

# ABLE: A New Way to Save

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September 27, 2017



## Overview of Presentation

*ABLE accounts are savings accounts for disability-related expenses. They are similar to college savings accounts but differ in important ways.*

- Amounts in, contributions to, and most distributions from ABLE accounts are disregarded in determining eligibility for needs-based federal programs such as Medicaid;*
- Eligibility for an ABLE account is open to an individual of any age who is blind or disabled, provided that individual's blindness or disability occurred before the age of 26;*
- ABLE accounts have tax advantages under federal law and many state laws.*

## Revisions to Original Presentation

The “Investment Rules” and “Summary of State Action” slides have been revised from the original presentation. The original “Investment Rules” slide erroneously listed the college savings plan account limit as \$235,000 for Tennessee. The correct account limit for Tennessee is \$350,000. The “Summary of State Action” slide has been edited to clarify that the District of Columbia ABLE program is now operating.





# A Short History of ABLE



## 529 Plans

- To understand ABLE plans, it's worthwhile to trace the history of their statutory relative, education savings plans, which are commonly known as 529 plans (after the section in the Internal Revenue Code where these plans can be found).
- Today's 529 plans originated out of an effort by the state of Michigan in the mid-1980's to make college more affordable. That effort ultimately culminated in the passage of federal legislation in 1996, establishing section 529 of the Code. Subsequent federal legislation shaped the benefits available under current law.
- Today, 529 plans can be used for tuition and other expenses at colleges or vocational schools. Investments in these plans grow tax free and have other tax advantages.



