

*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.	3/20/17	Committee on Appropriations and Adjudication	6/21/17 9:00 a.m.	10/18/17 1:28 p.m.	Fiscal Note Request 3/20/17	Supplemental Committee Report 11/28/18 9:01 a.m.
				Re-referred: 3/28/2017	Re-Referred Committee: Committee on Education, Finance and Taxation			Fiscal Note 4/18/17	
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	PUBLIC LAW	DATE SIGNED	NOTES	
11/28/18	AN ACT TO ADD A NEW CHAPTER 53 TO DIVISION 2 OF TITLE 11 AND A NEW § 23111(p) TO ARTICLE 1 OF CHAPTER 23, TITLE 7, BOTH OF GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE GUAM ABLE SAVINGS PROGRAM FOR THE BENEFIT OF PERSONS WITH DISABILITIES AND TO EXEMPTING MONIES CONTAINED IN ABLE SAVINGS ACCOUNTS FROM EXECUTION.	11/30/18	11/30/18 7:55 p.m.	12/12/18	34-144	12/12/2018	Received: 12/19/18 Mess and Comm. Doc. No. 34GL-18-2666.		



**EDDIE BAZA CALVO**  
Governor

**RAY TENORIO**  
Lieutenant Governor

*Office of the Governor Of Guam.*

**DEC 12 2018**

Honorable Therese M. Terlaje  
Acting Speaker  
*I Mina'trentai Kuáttro Na Liheslaturan Guåhan*  
Guam Congress Building  
163 Chalan Santo Papa  
Hagåtña, Guam 96910

Speaker Therese M. Terlaje  
34GL-18 - 2666

**DEC 19 2018**

Time: 10:40  
Received by: [Signature]

2018 DEC 19 AM 11:37

Dear Madam Speaker:

Transmitted herewith is Bill No. 42-34 (COR), "AN ACT TO ADD A NEW CHAPTER 53 TO DIVISION 2 OF TITLE 11 AND A NEW § 23111(p) TO ARTICLE 1 OF CHAPTER 23, TITLE 7, BOTH OF GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE GUAM ABLE SAVINGS PROGRAM FOR THE BENEFIT OF PERSONS WITH DISABILITIES AND TO EXEMPTING MONIES CONTAINED IN ABLE SAVINGS ACCOUNTS FROM EXECUTION," which was signed on December 12, 2018, as Public Law 34-144.

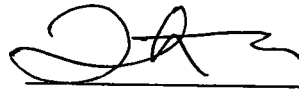
*Senseramente,*

**EDDIE BAZA CALVO**

***I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN***  
**2018 (SECOND) Regular Session**

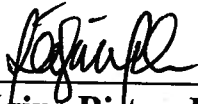
**CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÁHEN GUÁHAN***

This is to certify that **Bill No. 42-34 (COR)**, "AN ACT TO *ADD A NEW CHAPTER 53 TO DIVISION 2 OF TITLE 11 AND A NEW § 23111(p) TO ARTICLE 1 OF CHAPTER 23, TITLE 7, BOTH OF GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE GUAM ABLE SAVINGS PROGRAM FOR THE BENEFIT OF PERSONS WITH DISABILITIES AND TO EXEMPTING MONIES CONTAINED IN ABLE SAVINGS ACCOUNTS FROM EXECUTION,*" was on the 30<sup>th</sup> day of November 2018, duly and regularly passed.



**Therese M. Terlaje**  
**Acting Speaker**

Attested:



**Régine Biscoe Lee**  
**Legislative Secretary**

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This Act was received by *I Maga'låhen Guåhan* this 30 day of NOV,  
2018, at 7:55 o'clock P.M.



