

# LEGAL SERVICES

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## MEMORANDUM

April 22, 2015

**SUBJECT:** Sectional summary of SB 104 relating to financial accounts for persons with disabilities (Work Order No. 29-LS0702(W))

**TO:** Senator Cathy Giessel  
Attn: Jane Conway

**FROM:** Terry Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Bill section 1.** Gives the new chapter a short title of Alaska ABLE Savings Program Act.

**Bill section 2.** Creates a new chapter that establishes a savings program for eligible individuals.

**Sec. 06.65.010.** Creates the Alaska savings program ("program") for eligible individuals in the Department of Commerce, Community, and Economic Development ("department"). Directs the department to implement and administer the program.

**Sec. 06.65.020.** Lists some of the powers of the department relating to the program. These powers include entering into contracts for advice and assistance for implementing the program, seeking rulings and guidance from federal agencies, and adjusting the program as necessary to obtain the benefit of the federal income tax treatment provided for this type of program.

**Sec. 06.65.030.** Authorizes the department to contract with financial institutions to provide program accounts.

**Sec. 06.65.040.** Requires the department to comply with the State Procurement Code (AS 36.30) when it procures a contract under sec. 06.65.030.

**Sec. 06.65.050.** Directs the department, when procuring a contract under sec. 06.65.030, to require a person who responds to the solicitation to describe the types of program accounts the person is offering. Lists items that the department must consider when selecting the best offer for the contract. These items include the offeror's financial stability and integrity and the safety of the program accounts being offered.

**Sec. 06.65.060.** Lists certain obligations imposed on the financial institution selected to provide program accounts ("financial contractor"). These include providing accounts that comply with the federal authorizing law, keeping adequate records of each program account, keeping each program account separate from other program accounts, and annual audits.

**Sec. 06.65.070.** Allows the department to require a financial contractor to have an audit conducted when the department is concerned about the contractor's financial position, the contractor's record-keeping, or the status of the program accounts. This audit is in addition to the contractor's annual audit.

**Sec. 06.65.080.** Allows the department to terminate or not renew a financial contract. Requires the department to take custody of the program accounts if it does terminate or not renew and to transfer them to another financial contractor as soon as possible.

**Sec. 06.65.090.** Describes when an individual is eligible for a program account. Requires that the individual be a resident, that the individual be entitled to benefits based on blindness or disability under certain federal laws, and that the individual have a qualified disability certification filed with the U.S. Secretary of the Treasury ("Secretary") for the relevant calendar year.

**Sec. 06.65.100.** Allows certain persons to act as the representative of an eligible individual if the eligible individual is a minor or lacks decision-making capacity. Allows the representative to establish a program account for the eligible individual. Directs the representative to manage the program account for the benefit of the eligible individual.

**Sec. 06.65.110.** States that the owner of a program account is the beneficiary of the account.

**Sec. 06.65.120.** Limits an eligible individual to being the beneficiary of only one program account.

**Sec. 06.65.130.** Describes the form and content of an application for a program account.

**Sec. 06.65.140.** Allows a financial contractor to charge an eligible individual a nonrefundable fee for establishing a program account.

**Sec. 06.65.150.** Requires program account contributions to be in cash. Limits the contributions that can be made after the program account is established to the limits set by federal law. Specifies when the department or the financial contractor must reject or withdraw all or part of a contribution from an account. Requires the financial contractor to report distributions from program accounts to the Internal Revenue Service and the program account owner (or the program account owner's representative).

**Sec. 06.65.160.** Limits how many times each year a beneficiary (or the beneficiary's representative) may direct the investment of a program account.

**Sec. 06.65.170.** Allows a beneficiary (or the beneficiary's representative) to change the beneficiary on a program account. Limits the new beneficiary to an eligible individual who is a member of the beneficiary's family.

**Sec. 06.65.180.** Except for rollover distributions under sec. 06.65.190, prohibits program account withdrawals or other distributions unless they are used to pay the qualified expenses of the beneficiary.

**Sec. 06.65.190.** Allows for a rollover distribution to another program account under certain conditions.

**Sec. 06.65.200.** Requires a financial contractor to provide program account statements to the department, the secretary, and the beneficiary at least four times each calendar year. Lists what the statements must contain. The listing includes identifying each contribution made to the program account and giving the value of the program account.

**Sec. 06.65.210.** Requires the filing of program account information statements as required by state and federal law, in addition to the other reporting requirements of the chapter.

**Sec. 06.65.220.** Directs financial contractors to provide separate accounting for each program account.

**Sec. 06.65.230.** Allows a financial contractor to impose an annual fee on the program account owner for maintenance of the program account.

**Sec. 06.65.240.** Prohibits a person from using a program account or an interest in a program account as security for a loan. If the person does this, the pledge of security is void.

**Sec. 06.65.250.** Exempts the money in a program account and the money paid out of a program account from the creditors of the beneficiary of the program account.

**Sec. 06.65.260.** Prohibits construing this chapter as creating an obligation of the state, the department, or a state agency to guarantee the return of principal, a rate of interest or other return on principal, or the payment of interest or other return on principal. Requires every program account opening document to clearly state that the state does not ensure a program account or make these guarantees.

**Sec. 06.65.270.** Directs the department and the Department of Health and Social Services to keep confidential the information received under this chapter about eligible individuals, beneficiaries, and program accounts.

**Sec. 06.65.280.** Allows the department to exchange information with the Department of Health and Social Services when determining eligible individuals.

**Sec. 06.65.290.** Allows the department, instead of establishing a program under this chapter, to contract with another state to allow this state's residents to participate in another state's program. Allows the department to enter into a contract with another state to allow the residents of that contracting state to participate in this state's program. Removes the procurement of these contracts from the State Procurement Code (AS 36.30).

**Sec. 06.65.300.** Establishes a program expense fund in the general fund. The fund consists of appropriations made to the fund for program expenses. Directs the department to pay the department's program expenses from the fund and to manage the fund.

**Sec. 06.65.310.** Directs the department to adopt regulations to implement this chapter.

**Sec. 06.65.320.** Directs the department to submit an annual report evaluating the program to the legislature.

**Sec. 06.65.320.** Defines the terms used in the chapter.

**Bill section 3.** Amends AS 09.38.015(a) (property exempt without limitation) to add an exemption from creditors for the money in or paid from a program account under the new chapter.

**Bill section 4.** Amends AS 40.25.120(a) (public records exceptions) to exempt the names, addresses, and other information identifying a person as a participant in the new program from being public records.

**Bill section 5.** Amends AS 45.55.990(32) (definition of security) to exclude program accounts established under the new chapter from being considered securities under the Alaska Securities Act (AS 45.55).

**Bill section 6.** Indicates when the department is required to file its first report to the legislature on the program established by the new chapter.

**Bill section 7.** Allows the department to adopt regulations for the new chapter.

**Bill section 8.** Gives bill section 7 an immediate effective date.

If I may be of further assistance, please advise.