

BILL ANALYSIS

Senate Research Center

S.B. 1764
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State Affairs
6/12/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2015 the legislature passed S.B. 1664, which allowed certain persons with disabilities to have Texas Achieving a Better Life Experience (ABLE) accounts for disability-related expenses without losing eligibility under supplemental security income (SSI) and Medicaid benefits. Distributions from an ABLE account, including any earnings, are tax free if used for qualified disability expenses. A person is eligible to open an ABLE account if the person became disabled or blind before the age of 26, and either is currently entitled to Social Security Disability Insurance (SSDI) or SSI, or gets a disability certification.

ABLE accounts are similar to a special needs trust (SNT) in that funds can be set aside for a person with a disability while maintaining eligibility for SSI and Medicaid programs. It is different from an SNT in so far as it allows a beneficiary who is competent or a beneficiary's agent or guardian to access cash for qualified disability expenses. Qualified disability expenses generally are expenses for education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, legal fees, expenses for oversight and monitoring, and funeral expenses, to name a few.

The person who is incapacitated or the person's legal representative can create an ABLE account. Nothing in the Texas Property Code or the Texas Estates Code, however, allows a guardian to establish and fund an ABLE account for an incapacitated person. What's more, a judge is not authorized to terminate a guardianship of the estate when an ABLE account could serve as a less restrictive alternative to guardianship.

S.B. 1764 authorizes a guardian to create an ABLE account on behalf of the person under guardianship. S.B. 1764 also authorizes a guardian ad litem to deposit the proceedings of a lawsuit in an ABLE account for the benefit of the person with an incapacity. What's more, S.B. 1764 authorizes a judge to terminate a guardianship of the estate and establish an ABLE account in lieu of the guardianship of the estate. These changes not only would encourage more persons to use ABLE accounts, but also would result in fewer unnecessary guardianships, as guardianship of the estate could be replaced by this less intrusive alternative when appropriate. (Original Author's / Sponsor's Statement of Intent)

S.B. 1764 amends current law relating to the investment of funds in, and operation of guardianships of the estate in relation to, accounts established under the Texas Achieving a Better Life Experience (ABLE) Program.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1161.003, Estates Code, to provide that a guardian of the estate is considered to have exercised the standard required by Section 1161.002(a) (relating to the standard of judgment and care the guardian of the estate is required to exercise) with respect to investing the ward's estate if the guardian invests in certain investments, including a Texas Achieving a Better Life Experience (ABLE) account established in accordance with the Texas

ABLE Program under Subchapter J (Texas Achieving a Better Life Experience (ABLE) Program), Chapter 54 (Tuition and Fees), Education Code.

SECTION 2. Amends Subchapter A, Chapter 1202, Estates Code, by adding Section 1202.003, as follows:

Sec. 1202.003. TERMINATION OF GUARDIANSHIP OF ESTATE ON ESTABLISHMENT OF ABLE ACCOUNT BY CERTAIN PERSONS. Authorizes the court to, on application by the guardian of the estate of a ward or another person interested in the ward's welfare, order that the guardianship of the estate of the ward terminate and be settled and closed if the court finds that the ward no longer needs a guardian of the estate because all of the ward's assets have been placed in an ABLE account established in accordance with the ABLE Program under Subchapter J, Chapter 54, Education Code, and the ward is the designated beneficiary of the account.

SECTION 3. Amends Section 142.004(a), Property Code, as follows:

(a) Authorizes any money recovered by the plaintiff, if not otherwise managed under this chapter (Management of Property Recovered in Suit by a Next Friend or Guardian Ad Litem), in a suit in which a minor or incapacitated person who has no legal guardian is represented by a next friend or an appointed guardian ad litem, to be invested:

(1) by the next friend or guardian ad litem in a certain higher education savings plan, a certain prepaid tuition program, or an ABLE account established in accordance with the ABLE Program under Subchapter J, Chapter 54, Education Code; or

(2) by the clerk of the court, on written order of the court of proper jurisdiction, in a certain higher education savings plan, a certain prepaid tuition program, or an ABLE account established in accordance with the ABLE Program under Subchapter J, Chapter 54, Education Code.

SECTION 4. Effective date: September 1, 2017.