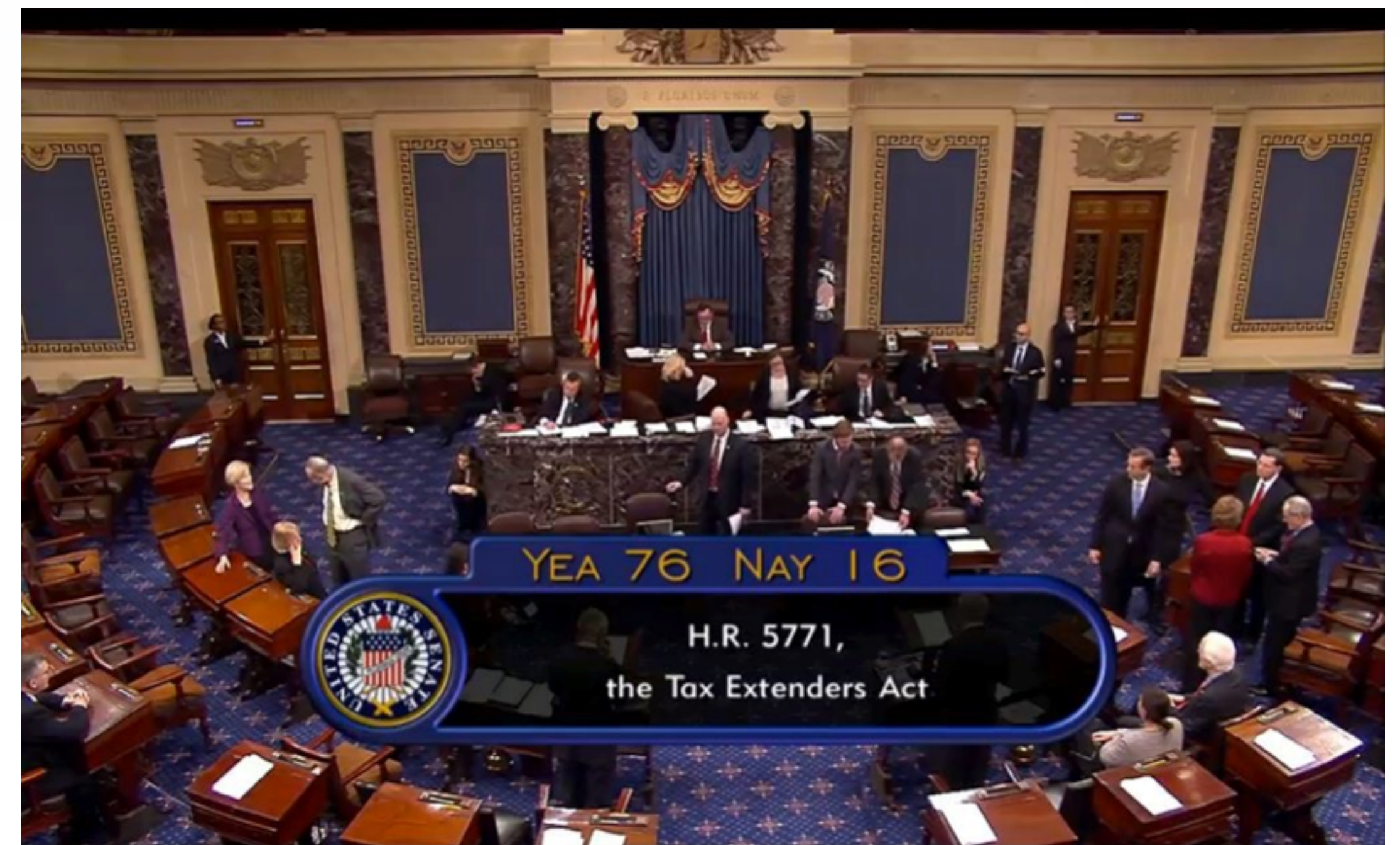
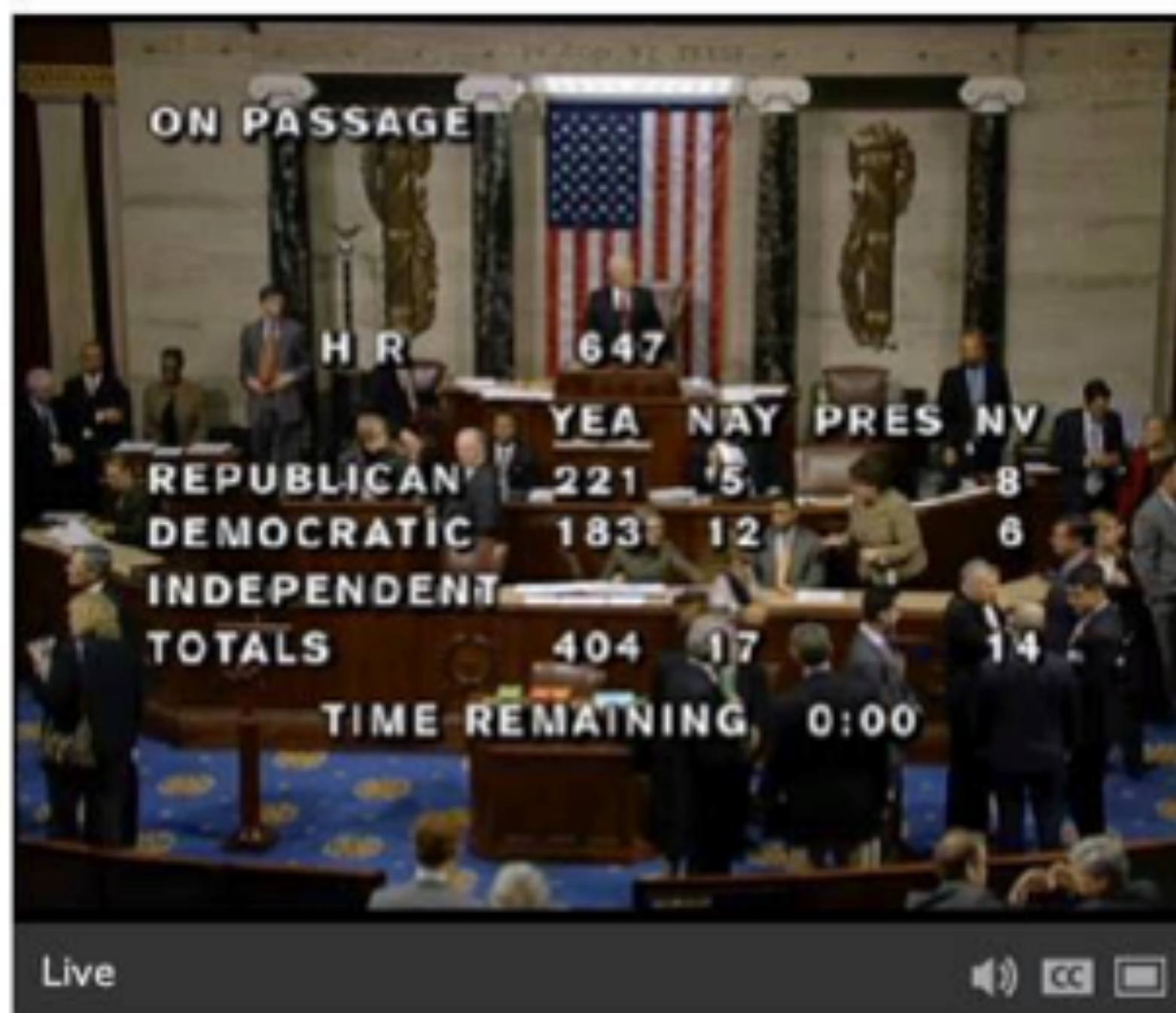
# Financial Challenges for People with Disabilities