**Assistant Staff Officer**  
***Maga'låhi's Office***

APPROVED:



**EDWARD J.B. CALVO**  
***I Maga'låhen Guåhan***

Date: DEC 12 2018

Public Law No. 34-144

***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  
Thomas C. Ada  
FRANK B. AGUON, JR.  
William M. Castro  
James V. Espaldon  
Fernando Barcinas Esteves  
Régine Biscoe Lee  
Tommy Morrison  
Louise B. Muña  
Telena Cruz Nelson  
Michael F.Q. San Nicolas  
Therese M. Terlaje  
Mary Camacho Torres

**AN ACT TO *ADD* A NEW CHAPTER 53 TO DIVISION 2 OF TITLE 11 AND A NEW § 23111(p) TO ARTICLE 1 OF CHAPTER 23, TITLE 7, BOTH OF GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE GUAM ABLE SAVINGS PROGRAM FOR THE BENEFIT OF PERSONS WITH DISABILITIES AND TO EXEMPTING MONIES CONTAINED IN ABLE SAVINGS ACCOUNTS FROM EXECUTION.**

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

1 individuals and families to save private funds to support individuals with disabilities  
2 pursuant to § 529A of the Internal Revenue Code of 1986, as amended, or successor  
3 legislation, and any regulations promulgated thereunder. *I Liheslaturan Guåhan*  
4 further intends that the program established by this legislation be and remain in  
5 conformance with the Stephen Beck, Jr. *Achieving a Better Life Experience (ABLE)*  
6 *Act of 2014*, Division B of U.S. Public Law No. 113-295.

7 The ABLE accounts are designed to provide secure funding for disability-  
8 related expenses on behalf of the designated beneficiaries with disabilities and will  
9 supplement, but not supplant, benefits provided through private insurances, the  
10 Medicaid program, the supplemental security income program (if applicable), the  
11 beneficiary's employment, and other sources.

12 The ABLE savings accounts are modeled on the requirements and regulations  
13 of a traditional 529 qualified tuition program. The accounts are easy to open,  
14 available in every state, the same annual contributions apply with gift tax rules  
15 applying after Thirteen Thousand Dollars (\$13,000), income and withdrawals from  
16 the accounts are tax-free, and rollovers are allowed to another family member with  
17 an ABLE or 529 account, or to a 529 account if the beneficiary is no longer disabled.

18 Although the purpose of an ABLE account is to provide for qualified disability  
19 expenses, the definition of these expenses is quite broad. These qualified expenses  
20 are:

21 (a) *education*, including preschool to post-secondary, with books,  
22 materials, tutors, and special education classes;

23 (b) *housing*, including a primary residence, rent, purchase, and  
24 mortgage payments, home improvements and modifications, maintenance,  
25 repairs, taxes, and utilities;

26 (c) *transportation*, including mass transit, purchase or modification  
27 of vehicles, and moving expenses;

1 (d) *employment support*, including expenses related to obtaining and  
2 maintaining employment, job training, assistive technology, and personal  
3 assistance supports; and

4 (e) *health prevention and wellness*, including premiums for health  
5 insurance, mental health, medical, vision, and dental, rehabilitation, durable  
6 medical equipment, therapy, respite care, long-term service and supports,  
7 nutritional management, communication services and devices, adaptive  
8 equipment, assistive technology, and personal assistance.

9 There is no effect on other programs for persons with an ABLE account. The  
10 existence of the account or the amount in the account has no effect on other benefits  
11 that can be received by the beneficiary. A beneficiary may have up to One Hundred  
12 Thousand Dollars (\$100,000) in an ABLE savings account.

13 **Section 3.** A new Chapter 53 is *added* to Division 2 of Title 11, Guam Code  
14 Annotated, to read:

15 **“CHAPTER 53**

16 **GUAM ABLE SAVINGS PROGRAM**

17 **§ 53101. Definitions.** As used in this Chapter, unless the context  
18 otherwise requires:

19 (a) *Account* or *ABLE savings account* means an individual savings  
20 account established in accordance with this Chapter.

21 (b) *Account owner* means the person who enters into a savings  
22 agreement pursuant to this Chapter.

