

*I Mina'Trentai Kuáttro Na Liheslaturan*  
**BILL STATUS**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
42-34 (COR)	Dennis G. Rodriguez, Jr. Joe S. San Agustin	AN ACT TO ADD A NEW CHAPTER 53 TO DIVISION 2, TITLE 11, GUAM CODE ANNOTATED, AND A NEW §23111(p) TO TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE GUAM ABLE SAVINGS PROGRAM, PROVIDING TAX EXEMPT BANK ACCOUNTS FOR PERSONS WITH DISABILITIES AND EXEMPTING THEM FROM EXECUTION.	3/15/17 1:18 p.m.						

*I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN*  
2017 (First) Regular Session

Bill No. 42-34 (COR)

Introduced by:

Dennis G. Rodriguez, Jr.   
Joe S. San Agustin

**AN ACT TO ADD A NEW CHAPTER 53 TO DIVISION 2, TITLE 11, GUAM CODE ANNOTATED, AND A NEW §23111(p) TO TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE GUAM ABLE SAVINGS PROGRAM, PROVIDING TAX EXEMPT BANK ACCOUNTS FOR PERSONS WITH DISABILITIES AND EXEMPTING THEM FROM EXECUTION.**

2017 MAR 15 PM 1:18  


1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1. Short Title.** This Act *shall* be cited as the “Guam ABLE Savings  
3 Program Act.”

4           **Section 2. Legislative Findings and Intent.** *I Liheslaturan Guáhan*  
5 intends to establish a qualified tax exempt savings program to encourage and assist  
6 individuals and families to save private funds to support individuals with disabilities  
7 pursuant to §529A of the Internal Revenue Code of 1986, as *amended*, or successor  
8 legislation, and any regulations promulgated thereunder. *I Liheslaturan Guáhan*  
9 further intends that the program established by this legislation be and remain in  
10 conformance with the Stephen Beck, Jr., Achieving a Better Life Experience Act of  
11 2014, Division B of U.S. Public Law No. 113-295.

12           The ABLE accounts are designed to provide secure funding for disability-  
13 related expenses on behalf of the designated beneficiaries with disabilities and will

1 supplement, but not supplant, benefits provided through private insurances, the  
2 Medicaid program, the supplemental security income program (if applicable), the  
3 beneficiary's employment, and other sources.

4 The ABLE savings accounts are modeled on the requirements and regulations  
5 of a traditional 529 qualified tuition program. The accounts are easy to open,  
6 available in every state, the same annual contributions apply with gift tax rules  
7 applying after thirteen thousand dollars (\$13,000), income and withdrawals from the  
8 accounts are tax-free, and rollovers are allowed to another family member with an  
9 ABLE or 529 account, or to a 529 account if the beneficiary is no longer disabled.

10 Although the purpose of an ABLE account is to provide for qualified disability  
11 expenses, the definition of these expenses is quite broad. These qualified expenses  
12 are:

13 1) *education*, including preschool to post-secondary, with books,  
14 materials, tutors and special education classes;

15 2) *housing*, including a primary residence, rent, purchase, and mortgage  
16 payments, home improvements and modifications, maintenance, repairs, taxes, and  
17 utilities;

18 3) *transportation*, including mass transit, purchase or modification of  
19 vehicles, and moving expenses;

20 4) *employment support*, including expenses related to obtaining and  
21 maintaining employment, job training, assistive technology, and personal assistance  
22 supports; and

23 5) *health prevention and wellness*, including premiums for health  
24 insurance, mental health, medical, vision, and dental, rehabilitation, durable medical  
25 equipment, therapy, respite care, long term service and supports, nutritional  
26 management, communication services and devices, adaptive equipment, assistive  
27 technology, and personal assistance.



1 (1) Licensed or chartered under the banking and insurance  
2 laws of Guam ;

3 (2) Licensed or chartered under the Savings and Loan  
4 Association laws of Guam;

5 (3) Chartered by an agency of the federal government; or

6 (4) Subject to the jurisdiction and regulation of the federal  
7 Securities and Exchange Commission.

8 (g) “*Management contract*” means the contract executed by the  
9 Director and a Financial Organization selected to act as a depository and  
10 manager of the program.

11 (h) “*Member of the family*” has the same meaning defined in §529A  
12 of the Internal Revenue Code of 1986, as *amended*.

13 (i) “*Non-qualified withdrawal*” means a withdrawal from an  
14 account that is not:

15 (1) a qualified withdrawal; or

16 (2) a rollover distribution.

