



March 17, 2016

The Honorable Kurt Olson
Chair
House Labor and Commerce Committee
State Capitol
120 4th Street
Juneau, AK 99801-1182

RE: House Bill No. 188

Dear Chairman Olson:

I am writing to thank you and the members of the committee for allowing me to address questions that arose yesterday during the committee's consideration of HB 188, legislation which would create an Alaska ABLE (Achieving a Better Life Experience) savings program. In this letter I will address balances in ABLE accounts and creditor rights.

Balances in ABLE Accounts

Although a majority of states have authorized ABLE programs, no ABLE program yet operates. We do not, therefore, have hard data on ABLE account balances. We can, however, look at balances in 529 accounts (savings and prepaid tuition plans) for guidance. Just this week [the College Savings Plan Network released findings from its 2015 year-end 529 report](#). The report shows an average account size of \$20,190 as of December 2015. [Another recent report](#), one from Ascensus College Savings, a recordkeeper and administrator for many 529 accounts, found that over 80% of 529 accounts had balances below \$30,000 and less than 4% had balances over \$100,000. The data from these reports, as well as [information from the U.S. Census Bureau](#), which reported a poverty rate of 28.5% in 2014 for people aged 18 to 64 with a disability, suggest that ABLE account balances will be small.

Creditor Rights

One of the questions at yesterday's hearing concerned section 06.65.260 of the bill. This provision would exempt from creditor claims the money in a program account and money paid out of a program account during the life of the account's designated beneficiary.

As I noted during my testimony, federal bankruptcy law (Title 11, section 541(b)(10) of the United States Code) protects money in an ABLE account. This protection is limited. The property of the bankruptcy estate does not include

funds placed in an account of a qualified ABLE program (as defined in section 529A(b) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds—

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed \$6,225.

State law may afford additional protection from creditor claims. For example, under Ohio Revised Code Annotated section 113.53(G), “money in an ABLE account shall be exempt from attachment, execution, or garnishment as provided in section 2329.66 of the Revised Code, and is subject to claims made under the medicaid estate recovery program instituted pursuant to section 5162.21 of the Revised Code, in accordance with [federal law].”

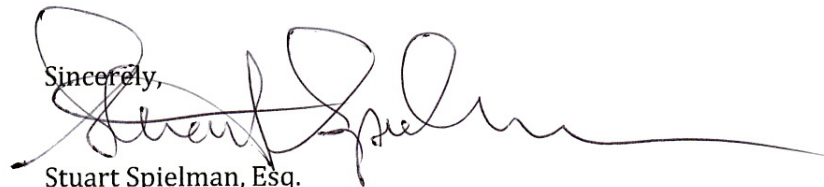
Florida law also protects ABLE accounts from creditor claims. Under Florida Statutes section 1009.986(6), “[m]oneys paid into or out of the Florida ABLE Program Trust Fund by or on behalf of a designated beneficiary are exempt, as provided by s. 222.22, from all claims of creditors of the designated beneficiary if the participation agreement has not been terminated.”

The state law protections afforded ABLE accounts are similar to protections afforded college savings accounts. Alaska Statutes section 14.40.802(h) generally exempts Alaska Higher Education Savings Trust accounts from a claim by creditors of a participant or of a beneficiary. [Writing for Morningstar Advisor](#), Susan T. Bart notes that protection of 529 assets from creditors varies state by state. Ms. Bart has compiled [a helpful table listing creditor protection for 529 accounts](#).

In sum, creditor claims against ABLE accounts and 529 accounts may be limited. The protections set out in section 06.65.260 of HB 188 have analogs in other laws.

This letter is not meant as legal advice and is certainly not an exhaustive overview. I hope nevertheless that the information in this letter helps the committee. Please let me know how I can further assist your important work.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart Spielman", with a long horizontal flourish extending to the right.

Stuart Spielman, Esq.
Senior Policy Advisor and Counsel
Autism Speaks