

# ALASKA STATE LEGISLATURE

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## REPRESENTATIVE DAN SADDLER

### CS for House Bill 188 ABLE Act Draft Version E Sectional Analysis

*"An Act establishing a program for financial accounts for individual with disabilities; creating a property exemption for money in or paid from a financial account in the program for an individual with a disability; exempting the procurement of contracts for the program from the State Procurement Code; exempting certain information on the participants in the program from being subject to inspection as a public record; providing that an account under the program for an individual with a disability is not a security; allowing a state to file a claim against an individual's financial account under the program to recover Medicaid payments after the individual's death; and providing for an effective date."*

**Sec. 1:** Cites this as the **Alaska ABLE Act Savings Program Act**

**Sec. 2:** Creates a new chapter 65. **Alaska Savings Program for Eligible Individuals**

**Sec. 06.65.010: Program authorized.** Authorizes Alaska ABLE savings program in the Department – which is the Alaska Department of Revenue. Allows it to implement and administer the program under the Federal ABLE Act.

**Sec. 06.65.020: General department duties.** Outlines the duties of the department in implementing and administering the program.

**Sec. 06.65.030: Modification of program.** Gives the Department authority to modify the program in accordance to any federal law changes

**Sec. 06.65.040: Additional department powers.** Allows department to set fees for program transactions and services and also develop marketing plan to promote the ABLE program

**Sec. 06.65.050: Contracting authority; procurement exemption.** Allows department to contract with a person to assist in implementing the program, provide services, join other states to obtain or provide services for implementation, join a cooperative effort with other states to provide services for the program that could include investment and record-keeping services. Allows state to join with other states to allow an Alaska resident to participate in a program in another state under federal authorizing law and for an outside state to participate in a program in this state. If contracting with another state, AS 36.30 (Procurement Code) will not apply.

**Sec. 06.65.060: Investment oversight:** Allows the department to oversee and approve selection of investment managers and advisors for the program, and to oversee all investment disclosures and regulatory filings related to program investments

**Sec. 06.65.070: Financial contractor obligations:** outlines duties/obligations of the selected financial contractor(s)

**Sec. 06.65.080: Additional audits:** Allows the department to order an audit of the contractor's financial operation and position in addition to annual audit if the department has reason to be concerned

**Sec. 06.65.090: Contract termination; non-renewal.** Gives department authority to not renew a financial contract. If so it would take custody of the program accounts and transfer them to another financial contractor that offers similar program accounts

**Sec. 06.65.100: Eligible individuals.** Describes who is eligible to participate in the program.

**Sec. 06.65.110: Representative of eligible individuals.** Describes who may act as a representative of the eligible individual who is a minor or lacks decision-making capacity

**Sec. 06.65.120: Program account ownership.** States that the owner of the program account is the designated beneficiary.

**Sec. 06.65.130: Number of program accounts.** Allows only one program account per designated beneficiary under federal authorizing law.

**Sec. 06.65.140: Program account application:** Outlines department procedures for program account applications and information to be collected in that process

**Sec. 06.65.150: Program account establishment fee.** Allows financial contractor to charge a non-refundable to establish program account. That fee to be determined in the contract with the financial contractor.

**Sec. 06.65.160: Program account contributions.** Outlines how a person can make a contribution, the limit authorized by federal law, allows department to reject or withdraw a contribution that exceeds that annual limit or maximum limit established by authorizing law or if designated beneficiary is not eligible, and that financial contractor must report contributions to the IRS.

**Sec. 06.65.170: Limited investment direction.** Limits to two the number of times a program account investment can be changed.

**Sec. 06.65.180: Change of designated beneficiary.** Allows a designated beneficiary or representative to change beneficiary of an account to another eligible individual in the family.

**Sec. 06.65.190: Distribution for qualified expenses.** States that withdrawals from the program accounts may only be used for qualified expenses for the designated beneficiary.

**Sec. 06.65.200: Rollover distribution.** Subject to federal law governing rollovers, a distribution from a program account can be made to the same designated beneficiary or another eligible individual in the family, and the timeframe for that to be done.

**Sec. 06.65.210: Statements.** Requires that statements re: program accounts be issued 4 times a year at times established by the department and that the program contractor provide related information at the department's request.

**Sec. 06.65.220: Preparation and filing.** In addition to other reports a financial contractor shall prepare and file statements required under state and federal law and other agencies.

**Sec. 06.65.230: Separate accounting.** Requires a financial contractor to provide separate accounting for each program account.

**Sec. 06.65.240: Annual fee.** Allows a financial contractor may charge an annual fee for maintenance of a program account.

**Sec. 06.65.250: Use as security.** Prohibits a program account from being used as security for a loan

**Sec. 06.65.260: Exemption from creditor claims.** States that a program account is exempt from a claim by a creditor

**Sec. 06.65.270: No state obligation.** Declares that the program does not create an obligation of the state, department, or any agency to guarantee the return of principal or pay interest on the principal in a program account

**Sec. 06.65.280: Confidentiality.** Specifies that program account information is confidential

**Sec. 06.65.290: Exchange of information.** Allows the Department to exchange information with the Department of Health and Social Services and other state agencies to determine whether an individual is eligible

**Sec. 06.65.300: Treatment under means test programs.** Specifies the program account amounts must be disregarded in determining eligibility for means-tested programs

**Sec. 06.65.310: Deposit from permanent fund dividend.** Allows deposits to program accounts from the permanent fund dividend

**Sec. 06.65.320: Program expense fund.** Establishes program expense fund and describes its purpose and operation

**Sec. 06.65.330: Medicaid claims:** Allows that the state may file a claim against the program account of a beneficiary who dies.

**Sec. 06.65.340: Governing law.** Establishes federal law as governing to the extent of any conflict with state law

**Sec. 06.65.350: Regulations.** Requires the department to adopt implementing regulations

**Sec. 06.65.360: Annual report.** Requires the department to evaluate the program each year and file an annual report on or before the start of each legislative session beginning in 2018

**Sec. 06.65.390: Definitions.**

### **Sec. 3:**

**AS 09.38.015(a):** Creates an exemption for amounts in a program account

### **Sec. 4:**

**AS 36.30.850(b):** Adds ABLE program account oversight as a responsibility of the Commissioner of Revenue

### **Sec 5:**

**AS 40.25.120(a) is amended to** create an exception to public inspection for names, addresses, and other program account identifying information

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## **Sec. 6**

**AS 45.55.990(32):** Excludes program accounts from the definition of “security”

## **Sec. 7:**

**AS 47.07.055:** Allows the state to file a claim against the designated beneficiary’s program account after the individual dies

## **Sec. 8:** Transition

Requires the Department to file its first report on the program on or before the first day of the Second Regular Session of Thirtieth Alaska State Legislature (2018)

## **Sec. 9:** Transition

Allows the Department to adopt regulations, but not before the effective date of the provisions authorizing the Alaska ABLE savings program

## **Sec. 10:** Effective Date

Section 9 takes effect immediately