17 (j) “*Program*” means the Guam ABLÉ savings program established  
18 under this Chapter.

19 (k) “*Program manager*” means a financial organization selected by  
20 the Director to act as a depository and manager of the program.

21 (l) “*Qualified disability expense*” means any qualified disability  
22 expense included in §529A of the Internal Revenue Code of 1986, as  
23 *amended*.

24 (m) “*Qualified withdrawal*” means a withdrawal from an account to  
25 pay the qualified disability expenses of the designated beneficiary of the  
26 account.

1 (n) “*Rollover distribution*” means a rollover distribution as defined  
2 in §529A of the Internal Revenue Code of 1986, as *amended*.

3 (o) “*Savings agreement*” means an agreement between the program  
4 manager or the Director and the account owner.

5 (p) “*Secretary*” means the Secretary of the United States  
6 Department of the Treasury.

7 **§53102. Guam ABLÉ savings program; establishment.** The Director  
8 *shall* establish the Guam ABLÉ savings program to provide for individual savings  
9 accounts that empower individuals with a disability and their families to save private  
10 funds to support an individual with a disability.

11 **§53103. Functions and powers of the Director.**

12 (a) The Director *shall* implement and administer the program under  
13 the terms and conditions established by this Chapter and in conformity with  
14 federal law including the Stephen Beck, Jr., Achieving a Better Life  
15 Experience Act of 2014; Division B of U.S. Public Law No. 113-295, as it  
16 may be *amended*. The Director *shall* have the authority to:

17 (1) Develop and implement the program in a manner  
18 consistent with this Chapter;

19 (2) Engage the services of consultants on a contractual basis  
20 for rendering professional and technical assistance and advice;

21 (3) Seek rulings and other guidance from the Secretary and  
22 the Internal Revenue Service relating to the program;

23 (4) Make any changes to the program required for the  
24 participants in the program to obtain the federal income tax benefits or  
25 treatment provided by §529A of the Internal Revenue Code of 1986, as  
26 *amended*, and as provided under this Chapter;

1           (5) Charge, impose, and collect administrative fees and  
2 service charges in connection with any agreement, contract, or  
3 transaction relating to the program;

4           (6) Develop marketing plans and promotional material;

5           (7) Establish the methods by which the funds held in accounts  
6 *shall* be disbursed;

7           (8) Establish the method by which funds *shall* be allocated to  
8 pay for administrative costs.

9           (9) Notify the Secretary, if required, when an account has been  
10 opened for a designated beneficiary and submit other reports  
11 concerning the program required by the Secretary;

12           (10) Adopt rules pursuant to the Administrative Adjudication  
13 Act as necessary to carry out the purposes of this Chapter.

14           (b) The Director may enter into agreements with various states and  
15 territories to either allow residents of Guam to participate in a comparable  
16 program operated by another state or territory or allow residents of other states  
17 and territories to participate in the Guam ABLE savings program.

18           (c) The Director may implement the program through use of  
19 financial organizations as account depositories and managers. The Director  
20 may solicit proposals from financial organizations to act as depositories and  
21 managers of the program. Financial organizations that submit proposals *shall*  
22 describe the investment instruments which will be held in accounts. The  
23 Director may select more than one financial organization and investment  
24 instrument for the program. The Director *shall* select as program depositories  
25 and managers the financial organization or organizations, from among the  
26 financial organizations seeking the contract, that demonstrate the most

1 advantageous combination, both to potential program participants and to  
2 Guam, of the following factors:

3 (1) Financial stability and integrity of the financial  
4 organization;

5 (2) The safety of the investment instrument being offered;

6 (3) The ability of the financial organization to satisfy record-  
7 keeping and reporting requirements;

8 (4) The financial organization's plan for promoting the  
9 program and the investment the organization is willing to make to  
10 promote the program;

11 (5) The fees, if any, proposed to be charged to the account of  
12 owners;

13 (6) The minimum initial deposit and minimum contributions  
14 that the financial organization will require;

15 (7) The ability of the financial organization to accept  
16 electronic withdrawals, including payroll deduction plans; and

17 (8) Other benefits to Guam or its residents included in the proposal,  
18 including fees payable to Guam to cover expenses of operation of the  
19 program.

20 (d) The Director may enter into contracts and agreements with a  
21 financial organization or organizations necessary to implement this Chapter.”