- 529 plans have provided a convenient and popular means of savings for post-secondary education expenses. Of course, not every child, disabled or not, goes on to college. Moreover, many children and adults with disabilities have significant current or anticipated expenses. Planning for those expenses has often proven difficult.
- Compounding the usual difficulties of saving is the reliance of many people with disabilities on programs like Medicaid and Supplemental Security Income (SSI). These programs are means tested, meaning that even a small amount of savings can make an individual ineligible for benefit programs. Rather than risk jeopardizing eligibility for these programs, people with disabilities have often foregone saving.
- People with disabilities have not only faced obstacles to saving but obstacles to earning as well. According to the Census Bureau, in 2016 26.8% of non-elderly adults with a disability were living below the poverty line, while 10.3% of non-elderly adults without a disability were living below the poverty line.
- The special financial challenges faced by people with disabilities propelled forward proposals that led to enactment of the ABLE Act.



# ABLE Becomes Law

- Beginning around the mid-2000's, advocates coalesced around an effort to create an analog to the 529 plans.
- In Washington time can collapse or expand in unpredictable and sometimes frustrating ways. After about a decade of effort, Congress passed and the president signed into law the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 as part of the Tax Increase Prevention Act of 2014. In a time marked by partisanship, the margins of passage of the legislation were extraordinary.





## Steve Beck

Before I move on to discussing the specifics of the ABLE Act, I would be remiss if I did not mention the namesake of the Act, Steve Beck. Steve passed away after the House acted but before the bill came up in the Senate. Steve was committed to ensuring that both of his daughters lived the fullest life possible. His passion is a testament to the power of any of us and all of us to change Washington.







# ABLE Act 101



## Purposes of the ABLE Act

The purposes of the ABLE Act are spelled out in the law:

- “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.”
- “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.”



## How the ABLE Act Works

- The ABLE Act authorizes states through section 529A of the Internal Revenue Code to establish ABLE programs.
- The ABLE Act establishes the ground rules for those programs and the accounts they offer.



## ABLE Programs

- States, and only states and their agencies, can offer ABLE programs.
- While states can offer ABLE programs, they are not required to do so.





# ABLE Accounts – Ground Rules



## Tax Status

- ABLE accounts are tax-advantaged: contributions to an ABLE account, earnings by an ABLE account, and distributions from an ABLE account are generally not taxed by the federal government.
- Contributions to an ABLE account are made with after-tax money.
- Contributions to an ABLE account are not deductible on federal tax returns.
- The state tax treatment of ABLE accounts varies.



