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| **Nebraska Achieving a Better Life Experience (ABLE) Accounts**  **Nebraska Chapter 77, Section 77-1401 to 77-1409** |
| **Summary**  These statutes establish the Enable Savings Plan, created as the result of the Achieving a Better Life Experience Act (ABLE) passed by the Nebraska Legislature in 2015. The law allows Nebraskans with certain disabilities to create tax-advantaged ABLE savings accounts to pay for qualified disability-related expenses. This legislation is in keeping with the federal ABLE Act passed by Congress in 2014. The purpose is for individuals with disabilities to be able to save for qualified disability expenses, yet not lose eligibility for Medicaid and other federal programs that determine eligibility, in part, based on income and assets. The plan is to be used to save for qualified disability expenses, pursuant to the ABLE Act of 2014 and Section 529A of the U.S. Internal Revenue Code. Investment decisions are made by the account owner or his or her legal representative. |
| **Responsible State Department**  The Nebraska program is sponsored by the State of Nebraska and administered by the Nebraska State Treasurer. |
| **Federal Legislation**  The Stephen Beck Jr. Achieving a Better Life Experience (ABLE) Act of 2014 (Pub. Law 113-295) amends the Internal Revenue Service (IRS) Code of 1986 to create tax-free savings accounts for individuals with disabilities. The funds in the ABLE account do not count toward the $2,000 cap on assets that is required to remain eligible for critical government supports. The federal ABLE Act authorizes the states to develop their own ABLE programs, hence the Nebraska Enable Savings Plan. An ABLE account may fund a variety of essential expenses for individuals with disabilities including medical and dental care, education, community-based supports, employment training, assistive technology, housing, and transportation.  To qualify an eligible individual must be a person whose disability occurred before the age of 26. Federal legislation has been introduced to extend the age of onset to age of 46. The Nebraska Treasurer supports this legislation, which would allow more people whose brain injury occurred after the age of 26. |
| **How do the State Statutes Apply to People with Brain Injury?**  Nebraskans of any age can open an ABLE account at any time if the disability exists at the time the account is opened and if the onset of the brain injury was before the individual’s 26th birthday. A disability benefits advisor at your local Social Security or Medicaid office or an advocate or medical provider can help determine eligibility. |
| **Pertinent Sections**  Section 77-1401, which defines eligibility and qualified expenses or use of the money in the account. |
| **Web page Link:**  https://www.enablesavings.com/ |
| **Relevant Organizations/Partners:**  Nebraska Council on Developmental Disabilities; University of Nebraska Medical Center’s Munroe-Meyer Institute, University Center for Excellence In Developmental Disabilities Education; Research and Service; Nebraska Consortium For Citizens with Disabilities (NCCD); Disability Rights Nebraska |

**Section 77-1401. Terms, defined.**

For purposes of sections [77-1401](https://nebraskalegislature.gov/laws/statutes.php?statute=77-1401) to [77-1409](https://nebraskalegislature.gov/laws/statutes.php?statute=77-1409):

(1) Account means an achieving a better life experience account established under the program for the purposes of funding future qualified disability expenses of a designated beneficiary;

(2) Contracting state means a state without a qualified program which has entered into a contract with a state with a qualified program to provide residents of the contracting state access to a qualified program;

(3) Designated administrator means any corporation or other entity whose powers and privileges are provided for in any general or special law, whether for profit or not, designated or retained by the State Treasurer for the purpose of administering, subject to the ongoing supervision of the State Treasurer, all or any portion of the investment, marketing, recordkeeping, administrative, or other functions of the program;

(4) Designated beneficiary means the individual with a disability named as the beneficiary of an account;

(5) Individual with a disability means an individual who is an eligible individual as defined under section 529A;

(6) Program means the qualified program established by the State Treasurer as provided in section [77-1402](https://nebraskalegislature.gov/laws/statutes.php?statute=77-1402) and administered by the State Treasurer and, to the extent so delegated or contracted by the State Treasurer, one or more designated administrators;

(7) Qualified disability expenses means any expenses related to the blindness or disability of the individual with a disability which are made for the benefit of an individual who is the designated beneficiary, including education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention, and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses; and other expenses which are approved under regulations promulgated under section 529A;

(8) Qualified program means a qualified ABLE program as defined under section 529A; and

(9) Section 529A means section 529A of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