22 **§53104. Management contract; terms.**

23 (a) A management contract *shall* include, at a minimum, terms  
24 requiring the financial organization to:

25 (1) Take any action required to keep the program in  
26 compliance with the requirements of this Chapter and take any action  
27 not contrary to the management contract to qualify as a qualified ABLE



1 program as defined in §529A of the Internal Revenue Code of 1986, as  
2 *amended*;

3 (2) Keep accurate records of each account, keep each account  
4 segregated from other accounts and provide the Director with the  
5 information necessary to prepare the statements required by §53105 of  
6 this Chapter;

7 (3) Compile and total information contained in statements  
8 required to be prepared under §53105 of this Chapter and provide the  
9 compilations to the Director;

10 (4) If there is more than one program manager, provide the  
11 Director with the information necessary to determine compliance with  
12 §53105 of this Chapter;

13 (5) Provide the Director with access to the books and records  
14 of the program manager to the extent needed to determine compliance  
15 with the contract, this Chapter and §529A of the Internal Revenue Code  
16 of 1986, as *amended*;

17 (6) Hold all accounts for the benefit of the account owner or  
18 owners;

19 (7) Be audited at least annually by a firm of certified public  
20 accountants selected by the program manager and provide the results of  
21 the audit to the Director;

22 (8) Provide the Director with copies of all regulatory filings  
23 and reports made by the financial organization during the term of the  
24 management contract or while the financial organization is holding any  
25 accounts, other than confidential filings or reports that will not become  
26 part of the program. The program manager *shall* make available for  
27 review by the Director the results of any periodic examination of the

1 program manager by any state, territory or federal banking, insurance,  
2 or securities commission, except to the extent that the report or reports  
3 may not be disclosed under law; and

4 (9) Ensure that any description of the program, whether in  
5 writing or through the use of any media, is consistent with a marketing  
6 plan developed pursuant to this Chapter;

7 (b) The Director may:

8 (1) Enter into contracts as the Director deems necessary and  
9 proper for the implementation of the program;

10 (2) Require that an audit be conducted of the operations and  
11 financial position of the program manager at any time if the Director  
12 has any reason to be concerned about the financial position, the record-  
13 keeping practices, or the status of accounts of the program manager;  
14 and

15 (3) Terminate or not renew a management agreement. If the  
16 Director terminates or does not renew a management agreement, the  
17 Director *shall* take custody of accounts held by the program manager  
18 and *shall* seek to promptly transfer the accounts to another financial  
19 organization that is selected as a program manager and into investment  
20 instruments as similar to the original instruments as possible.

21 (c) The Department of Revenue and Taxation, the Department of  
22 Public Health and Social Services, and the Department of Integrated Services  
23 to Individuals with Disabilities are authorized to exchange data regarding  
24 eligible individuals to carry out the purposes of this Chapter.

25 **§53105. Guam ABLE savings accounts; terms and conditions.**

26 (a) An ABLE savings account established pursuant to this  
27 Chapter *shall* be opened by a designated beneficiary or by a trustee or

1 guardian of a designated beneficiary who lacks capacity to enter into a  
2 contract; provided that the designated beneficiary *shall* be an eligible  
3 individual at the time the account is established. Each beneficiary may  
4 hold only one account. The Director may establish a nonrefundable  
5 application fee and an annual fee for each account. An application for  
6 an account *shall* be in the form specified by the Director and *shall*  
7 contain:

8 (1) The name, address, and social security number of the  
9 account owner;

10 (2) The name, address, and social security number of the  
11 designated beneficiary, if the account owner is the beneficiary's trustee  
12 or guardian;

13 (3) Certification relating to no excess contributions; and

14 (4) Additional information as the Director may require.

15 (b) Any person may make contributions to an ABLE savings account  
16 after the account is opened, subject to the limitations imposed by §529A of  
17 the Internal Revenue Code of 1986, as *amended*, or any rules and regulations  
18 adopted by the Secretary and applicable to this Chapter.

19 (c) Contributions to an ABLE savings account may be made only in  
20 cash. The Director or program manager *shall* reject or promptly withdraw a  
21 contribution:

22 (1) If the contribution is in excess of the limits established  
23 pursuant to Subsection (b) of this Section;

24 (2) If total contributions cause the value of the account to be  
25 equal to or greater than the account maximum established by the  
26 Director. The account maximum must be equal to the account

1 maximum for postsecondary education savings accounts established  
2 pursuant to §529 of the Internal Revenue Code, or

3 (3) If the designated beneficiary is not an eligible individual  
4 in the current calendar year.