# Non-Tax Considerations

- Federal programs like Medicaid and SSI, which are means-tested, *generally* disregard funds in an ABLE account. A beneficiary will not lose eligibility for these programs regardless of the balance in the beneficiary's ABLE account. Beyond these rules, there is considerable nuance; both the Centers for Medicare & Medicaid Services, which administers the Medicaid program, and the Social Security Administration, which administers the SSI program, have issued guidance on ABLE accounts. Here are some key points:
  - ABLE account balances up to and including \$100,000 are excluded for SSI. (Note that balances in excess of \$100,000 will not be possible for many years because of annual contribution limits) Balances in excess of \$100,000 are countable resources and may result in suspension of SSI benefits but not loss of SSI eligibility.
  - Distributions from ABLE accounts for “qualified disability expenses” (more on that shortly) are not counted for Medicaid. Distributions from ABLE accounts for these expenses are generally not counted for SSI. There is a special rule, however, for distributions for housing. Distributions for housing are counted for SSI if retained into the month following the month of receipt. So, for example, if a beneficiary made a distribution this month from an ABLE account to a checking account and did not pay for housing expenses until October, that distribution would be counted in determining the beneficiary's resources for SSI.
- Many means-tested state programs also disregard funds in an ABLE account. The interplay of ABLE and these state programs is a matter of state law, and it's worth checking with your home state if you have any concerns.



## Ownership

- An ABLE Account is owned by the person with a disability who is the beneficiary of the account. This is a difference from college savings accounts, which may be owned not just by the student but by the student's parent or others.
- A person with signature authority can establish and control an ABLE account for a designated beneficiary who is a minor child or is otherwise incapable of managing the account. The person with signature authority must be the designated beneficiary's parent, legal guardian, or agent acting under power of attorney.



# Investment Rules

- A beneficiary may have only one ABLÉ account. Again, a different rule applies to section 529 college savings accounts.
- An ABLÉ account may be opened in any state with an ABLÉ program; a person who lives in, say, Maryland, can open an ABLÉ account in Ohio, Nebraska, or any other state with an ABLÉ program. This rule is a 2015 legislative change from the law as it originally passed Congress.
- Anyone may contribute to an ABLÉ account, not just the beneficiary of that account.
- Contributions to an ABLÉ account must be in cash.
- Contributions from all contributors cannot exceed the annual federal gift tax exclusion (which is \$14,000 in 2017).
- Aggregate contributions to an ABLÉ account cannot exceed the state's limit on contributions to a college savings account. These limits vary by state. For example, the limit is \$235,000 in Mississippi and \$511,758 in Pennsylvania.
- The beneficiary of an ABLÉ account may direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.



# Eligibility

- To be eligible for an ABLÉ account, an individual must be blind or disabled before the age of 26. *When an individual is diagnosed does not matter; what matters is when the disability occurred.*
- An individual can establish eligibility in one of the following ways:
  - by showing that he or she is receiving SSI or Social Security Disability Insurance;
  - by having a condition listed in the Social Security Administration's "List of Compassionate Allowances Conditions," a list that primarily includes certain cancers, adult brain disorders, and a number of rare disorders that affect children; or
  - by having a physician certify in writing that the individual is blind or has a medically determinable physical or mental impairment that results in "marked and severe functional limitations" and is expected to result in death or has lasted or is expected to last not less than 12 months. Examples of qualifying conditions that result in "marked and severe functional limitations" can be found in the Social Security Administration's disability Blue Book. Autism spectrum disorder (ASD) is one of the conditions listed in the Blue Book. For ASD, the Blue Book requires medical documentation of both qualitative deficits in verbal communication, nonverbal communication, and social interaction; and significantly restricted, repetitive patterns of behavior, interests, or activities. It also requires extreme limitation of one, or marked limitation of two, of the following areas of mental functioning: (1) understand, remember, or apply information; (2) interact with others; (3) concentrate, persist, or maintain pace; (4) adapt or manage oneself.



