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113TH CONGRESS
1ST SESSION

S. 313

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2013

Mr. CASEY (for himself, Mr. BURR, Mr. HARKIN, Mr. CARDIN, Mr. RUBIO, Mr. FRANKEN, Mr. MORAN, Mr. REED, Mr. LEAHY, Mrs. BOXER, Mr. BROWN, Mr. SANDERS, Mr. BLUMENTHAL, Ms. BALDWIN, Mr. BLUNT, Mr. COONS, Mr. JOHANNS, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Finance

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Achieving a Better Life Experience Act of 2013'' or the ''ABLE Act of 2013''.

SEC. 2. PURPOSES.

The purposes of this Act are as follows:

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

(2) To provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under title XIX of the Social Security Act, the supplemental security income program under title XVI of such Act, the beneficiary's employment, and other sources.

SEC. 3. ABLE ACCOUNTS.

(a) ESTABLISHMENT.—

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

''(f) ABLE ACCOUNTS.—

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

"(A) a qualified ABLE program and an ABLE account shall be treated in the same manner as a qualified tuition program and an account described in subsection (b)(1)(A)(ii), respectively, are treated,

"(B) qualified disability expenses with respect to a program or account described in subparagraph (A) shall be treated in the same manner as qualified higher education expenses are treated, and

"(C) maximum contributions shall be no higher than the limit established by the State for their regular 529 account.

"(2) QUALIFIED ABLE PROGRAM.—For purposes of this subsection, the term 'qualified ABLE program' means a program established and maintained by a State or agency or instrumentality thereof—

"(A) under which a person may make contributions to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account,

"(B) which meets the requirements of the preceding subsections of this section (as modi-

fied 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 thru post-secondary education, which shall include higher education expenses (as defined by subsection (e)(3)) and expenses

for books, supplies, and educational materials related to preschool and secondary education, tutors, and special education services.

"(ii) HOUSING.—Expenses for a primary residence, including rent, purchase of a primary residence or an interest in a primary residence, mortgage payments, real property taxes, and utility charges.

"(iii) TRANSPORTATION.—Expenses for transportation, including the use of mass transit, the purchase or modification of vehicles, and moving expenses.

"(iv) EMPLOYMENT SUPPORT.—Expenses related to obtaining and maintaining employment, including job-related training, assistive technology, and personal assistance supports.

"(v) HEALTH, PREVENTION, AND WELLNESS.—Expenses for health and wellness, including premiums for health insurance, mental health, medical, vision, and dental expenses, habilitation and rehabilitation services, durable medical equipment, therapy, respite care, long-term serv-

ices and supports, nutritional management, communication services and devices, adaptive equipment, assistive technology, and personal assistance.

"(vi) MISCELLANEOUS EXPENSES.—Financial management and administrative services; legal fees; expenses for oversight; monitoring; home improvements, and modifications, maintenance and repairs, at primary residence; or funeral and burial expenses.

"(vii) ASSISTIVE TECHNOLOGY AND PERSONAL SUPPORT SERVICES.—Expenses for assistive technology and personal support with respect to any item described in clauses (i) through (vi).

"(viii) OTHER APPROVED EXPENSES.—Any other expenses which are approved by the Secretary under regulations and consistent with the purposes of this section.

"(C) INDIVIDUAL WITH A DISABILITY.—

"(i) IN GENERAL.—Except as provided in clause (ii), an individual is an in-

dividual with a disability for a year if the individual (regardless of age)—

"(I) has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 month, or

"(II) is blind.

"(ii) DISABILITY CERTIFICATION REQUIRED.—An individual shall not be treated as an individual with a disability for a year unless the individual—

"(I) is receiving (or, for purposes of title XIX of the Social Security Act, is deemed to be, or treated as, receiving by the State Medicaid Agency) benefits under the supplemental security income program under title XVI of such Act, or whose benefits under such program are suspended other than by reason of misconduct,

"(II) is receiving disability benefits under title II of such Act, or

"(III) files a disability certification with the Secretary for such year.

