

112TH CONGRESS  
1ST SESSION

# H. R. 3423

To amend the Internal Revenue Code of 1986 to provide for the tax treatment of ABLE accounts established under State programs for the care of family members with disabilities, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 15, 2011

Mr. CRENSHAW (for himself, Mr. VAN HOLLEN, Mrs. McMORRIS RODGERS, Mr. PAUL, Mr. HARPER, Mr. YOUNG of Florida, Mr. ROGERS of Kentucky, Mr. DEUTCH, Mr. CARNAHAN, Mr. BISHOP of New York, Mr. HOLT, Mr. SESSIONS, Mr. FRANK of Massachusetts, Mr. BURTON of Indiana, Ms. NORTON, Mr. MICHAUD, Mr. TOWNS, Mrs. EMERSON, Mr. DIAZ-BALART, Mr. WOLF, Mr. LANGEVIN, Mr. KLINE, Mr. VISCLOSKY, Mr. CONNOLLY of Virginia, Mr. KING of New York, Mr. POE of Texas, Mr. ROTHMAN of New Jersey, Mr. GALLEGLY, and Mr. MILLER of Florida) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for the tax treatment of ABLE accounts established under State programs for the care of family members with disabilities, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Achieving a Better  
3 Life Experience Act of 2011” or the “ABLE Act of  
4 2011”.

5 **SEC. 2. PURPOSES.**

6 The purposes of this Act are as follows:

7 (1) To encourage and assist individuals and  
8 families in saving private funds for the purpose of  
9 supporting individuals with disabilities to maintain  
10 health, independence, and quality of life.

11 (2) To provide secure funding for disability-re-  
12 lated expenses on behalf of designated beneficiaries  
13 with disabilities that will supplement, but not sup-  
14 plant, benefits provided through private insurance,  
15 the Medicaid program under title XIX of the Social  
16 Security Act, the supplemental security income pro-  
17 gram under title XVI of such Act, the beneficiary’s  
18 employment, and other sources.

19 **SEC. 3. ABLE ACCOUNTS.**

20 (a) ESTABLISHMENT.—

21 (1) IN GENERAL.—Section 529 of the Internal  
22 Revenue Code of 1986 is amended by redesignating  
23 subsection (f) as subsection (g) and by inserting  
24 after subsection (e) the following new subsection:

25 “(f) ABLE ACCOUNTS.—

1           “(1) GENERAL RULES.—For purposes of any  
2           other provision of law with respect to a qualified  
3           ABLE program and an ABLE account, except as  
4           otherwise provided in this subsection—

5                   “(A) a qualified ABLE program and an  
6           ABLE account shall be treated in the same  
7           manner as a qualified tuition program and an  
8           account described in subsection (b)(1)(A)(ii),  
9           respectively, are treated, and

10                   “(B) qualified disability expenses with re-  
11           spect to a program or account described in sub-  
12           paragraph (A) shall be treated in the same  
13           manner as qualified higher education expenses  
14           are treated.

15           “(2) QUALIFIED ABLE PROGRAM.—For pur-  
16           poses of this subsection, the term ‘qualified ABLE  
17           program’ means a program established and main-  
18           tained by a State or agency or instrumentality there-  
19           of—

20                   “(A) under which a person may make con-  
21           tributions to an ABLE account which is estab-  
22           lished for the purpose of meeting the qualified  
23           disability expenses of the designated beneficiary  
24           of the account,

“(B) which meets the requirements of the preceding subsections of this section (as modified by this subsection), determined by substituting—

“(i) ‘qualified ABLE program’ for ‘qualified tuition program’, and

“(ii) ‘ABLE account’ for ‘account’, and

“(C) which meets the other requirements of this subsection.

“(3) QUALIFIED DISABILITY EXPENSES.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘qualified disability expenses’ means any expenses which are made for the benefit of an individual with a disability who is a designated beneficiary.

“(B) EXPENSES INCLUDED.—The following expenses shall be qualified disability expenses if such expenses are made for the benefit of an individual with a disability who is a designated beneficiary and are related to such disability:

“(i) EDUCATION.—Expenses for education, including tuition for preschool through post-secondary education, books, supplies,

1 and educational materials related to such  
2 education, tutors, and special education  
3 services.

4 “(ii) HOUSING.—Expenses for a pri-  
5 mary residence, including rent, purchase of  
6 a primary residence or an interest in a pri-  
7 mary residence, mortgage payments, real  
8 property taxes, and utility charges.

9 “(iii) TRANSPORTATION.—Expenses  
10 for transportation, including the use of  
11 mass transit, the purchase or modification  
12 of vehicles, and moving expenses.

13 “(iv) EMPLOYMENT SUPPORT.—Ex-  
14 penses related to obtaining and maintain-  
15 ing employment, including job-related  
16 training, assistive technology, and personal  
17 assistance supports.