23 (c) *Designated beneficiary* means a resident of Guam whose  
24 qualified disability expenses may be paid from the account.

25 (d) *Director* means the Director of the Guam Department of  
26 Revenue and Taxation.

1 (e) *Eligible individual* means an individual who is entitled to  
2 benefits based on blindness or disability under 42 U.S.C. § 401 *et seq.* or 42  
3 U.S.C. § 1381 *et seq.*, as amended, and for whom blindness or disability  
4 occurred before the date on which the individual attained the age of twenty-  
5 six (26), or an individual who filed for the taxable year, a disability  
6 certification with and to the satisfaction of the Director, or the Secretary, if  
7 required.

8 (f) *Financial organization* means an organization authorized to do  
9 business on Guam that is:

10 (1) licensed or chartered under the banking and insurance  
11 laws of Guam;

12 (2) licensed or chartered under the savings and loan  
13 association laws of Guam;

14 (3) chartered by an agency of the federal government; or

15 (4) subject to the jurisdiction and regulation of the federal  
16 Securities and Exchange Commission.

17 (g) *Management contract* means the contract executed by the  
18 Director and a financial organization selected to act as a depository and  
19 manager of the Program.

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

22 (i) *Non-qualified withdrawal* means a withdrawal from an account  
23 that is not:

24 (1) a qualified withdrawal; or

25 (2) a rollover distribution.

26 (j) *Program* means the Guam ABLE Savings Program established  
27 under this Chapter.

1 (k) *Program manager* means a financial organization selected by the  
2 Director to act as a depository and manager of the Program.

3 (l) *Qualified disability expense* means any qualified disability  
4 expense included in § 529A of the Internal Revenue Code of 1986, as  
5 amended.

6 (m) *Qualified withdrawal* means a withdrawal from an account to  
7 pay the qualified disability expenses of the designated beneficiary of the  
8 account.

9 (n) *Rollover distribution* means a rollover distribution as defined in  
10 § 529A of the Internal Revenue Code of 1986, as amended.

11 (o) *Savings agreement* means an agreement between the program  
12 manager or the Director and the account owner.

13 (p) *Secretary* means the Secretary of the United States Department  
14 of the Treasury.

15 **§ 53102. Guam ABLE Savings Program; Establishment.** The Director  
16 *shall* establish the Guam ABLE Savings Program to provide for individual savings  
17 accounts that empower individuals with a disability and their families to save private  
18 funds to support an individual with a disability.

19 **§ 53103. Functions and Powers of the Director.**

20 (a) The Director *shall* implement and administer the program under the  
21 terms and conditions established by this Chapter and in conformity with federal law,  
22 including the Stephen Beck, Jr. *Achieving a Better Life Experience (ABLE) Act of*  
23 *2014*, Division B of U.S. Public Law No. 113-295, as amended. The Director *shall*  
24 have the authority to:

25 (1) develop and implement the program in a manner consistent with  
26 this Chapter;



1 (2) engage the services of consultants on a contractual basis for  
2 rendering professional and technical assistance and advice;

3 (3) seek rulings and other guidance from the Secretary and the  
4 Internal Revenue Service relating to the program;

5 (4) make any changes to the program required for the participants in  
6 the program to obtain the federal income tax benefits or treatment provided  
7 by § 529A of the Internal Revenue Code of 1986, as amended, and as provided  
8 under this Chapter;

9 (5) charge, impose, and collect administrative fees and service  
10 charges in connection with any agreement, contract, or transaction relating to  
11 the program;

12 (6) develop marketing plans and promotional material;

13 (7) establish the methods by which the funds held in accounts shall  
14 be disbursed;

15 (8) establish the method by which funds shall be allocated to pay for  
16 administrative costs;

17 (9) notify the Secretary, if required, when an account has been  
18 opened for a designated beneficiary and submit other reports concerning the  
19 program required by the Secretary; and

20 (10) adopt rules pursuant to the Administrative Adjudication Act as  
21 necessary to carry out the purposes of this Chapter.