"(iii) DISABILITY CERTIFICATION DEFINED.—The term 'disability certification' means, with respect to an individual, a certification to the satisfaction of the Secretary by the designated beneficiary or the parent or guardian of the designated beneficiary that—

"(I) the individual meets the criteria described in clause (i), and

"(II) includes a copy of the designated beneficiary's diagnosis, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act.

"(iv) RESTRICTION ON USE OF CERTIFICATION.—No inference may be drawn from a disability certification for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

"(4) ROLLOVERS FROM ABLE ACCOUNTS.—Subsection (c)(3)(A) shall not apply to any amount paid or distributed from an ABLE account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into—

"(A) another ABLE account for the benefit of—

"(i) the same beneficiary, or

"(ii) an individual with a disability who is a family member of the beneficiary,

"(B) any trust which is described in subparagraph (A) or (C) of section 1917(d)(4) of the Social Security Act and which is for the benefit of an individual described in clause (i) or (ii) of subparagraph (A), or

"(C) a qualified tuition program—

"(i) for the benefit of the designated beneficiary, or

"(ii) to the credit of another designated beneficiary under a qualified tuition program who is a member of the family of the designated beneficiary with respect to which the distribution was made.

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

"(5) TRANSFER TO STATE.—Subject to any outstanding payments due for qualified disability expenses, in the case that the designated beneficiary dies or ceases to be an individual with a disability, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program, under any State Medicaid plan established under title XIX of the Social Security Act shall be distributed to such State upon filing of a claim for payment by such State. For purposes of this paragraph, the State shall be a creditor of an ABLE account and not a beneficiary. Subsection (c)(3) shall not apply to a distribution under the preceding sentence.

"(6) REGULATIONS.—Not later than 6 months after the date of the enactment of this section, the Secretary may prescribe such regulations or other

guidance as the Secretary determines necessary or appropriate to carry out the purposes of this section, including regulations to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses.''.

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 6693(a) of the Internal Revenue Code of 1986 such Code is amended by striking ''and'' at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ''and'', and by inserting after subparagraph (E) the following new subparagraph:

''(F) section 529(d) by reason of 529(f) (relating to ABLE accounts).''.

(b) ANNUAL REPORTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall report annually to Congress on the usage of ABLE accounts under section 529(f) of the Internal Revenue Code of 1986.

(2) CONTENTS OF REPORT.—Any report under paragraph (1) may include—

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

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

(C) the total amount and nature of distributions from such accounts,

(D) issues relating to the abuse of such accounts, if any, and

(E) the amounts repaid from such accounts to State Medicaid programs established under title XIX of the Social Security Act.

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

SEC. 4. TREATMENT OF ABLE ACCOUNTS UNDER CERTAIN FEDERAL PROGRAMS.

(a) ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN OTHER MEANS-TESTED FEDERAL PROGRAMS.—Notwithstanding any other provision of Federal law that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, any amount (including earnings thereon) in any ABLE account (as defined in section 529(f) of the Internal Revenue Code of 1986) of such individual, and any distribution for qualified disability expenses (as defined in paragraph (3) of such section) shall be disregarded for such purpose with respect

to any period during which such individual maintains, makes contributions to, or receives distributions from such ABLE account, except that, in the case of the supplemental security income program under title XVI of the Social Security Act, a distribution for housing expenses (as defined in subparagraph (B)(ii) of such paragraph) shall not be so disregarded, and in the case of such program, only the 1st $100,000 of the amount (including such earnings) in such ABLE account shall be so disregarded.

(b) SUSPENSION OF SSI BENEFITS DURING PERIODS OF EXCESSIVE ACCOUNT FUNDS.—

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

(2) NO IMPACT ON MEDICAID ELIGIBILITY.—An individual who would be receiving payment of such supplemental security income benefits but for the application of the previous sentence shall be treated

for purposes of title XIX of the Social Security Act as if the individual continued to be receiving payment of such benefits.

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