regular session of the legislature and shall notify the legislature that
27 the report is available.

28 **Sec. 06.65.390. Definitions.** In this chapter,

29 (1) "department" means the Department of Revenue;

30 (2) "designated beneficiary" means the eligible individual for whom a
31 program account for qualified expenses is established under this chapter;

(3) "eligible individual" means an individual who is eligible under AS 06.65.100;

(4) "federal authorizing law" means 26 U.S.C. 529A (Internal Revenue Code) and the regulations issued under that statute;

(5) "financial contractor" means a person that enters into a contract with the department under this chapter to provide program accounts;

(6) "member of the family" has the meaning given in the federal authorizing statute;

(7) "program" means the Alaska savings program for eligible individuals established under AS 06.65.010;

(8) "program account" means a savings account used by the program to meet the qualified disability expenses of the designated beneficiary of the account;

(9) "program account owner" means the designated beneficiary of a program account;

(10) "qualified expense" means a qualified disability expense as defined by the federal authorizing law;

(11) "representative" means a person who is a representative of an eligible individual under AS 06.65.110(a);

(12) "savings account" means a financial account;

(13) "secretary" means the United States Secretary of the Treasury.

* **Sec. 3.** AS 36.30.850(b) is amended by adding a new paragraph to read:

(47) a contract under AS 06.65.

* **Sec. 4.** AS 40.25.120(a) is amended to read:

(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

(1) records of vital statistics and adoption proceedings, which shall be treated in the manner required by AS 18.50;

(2) records pertaining to juveniles unless disclosure is authorized by law;

(3) medical and related public health records;

(4) records required to be kept confidential by a federal law or

1 regulation or by state law;

2 (5) to the extent the records are required to be kept confidential under
3 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure
4 or retain federal assistance;

5 (6) records or information compiled for law enforcement purposes, but
6 only to the extent that the production of the law enforcement records or information

7 (A) could reasonably be expected to interfere with enforcement
8 proceedings;

9 (B) would deprive a person of a right to a fair trial or an
10 impartial adjudication;

11 (C) could reasonably be expected to constitute an unwarranted
12 invasion of the personal privacy of a suspect, defendant, victim, or witness;

13 (D) could reasonably be expected to disclose the identity of a
14 confidential source;

15 (E) would disclose confidential techniques and procedures for
16 law enforcement investigations or prosecutions;

17 (F) would disclose guidelines for law enforcement
18 investigations or prosecutions if the disclosure could reasonably be expected to
19 risk circumvention of the law; or

20 (G) could reasonably be expected to endanger the life or
21 physical safety of an individual;

22 (7) names, addresses, and other information identifying a person as a
23 participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the
24 advance college tuition savings program under AS 14.40.803 - 14.40.817;

25 (8) public records containing information that would disclose or might
26 lead to the disclosure of a component in the process used to execute or adopt an
27 electronic signature if the disclosure would or might cause the electronic signature to
28 cease being under the sole control of the person using it;

29 (9) reports submitted under AS 05.25.030 concerning certain
30 collisions, accidents, or other casualties involving boats;

31 (10) records or information pertaining to a plan, program, or

1 procedures for establishing, maintaining, or restoring security in the state, or to a
2 detailed description or evaluation of systems, facilities, or infrastructure in the state,
3 but only to the extent that the production of the records or information

4 (A) could reasonably be expected to interfere with the
5 implementation or enforcement of the security plan, program, or procedures;

6 (B) would disclose confidential guidelines for investigations or
7 enforcement and the disclosure could reasonably be expected to risk
8 circumvention of the law; or

9 (C) could reasonably be expected to endanger the life or
10 physical safety of an individual or to present a real and substantial risk to the
11 public health and welfare;

12 (11) the written notification regarding a proposed regulation provided
13 under AS 24.20.105 to the Department of Law and the affected state agency and
14 communications between the Legislative Affairs Agency, the Department of Law, and
15 the affected state agency under AS 24.20.105;

16 (12) records that are

17 (A) proprietary, privileged, or a trade secret in accordance with
18 AS 43.90.150 or 43.90.220(e);

19 (B) applications that are received under AS 43.90 until notice is
20 published under AS 43.90.160;

21 (13) information of the Alaska Gasline Development Corporation
22 created under AS 31.25.010 or a subsidiary of the Alaska Gasline Development
23 Corporation that is confidential by law or under a valid confidentiality agreement;

24 (14) information under AS 38.05.020(b)(11) that is subject to a
25 confidentiality agreement under AS 38.05.020(b)(12);

26 **(15) names, addresses, and other information identifying a person**
27 **as a participant in the Alaska savings program for eligible individuals under**
28 **AS 06.65.**

29 * **Sec. 5.** AS 45.55.990(32) is amended to read:

30 (32) "security" means a note; stock; treasury stock; bond; debenture;
31 evidence of indebtedness; certificate of interest or participation in any profit-sharing

1 agreement; limited liability company interest under AS 10.50, notwithstanding the
2 limitations of AS 45.08.103(c); collateral-trust certificate; preorganization certificate
3 or subscription; transferable share; investment contract; voting-trust certificate;
4 certificate of deposit for a security; viatical settlement interest; certificate of interest or
5 participation in an oil, gas, or mining title or lease or in payments out of production
6 under the title or lease or in any sale of or indenture or bond or contract for the
7 conveyance of land or any interest in land; an option on a contract for the future
8 delivery of agricultural or mineral commodities or any other commodity offered or
9 sold to the public and not regulated by the Commodity Futures Trading Commission;
10 however, the contract or option is not subject to the provisions of AS 45.55.070 if it is
11 sold or purchased on the floor of a bona fide exchange or board of trade and offered or
12 sold to the public by a broker-dealer or agent registered under this chapter; investment
13 of money or money's worth including goods furnished or services performed in the
14 risk capital of a venture with the expectation of some benefit to the investor where the
15 investor has no direct control over the investment or policy decision of the venture; or,
16 in general, any interest or instrument commonly known as a "security," or any
17 certificate of interest or participation in, temporary or interim certificate for, receipt
18 for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing;
19 "security" does not include a participation agreement entered into under AS 14.40.802,
20 **a program account established under AS 06.65**, or an insurance or endowment
21 policy or annuity contract under which an insurance company promises to pay a fixed
22 or variable sum of money either in a lump sum or periodically for life or for some
23 other specified period;

24 * **Sec. 6.** AS 47.07.055 is amended by adding a new subsection to read:

25 (h) In addition to the claims allowed under the other provisions of this section,
26 the state may file a claim under AS 06.65.320 against the amount in an individual's
27 program account after the individual dies. Notwithstanding the other provisions of this
28 section, the claim is subject to the requirements of 26 U.S.C. 529A(f) (Internal
29 Revenue Code). In this subsection, "program account" has the meaning given in
30 AS 06.65.390.

31 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION. The Department of Revenue shall file its first report required by
3 AS 06.65.350, added by sec. 2 of this Act, on or before the first day of the Second Regular
4 Session of the Thirtieth Alaska State Legislature.

5 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TRANSITION: REGULATIONS. The Department of Revenue may adopt regulations
8 authorized by AS 06.65.340, added by sec. 2 of this Act. The regulations take effect under
9 AS 44.62 (Administrative Procedure Act), but not before the effective date of sec. 2 of this
10 Act.

11 * **Sec. 9.** Section 8 of this Act takes effect immediately under AS 01.10.070(c).