22 (b) The Director may enter into agreements with various states and  
23 territories to either allow residents of Guam to participate in a comparable program  
24 operated by another state or territory or allow residents of other states and territories  
25 to participate in the Guam ABLE Savings Program.

26 (c) The Director may implement the program through use of financial  
27 organizations as account depositories and managers. The Director may solicit

1 proposals from financial organizations to act as depositories and managers of the  
2 program. Financial organizations that submit proposals *shall* describe the investment  
3 instruments which will be held in accounts. The Director may select more than one  
4 (1) financial organization and investment instrument for the program. The Director  
5 *shall* select as program depositories and managers of the financial organization or  
6 organizations, from among the financial organizations seeking the contract, that  
7 demonstrate the most advantageous combination, both to potential program  
8 participants and to Guam, of the following factors:

- 9 (1) financial stability and integrity of the financial organization;
- 10 (2) the safety of the investment instrument being offered;
- 11 (3) the ability of the financial organization to satisfy record-keeping  
12 and reporting requirements;
- 13 (4) the financial organization's plan for promoting the program and  
14 the investment the organization is willing to make to promote the program;
- 15 (5) the fees, if any, proposed to be charged to the account of owners;
- 16 (6) the minimum initial deposit and minimum contributions that the  
17 financial organization will require;
- 18 (7) the ability of the financial organization to accept electronic  
19 withdrawals, including payroll deduction plans; and
- 20 (8) other benefits to Guam or its residents included in the proposal,  
21 including fees payable to Guam to cover expenses of operation of the  
22 program.

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

25 **§ 53104. Management Contract; Terms.**

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

1           (1) take any action required to keep the program in compliance with  
2 the requirements of this Chapter and take any action not contrary to the  
3 management contract to qualify as a qualified ABLE program as defined in §  
4 529A of the Internal Revenue Code of 1986, as amended;

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

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

11           (4) if there is more than one (1) program manager, provide the  
12 Director with the information necessary to determine compliance with §  
13 53105 of this Chapter;

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

18           (6) hold all accounts for the benefit of the account owner or 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 the  
21 audit to the Director;

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

1 federal banking, insurance, or securities commission, except to the extent that  
2 the report or reports may not be disclosed under law; and

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

6 (b) The Director may:

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

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

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

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

23 **§ 53105. Guam ABLE Savings Accounts; Terms and Conditions.**

24 (a) An ABLE savings account established pursuant to this Chapter  
25 *shall* be opened by a designated beneficiary or by a trustee or guardian of a  
26 designated beneficiary who lacks capacity to enter into a contract; provided,  
27 that the designated beneficiary *shall* be an eligible individual at the time the

1 account is established. Each beneficiary may hold only one (1) account. The  
2 Director may establish a nonrefundable application fee and an annual fee for  
3 each account. An application for an account *shall* be in the form specified by  
4 the Director and *shall* contain:

5 (1) the name, address, and social security number of the account  
6 owner;

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

9 (3) certification relating to no excess contributions; and

10 (4) additional information as the Director may require.

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

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

17 (1) if the contribution is in excess of the limits established pursuant  
18 to Subsection (b) of this Section;

19 (2) if total contributions cause the value of the account to be equal  
20 to or greater than the account maximum established by the Director. The  
21 account maximum must be equal to the account maximum for postsecondary  
22 education savings accounts established pursuant to § 529 of the Internal  
23 Revenue Code of 1986, as amended; or

24 (3) if the designated beneficiary is not an eligible individual in the  
25 current calendar year.

26 (d) An account owner may:

1 (1) change the designated beneficiary of an account to an individual  
2 who is a member of the family of the prior designated beneficiary in  
3 accordance with procedures established by the Director; and

4 (2) transfer all or a portion of an account to another ABLE savings  
5 account, the designated beneficiary of which is a member of the family as  
6 defined in § 529A of the Internal Revenue Code of 1986, as amended.