18 “(v) HEALTH, PREVENTION, AND  
19 WELLNESS.—Expenses for health and  
20 wellness, including premiums for health in-  
21 surance, mental health, medical, vision,  
22 and dental expenses, habilitation and reha-  
23 bilitation services, durable medical equip-  
24 ment, therapy, respite care, long term serv-  
25 ices and supports, nutritional management,

1 communication services and devices, adapt-  
2 ive equipment, assistive technology, and  
3 personal assistance.

4 “(vi) MISCELLANEOUS EXPENSES.—  
5 Financial management and administrative  
6 services; legal fees; expenses for oversight;  
7 monitoring; home improvements, and modi-  
8 fications, maintenance and repairs, at pri-  
9 mary residence; or funeral and burial ex-  
10 penses.

11 “(vii) ASSISTIVE TECHNOLOGY AND  
12 PERSONAL SUPPORT SERVICES.—Expenses  
13 for assistive technology and personal sup-  
14 port with respect to any item described in  
15 clauses (i) through (vi).

16 “(viii) OTHER APPROVED EX-  
17 PENSES.—Any other expenses which are  
18 approved by the Secretary under regula-  
19 tions and consistent with the purposes of  
20 this section.

21 “(C) INDIVIDUAL WITH A DISABILITY.—

22 “(i) IN GENERAL.—Except as pro-  
23 vided in clause (ii), an individual is an in-  
24 dividual with a disability for a year if the  
25 individual (regardless of age)—

1           “(I) has a medically determinable  
2           physical or mental impairment, which  
3           results in marked and severe func-  
4           tional limitations, and which can be  
5           expected to result in death or which  
6           has lasted or can be expected to last  
7           for a continuous period of not less  
8           than 12 month, or

9           “(II) is blind.

10           “(ii) DISABILITY CERTIFICATION RE-  
11           QUIRED.—An individual shall not be treat-  
12           ed as an individual with a disability for a  
13           year unless the individual—

14           “(I) is receiving (or, for purposes  
15           of title XIX of the Social Security  
16           Act, is deemed to be, or treated as, re-  
17           ceiving) benefits under the supple-  
18           mental security income program  
19           under title XVI of such Act, or whose  
20           benefits under such program are sus-  
21           pended other than by reason of mis-  
22           conduct,

23           “(II) is receiving disability bene-  
24           fits under title II of such Act, or

1                   “(III) files a disability certifi-  
2                   cation with the Secretary for such  
3                   year.

4                   “(iii) DISABILITY CERTIFICATION DE-  
5                   FINED.—The term ‘disability certification’  
6                   means, with respect to an individual, a cer-  
7                   tification to the satisfaction of the Sec-  
8                   retary by the designated beneficiary or the  
9                   parent or guardian of the designated bene-  
10                  ficiary that—

11                   “(I) the individual meets the cri-  
12                  teria described in clause (i), and

13                   “(II) includes a copy of the des-  
14                  ignated beneficiary’s diagnosis, signed  
15                  by a physician meeting the criteria of  
16                  section 1861(r)(1) of the Social Secu-  
17                  rity Act.

18                   “(iv) RESTRICTION ON USE OF CER-  
19                  TIFICATION.—No inference may be drawn  
20                  from a disability certification for purposes  
21                  of establishing eligibility for benefits under  
22                  title II or XVI of the Social Security Act.

23                  “(4) ROLLOVERS FROM ABLE ACCOUNTS.—The  
24                  limits on contributions pursuant to subsection (b)(6)  
25                  shall not apply to any amount paid or distributed



1 from an ABLE account to the extent that the  
2 amount received is paid, not later than the 60th day  
3 after the date of such payment or distribution,  
4 into—

5 “(A) another ABLE account for the ben-  
6 efit of—

7 “(i) the same beneficiary, or

8 “(ii) an individual who—

9 “(I) is the spouse of such indi-  
10 vidual with a disability, or bears a re-  
11 lationship to such individual with a  
12 disability which is described in section  
13 152(d)(2), and

14 “(II) is also an individual with a  
15 disability,

16 “(B) any trust which is described in sub-  
17 paragraph (A) or (C) of section 1917(d)(4) of  
18 the Social Security Act and which is for the  
19 benefit of an individual described in clause (i)  
20 or (ii) of subparagraph (A), or

21 “(C) a qualified tuition program—

22 “(i) for the benefit of the designated  
23 beneficiary, or

24 “(ii) to the credit of another des-  
25 ignated beneficiary under a qualified tui-

1                   tion program who is a member of the fam-  
2                   ily of the designated beneficiary with re-  
3                   spect to which the distribution was made.

4       The preceding sentence shall not apply to any pay-  
5       ment or distribution if it applied to any prior pay-  
6       ment or distribution during the 12-month period  
7       ending on the date of the payment or distribution.