5 (d) An account owner may:

6 (1) Change the designated beneficiary of an account to an  
7 individual who is a member of the family of the prior designated  
8 beneficiary in accordance with procedures established by the Director;  
9 and

10 (2) Transfer all or a portion of an account to another ABLE  
11 savings account, the designated beneficiary of which is a member of  
12 the family as defined in §529A of the Internal Revenue Code of 1986,  
13 as amended.

14 No account owner *shall* use an interest in an account as security for a loan.  
15 Any pledge of an interest in an account *shall* be of no force and effect.

16 (e) If there is any distribution from an account to any individual or  
17 for the benefit of any individual during a calendar year, the distribution *shall*  
18 be reported to the Department of Revenue and Taxation and to the account  
19 owner, designated beneficiary, or distributee to the extent required by Guam  
20 or federal law.

21 (f) Statements *shall* be provided to each account owner at least four  
22 times each year within thirty days after the end of the three-month period to  
23 which a statement relates. The statement *shall* identify the contributions made  
24 during the preceding three-month period, the total contributions made to the  
25 account through the end of the period, the value of the account at the end of  
26 the period, distributions made during the period, and any other information  
27 that the Director requires to be reported to the account owner. Statements and

1 information relating to accounts *shall* be prepared and filed to the extent  
2 required by this Chapter and any other Guam or federal law.

3 (g) The program *shall* provide a separate accounting for each  
4 designated beneficiary.

5 **§53106. Account funds.** Moneys in an ABLE savings account:

6 (1) *Shall* be exempt from attachment, execution, or garnishment; and

7 (2) May be claimed by the MIP or medicaid plan subject to  
8 limitations imposed by the Director or Secretary, as applicable.

9 **§53107. Accounts not guaranteed by Guam.**

10 (a) Nothing in this Chapter *shall* create or be construed to create any  
11 obligation of the Director, the Government of Guam, or any agency or  
12 instrumentality of the Government of Guam to guarantee for the benefit of  
13 any account owner or designated beneficiary with respect to the:

14 (1) Return of principal;

15 (2) Rate of interest or other return on any account; or

16 (3) Payment of interest or other return on any account.

17 (b) The Director *shall* adopt rules to provide that every contract,  
18 obligation, application, or other similar document that may be used in  
19 connection with opening an account clearly indicates that the account is not  
20 insured by the Government of Guam and that the principal deposited and the  
21 investment return are not guaranteed by the Government of Guam.

22 **§53108. Guam ABLE savings program trust fund.**

23 (a) There is established the Guam ABLE savings program trust fund  
24 within the Treasury of Guam. The fund *shall* consist of moneys received from  
25 an ABLE savings program manager, any governmental or private grants, and  
26 any General Fund appropriations for the program.

1 (b) The fund *shall* be used if the Director elects to accept deposits  
2 from contributors, rather than have deposits sent directly to the program  
3 manager. The fund *shall* consist of any moneys deposited by contributors in  
4 accordance with this Chapter which are not deposited directly with the  
5 program manager.

6 (c) All interest derived from the deposit and investment of moneys  
7 in the savings program trust fund *shall* be credited to the fund. At the end of  
8 any fiscal year, all unexpended and unencumbered moneys in the savings  
9 program trust funds *shall* remain in the savings program trust fund and *shall*  
10 not be credited or transferred to the General Fund or any other fund.

11 (d) All expenses incurred by the Director in developing and  
12 administering the ABLE savings program *shall* be payable from the Guam  
13 ABLE savings program trust fund.”

14 **Section 4. ABLE savings accounts exempt from execution or**  
15 **attachment.**

16 A new §23111(p) is *added* to Title 7, Guam Code Annotated, to read:

17 “§23111(p) All money within an ABLE savings account set up in  
18 accordance with the 'Achieving A Better Life Experience Act' or 'ABLE Act',  
19 Division B of U.S. Public Law No. 113-295, and in accordance with the 'Guam  
20 ABLE Savings Program Act', Chapter 53 of Division 2 of Title 11, Guam  
21 Code Annotated.”

22 **Section 4. Severability.** *If any provision of this Act or its application to any*  
23 *person or circumstance is found to be invalid or contrary to law, such invalidity shall*  
24 *not affect other provisions or applications of this Act that can be given effect without*  
25 *the invalid provisions or application, and to this end the provisions of this Act are*  
26 *severable.*

1           **Section 5. Effective Date.** This act *shall* become effective immediately  
2 upon enactment.