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

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

13 (f) Statements *shall* be provided to each account owner *at least* four (4)  
14 times each year within thirty (30) days after the end of the three (3)-month period to  
15 which a statement relates. The statement *shall* identify the contributions made during  
16 the preceding three (3)-month period, the total contributions made to the account  
17 through the end of the period, the value of the account at the end of the period,  
18 distributions made during the period, and any other information that the Director  
19 requires to be reported to the account owner. Statements and information relating to  
20 accounts *shall* be prepared and filed to the extent required by this Chapter and any  
21 other Guam or federal law.

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

24 **§ 53106. Account Funds.** Moneys in an ABLE savings account:

25 (a) *shall* be exempt from attachment, execution, or garnishment; and

26 (b) may be claimed by the MIP or Medicaid plan subject to limitations  
27 imposed by the Director or Secretary, as applicable.

1           **§ 53107.     Accounts Not Guaranteed by Guam.**

2           (a)   Nothing in this Chapter *shall* create or be construed to create any  
3 obligation of the Director, the government of Guam, or any agency or instrumentality  
4 of the government of Guam to guarantee for the benefit of any account owner or  
5 designated beneficiary with respect to the:

- 6                   (1)   return of principal;  
7                   (2)   rate of interest or other return on any account; or  
8                   (3)   payment of interest or other return on any account.

9           (b)   The Director *shall* adopt rules to provide that every contract, obligation,  
10 application, or other similar document that may be used in connection with opening  
11 an account clearly indicates that the account is not insured by the government of  
12 Guam, and that the principal deposited and the investment return are not guaranteed  
13 by the government of Guam.

14           **§ 53108.     Guam ABLE Savings Program Trust Fund.**

15           (a)   There is established the Guam ABLE Savings Program Trust Fund  
16 (Fund) within the Treasury of Guam. The Fund *shall* consist of monies received from  
17 an ABLE savings program manager, any governmental or private grants, and any  
18 General Fund appropriations for the program.

19           (b)   The Fund *shall* be used if the Director elects to accept deposits from  
20 contributors, rather than have deposits sent directly to the program manager. The  
21 Fund *shall* consist of any monies deposited by contributors in accordance with this  
22 Chapter which are not deposited directly with the program manager.

23           (c)   All interest derived from the deposit and investment of monies in the  
24 Guam ABLE Savings Program Trust Fund *shall* be credited to the Fund. At the end  
25 of any fiscal year, all unexpended and unencumbered monies in the Guam ABLE  
26 Savings Program Trust Fund *shall* remain in the Guam ABLE Savings Program Trust  
27 Fund and *shall not* be credited or transferred to the General Fund, or any other fund.

1 (d) All expenses incurred by the Director in developing and administering  
2 the ABLÉ savings program *shall* be payable from the Guam ABLÉ Savings Program  
3 Trust Fund.”

4 **Section 4. ABLÉ Savings Accounts Exempt from Execution or**  
5 **Attachment.** A new § 23111(p) is *added* to Article 1 of Chapter 23, Title 7, Guam  
6 Code Annotated, to read:

7 “(p) All monies within an ABLÉ savings account set up in accordance  
8 with the *Achieving A Better Life Experience Act* or *ABLE Act*, Division B of  
9 U.S. Public Law No. 113-295, and in accordance with the Guam ABLÉ  
10 Savings Program Act in Chapter 53 of Division 2, Title 11, Guam Code  
11 Annotated.”

12 **Section 5. Severability.** If any provision of this Act or its application to any  
13 person or circumstance is found to be invalid or contrary to law, such invalidity *shall*  
14 *not* affect other provisions or applications of this Act that can be given effect without  
15 the invalid provisions or application, and to this end the provisions of this Act are  
16 severable.

17 **Section 6. Effective Date.** This Act *shall* become effective upon  
18 enactment.