**Source:**

* [Laws 2015, LB591, § 1.](https://nebraskalegislature.gov/FloorDocs/104/PDF/Slip/LB591.pdf)

**Section 77-1402. State Treasurer; establish achieving a better life program or contract with another state.**

(1) For purposes of administering accounts established to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities, the State Treasurer shall either establish the achieving a better life experience program as provided in sections 77-1403 to 77-1409 or contract with another state with a qualified program. The State Treasurer may enter into a contract with any contracting state to allow any resident of the contracting state to participate in the program established by the State Treasurer. Money from the Treasury Management Cash Fund may be appropriated for a program pursuant to section 77-1407 and to contract with another state with a qualified program under this section.

(2) Under a qualified program, one or more persons may make contributions to an account to meet the qualified disability expenses of the designated beneficiary of the account.

(3) If the State Treasurer establishes the program as authorized in this section, sections 77-1403 to 77-1409 apply.

**Source:** Laws 2015, LB591, § 2.

**Section 77-1403. Account owner; designated beneficiary.**

(1) Unless otherwise permitted under section 529A, the owner of an account shall be the designated beneficiary of the account, except that if the designated beneficiary of the account is a minor or has a custodian or other fiduciary appointed for the purposes of managing such beneficiary's financial affairs, a custodian or fiduciary for such designated beneficiary may serve as the account owner if such form of ownership is permitted or not prohibited under section 529A.

(2) Unless otherwise permitted under section 529A, the designated beneficiary of an account shall be a resident of the state or of a contracting state. The State Treasurer shall determine residency of Nebraska residents for such purpose in such manner as may be required or permissible under section 529A or, in the absence of any guidance under section 529A, by such other means as the State Treasurer shall consider advisable for purposes of satisfying the requirements of section 529A.

**Source:**

* [Laws 2015, LB591, § 3.](https://nebraskalegislature.gov/FloorDocs/104/PDF/Slip/LB591.pdf) 77-1404.

**Contributions.**

Any person may make contributions to an account to meet the qualified disability expenses of the designated beneficiary of the account if the account and contributions meet the other requirements of sections 77-1403 to 77-1409 and the rules and regulations adopted and promulgated by the State Treasurer.

**Source:** Laws 2015, LB591, § 4. 77-1405.

**Qualified program.**

The State Treasurer and, to the extent required by the terms of such designation, any designated administrator shall operate the program so that it constitutes a qualified program in compliance with the requirements of section 529A.

**Source:**

[Laws 2015, LB591, § 5.](https://nebraskalegislature.gov/FloorDocs/104/PDF/Slip/LB591.pdf)

**Section 77-1406. Investment options; state investment officer; fiduciary responsibility.**

The State Treasurer and any designated administrator shall provide investment options for the investment of amounts contributed to an account, except that the state investment officer shall have fiduciary responsibility to make all decisions regarding the investment of the money in the expense fund and program fund created in section [77-1407](https://nebraskalegislature.gov/laws/statutes.php?statute=77-1407) and any money credited to the Treasury Management Cash Fund for administrative expenses of the program, including the selection of all investment options and the approval of all fees and other costs charged to trust assets except costs for administration, operation, and maintenance of the trust as appropriated by the Legislature, pursuant to the directions, guidelines, and policies established by the Nebraska Investment Council. The State Treasurer shall not adopt and promulgate rules and regulations that in any way interfere with the fiduciary responsibility of the state investment officer to make all decisions regarding the investment of money in the expense fund and program fund or money of the program credited to the Treasury Management Cash Fund. The Nebraska Investment Council may adopt and promulgate rules and regulations to provide for the prudent investment of the assets of the program. The council or its designee also has the authority to select and enter into agreements with individuals and entities to provide investment advice and management of the assets held by the program, establish investment guidelines, objectives, and performance standards with respect to the assets held by the program, and approve any fees, commissions, and expenses, which directly or indirectly affect the return on assets.

**Source:** [Laws 2015, LB591, § 6.](https://nebraskalegislature.gov/FloorDocs/104/PDF/Slip/LB591.pdf)

**Section 77-1407. Funds held in trust; ABLE Program Fund; ABLE Expense Fund; created; use; investment.**

(1) Funds contributed to the program shall be held in trust by the State Treasurer. The State Treasurer shall credit money received by the program into three funds: The ABLE Program Fund, the ABLE Expense Fund, and the Treasury Management Cash Fund. The State Treasurer shall credit money received into the appropriate fund. The State Treasurer and Accounting Administrator of the Department of Administrative Services shall determine the state fund types necessary to comply with section 529A and state policy. The money in the funds shall be invested by the state investment officer pursuant to policies established by the Nebraska Investment Council. The program fund, the expense fund, and the Treasury Management Cash Fund shall be separately administered.