8           “(5) TRANSFER TO STATE.—Subject to any  
9       outstanding payments due for qualified disability ex-  
10      penses, in the case that the designated beneficiary  
11      dies or ceases to be an individual with a disability,  
12      all amounts remaining in the qualified ABLE ac-  
13      count not in excess of the amount equal to the total  
14      medical assistance paid for the designated bene-  
15      ficiary after the establishment of the account, net of  
16      any premiums paid from the account or paid by or  
17      on behalf of the beneficiary to a Medicaid Buy-In  
18      program, under any State Medicaid plan established  
19      under title XIX of the Social Security Act shall be  
20      distributed to such State upon filing of a claim for  
21      payment by such State. For purposes of this para-  
22      graph, the State shall be a creditor of an ABLE ac-  
23      count and not a beneficiary. Subsection (c)(3) shall  
24      not apply to a distribution under the preceding sen-  
25      tence.

1           “(6) REGULATIONS.—Not later than 6 months  
2     after the date of the enactment of this section, the  
3     Secretary may prescribe such regulations or other  
4     guidance as the Secretary determines necessary or  
5     appropriate to carry out the purposes of this section,  
6     including regulations to prevent fraud and abuse  
7     with respect to amounts claimed as qualified dis-  
8     ability expenses.”.

9           (2) CONFORMING AMENDMENT.—Paragraph (2)  
10    of section 6693(a) of the Internal Revenue Code of  
11    1986 such Code is amended by striking “and” at the  
12    end of subparagraph (D), by striking the period at  
13    the end of subparagraph (E) and inserting “and”,  
14    and by inserting after subparagraph (E) the fol-  
15    lowing new subparagraph:

16           “(F) section 529(d) by reason of 529(f)  
17           (relating to ABLE accounts).”.

18    (b) ANNUAL REPORTS.—

19           (1) IN GENERAL.—The Secretary of the Treas-  
20    ury shall report annually to Congress on the usage  
21    of ABLE accounts under section 529(f) of the Inter-  
22    nal Revenue Code of 1986.

23           (2) CONTENTS OF REPORT.—Any report under  
24    paragraph (1) shall include—

1 (A) the number of people with an ABLE  
2 account,

3 (B) the total amount of contributions to  
4 such accounts,

5 (C) the total amount and nature of dis-  
6 tributions from such accounts,

7 (D) issues relating to the abuse of such ac-  
8 counts, if any, and

9 (E) the amounts repaid from such ac-  
10 counts to State Medicaid programs established  
11 under title XIX of the Social Security Act.

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to taxable years beginning after  
14 the date of the enactment of this Act.

15 **SEC. 4. TREATMENT OF ABLE ACCOUNTS UNDER CERTAIN**  
16 **FEDERAL PROGRAMS.**

17 (a) ACCOUNT FUNDS DISREGARDED FOR PURPOSES  
18 OF CERTAIN OTHER MEANS-TESTED FEDERAL PRO-  
19 GRAMS.—Notwithstanding any other provision of Federal  
20 law that requires consideration of 1 or more financial cir-  
21 cumstances of an individual, for the purpose of deter-  
22 mining eligibility to receive, or the amount of, any assist-  
23 ance or benefit authorized by such provision to be provided  
24 to or for the benefit of such individual, any amount (in-  
25 cluding earnings thereon) in any ABLE account (as de-

1    fined in section 529(f) of the Internal Revenue Code of  
2    1986) of such individual, and any distribution for qualified  
3    disability expenses (as defined in paragraph (3) of such  
4    section) shall be disregarded for such purpose with respect  
5    to any period during which such individual maintains,  
6    makes contributions to, or receives distributions from such  
7    ABLE account, except that, in the case of the supple-  
8    mental security income program under title XVI of the  
9    Social Security Act, a distribution for housing expenses  
10   (as defined in subparagraph (B)(ii) of such paragraph)  
11   shall not be so disregarded, and in the case of such pro-  
12   gram, only the 1st \$100,000 of the amount (including  
13   such earnings) in such ABLE account shall be so dis-  
14   regarded.

15       (b) SUSPENSION OF SSI BENEFITS DURING PERI-  
16   ODS OF EXCESSIVE ACCOUNT FUNDS.—

17       (1) IN GENERAL.—The benefits of an individual  
18       under the supplemental security income program  
19       under title XVI of the Social Security Act shall not  
20       be terminated, but shall be suspended, by reason of  
21       excess resources of the individual attributable to an  
22       amount in the ABLE account (as defined in section  
23       529(f) of the Internal Revenue Code of 1986) of the  
24       individual not disregarded under subsection (a) of  
25       this section.

1           (2) NO IMPACT ON MEDICAID ELIGIBILITY.—An  
2       individual who would be receiving payment of such  
3       supplemental security income benefits but for the  
4       application of the previous sentence shall be treated  
5       for purposes of title XIX of the Social Security Act  
6       as if the individual continued to be receiving pay-  
7       ment of such benefits.

○