(2) The ABLE Program Fund is created. All money paid by participants in connection with accounts and all investment income earned on such money shall be deposited as received into separate accounts within the program fund. Contributions to the program may only be made in the form of cash. All funds generated in connection with accounts shall be deposited into the appropriate accounts within the program fund. A beneficiary shall not provide investment direction regarding contributions or earnings held by the program. Money accrued by designated beneficiaries in the program fund may be used for qualified disability expenses. Any money in the program fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3)(a) The ABLE Expense Fund is created. The expense fund shall be used to pay costs associated with the program and shall be funded with fees assessed to the program fund.

(b) The State Treasurer shall transfer from the expense fund to the State Investment Officer's Cash Fund an amount equal to the pro rata share of the budget appropriated to the Nebraska Investment Council as permitted in section [72-1249.02](https://nebraskalegislature.gov/laws/statutes.php?statute=72-1249.02), to cover reasonable expenses incurred for investment management of the program. Annually and prior to such transfer to the State Investment Officer's Cash Fund, the State Treasurer shall report to the budget division of the Department of Administrative Services and to the Legislative Fiscal Analyst the amounts transferred during the previous fiscal year. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

(c) When the State Treasurer determines that the ABLE Program Fund is generating enough fees to make the program self-sustaining, it is the intent of the Legislature to reimburse the Treasury Management Cash Fund for startup costs of the program from the expense fund.

(d) Any money in the expense fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(4) Until the State Treasurer determines that the ABLE Program Fund is generating enough fees to make the program self-sustaining, the costs of establishing, administering, operating, and maintaining the program shall be paid from the Treasury Management Cash Fund and, to the extent permitted by section 529A, from money transferred from the expense fund to the Treasury Management Cash Fund, in an amount authorized by an appropriation from the Legislature. The Treasury Management Cash Fund shall not be credited with any money from the program other than money transferred from the expense fund in an amount authorized by an appropriation by the Legislature or any interest income earned on the money from the program held in the Treasury Management Cash Fund.

(5) The assets of the program, including the program fund and excluding the expense fund and the Treasury Management Cash Fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the program and shall be held in trust for the designated beneficiaries. No property rights in the program shall exist in favor of the state. Such assets of the program shall not be transferred or used by the state for any purposes other than the purposes of the program.

**Source:**

[Laws: 2015, LB591, § 7.](https://nebraskalegislature.gov/FloorDocs/104/PDF/Slip/LB591.pdf)

Cross References

* Nebraska Capital Expansion Act, see section [72-1269](https://nebraskalegislature.gov/laws/statutes.php?statute=72-1269).
* Nebraska State Funds Investment Act, see section [72-1260](https://nebraskalegislature.gov/laws/statutes.php?statute=72-1260).
* 77-1408.

Annual audited financial report; supplemental information.

(1) The State Treasurer shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the program by November 1 to the Governor and the Legislature. The report submitted to the Legislature shall be submitted electronically. The State Treasurer shall cause the audit to be made either by the Auditor of Public Accounts or by an independent certified public accountant designated by the State Treasurer, and the audit shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

(2) The annual audit shall be supplemented by all of the following information prepared by the State Treasurer:

(a) Any related studies or evaluations prepared in the preceding year;

(b) A summary of the benefits provided by the program, including the number of designated beneficiaries in the program; and

(c) Any other information which is relevant in order to make a full, fair, and effective disclosure of the operations of the program, including the investment performance of the funds.

**Source:** Laws 2015, LB591, § 8.

**Section 77-1409. State Treasurer; rules and regulations; powers.**

The State Treasurer may adopt and promulgate rules and regulations, enter into contracts and agreements, charge fees and expenses to the funds held under the program or to persons establishing or owning accounts, make reports, retain designated administrators, employees, experts, and consultants, and do all other things necessary or convenient to implement sections 77-1401 to 77-1409.

**Source:** Laws 2015, LB591, § 9.