# Qualified Disability Expenses

- Distributions from an ABLÉ account must be for qualified disability expenses. Distributions that are not for such expenses are taxable and subject to a penalty.
- Qualified disability expenses are expenses that relate to the designated beneficiary's blindness or disability and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life.
- Such expenses include, but are not limited to, expenses for 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, funeral and burial expenses, and other expenses that may be identified from time to time in future IRS guidance.
- Qualified disability expenses include expenses for items that may benefit others in addition to the eligible individual. For example, expenses for common items such as smart phones could be considered qualified disability expenses if they are an effective and safe communication or navigation aid for a child with ASD.



## Rollovers and Payback

- Amounts may be rolled over from an individual's ABLE account in one state to a new ABLE account in another state. They may also be rolled over from one individual's ABLE account to the ABLE account of a brother, sister, stepbrother, or stepsister.
- Upon death amounts in an ABLE account are includible in the designated beneficiary's gross estate for purposes of the estate tax. Any state may file a claim for the amount of the total medical assistance paid for the designated beneficiary under the State's Medicaid plan after the establishment of the ABLE account.
- The latter feature of ABLE accounts has deterred some individuals from investing in them.





# ABLE in the States

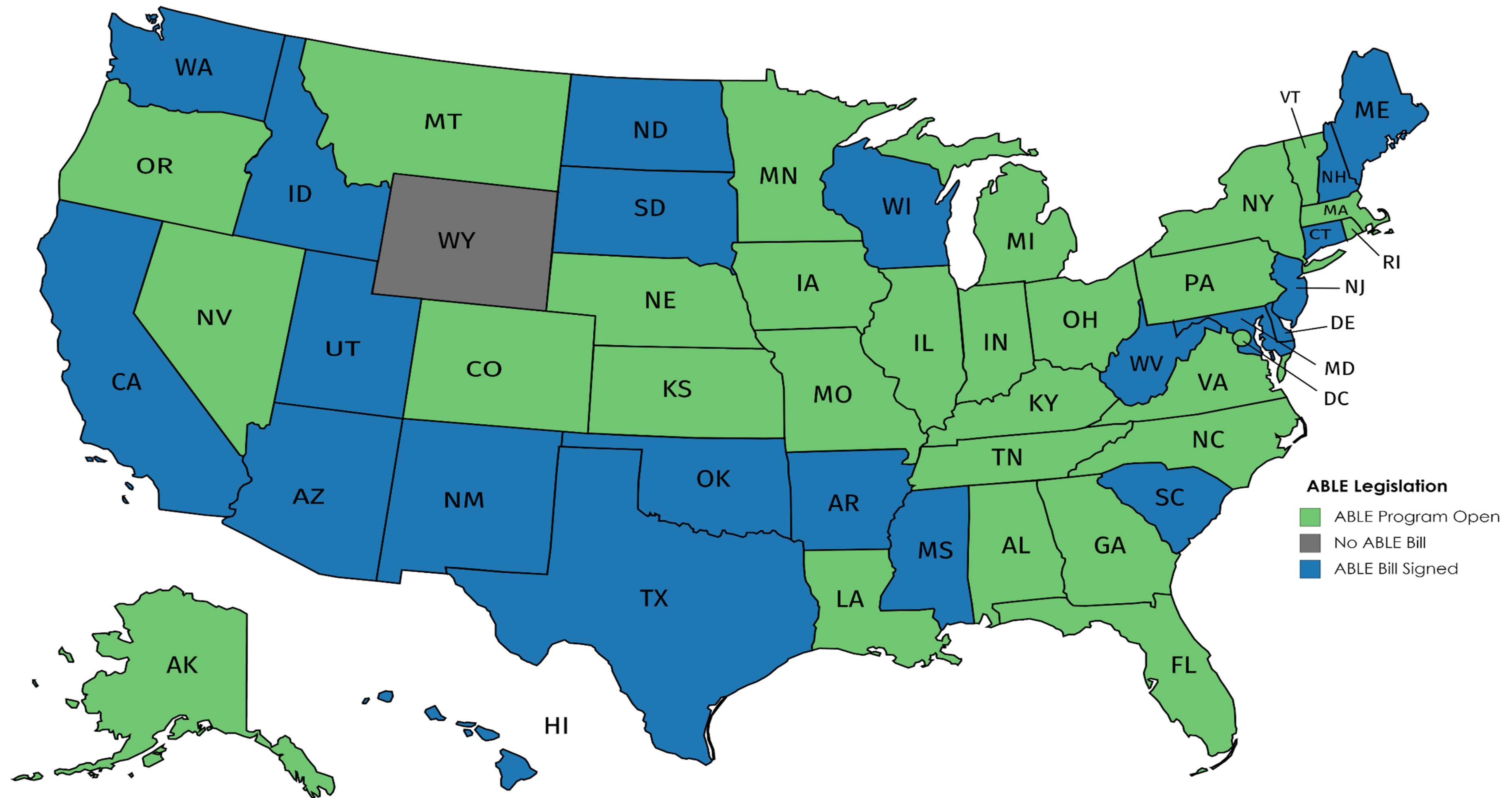


## Summary of State Action

- After the ABLE Act became law, it was up to the states to act. Again, the federal law authorized ABLE programs but did not require states to create ABLE programs.
- Forty-nine states and the District of Columbia have passed ABLE laws. Twenty-six states and the District of Columbia have ABLE programs that are now operating.
- The state laws differ. Some authorize a state ABLE program. Others do not authorize a state ABLE program but do facilitate investment in ABLE accounts. Consider these examples:
  - Utah allows a credit for 5 percent of the total qualified contributions made to an ABLE account.
  - The state-owned Bank of North Dakota acts as a resource to answer questions about the ABLE Act. North Dakota has enacted a law disregarding ABLE accounts from being considered by state and local means-tested aid programs.




# State ABLE Implementation





# Ohio Was the First State to Open an ABLE Program



**JOSH MANDEL**  
TREASURER OF OHIO


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## STABLE ACCOUNT

- ✓ Nationwide enrollment for individuals with disabilities
- ✓ Tax-free savings plan for disability-related expenses
- ✓ Save and invest without losing needs-based benefits

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# Illinois Is Part of the 13-State National ABLE Alliance



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**Giving those with disabilities the ability to save.**

New Illinois ABLE helps individuals save, while preserving their SSI and Medicaid.

Start Saving

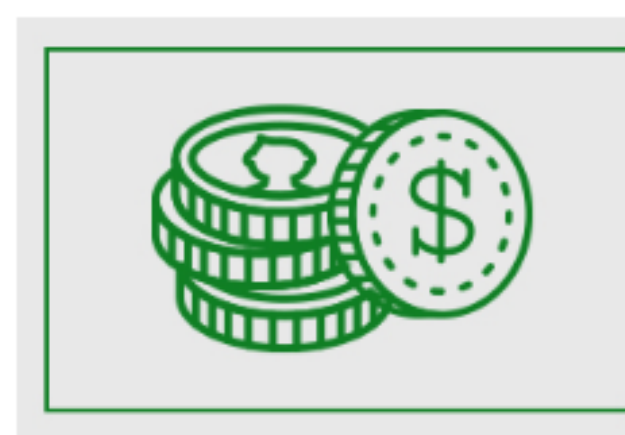




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## Some Features of State ABLE Programs

Among other features, state ABLE programs offer

- online enrollment;
- multiple investment choices;
- low minimum deposits;
- low account maintenance fees;
- easy access to funds; and
- the simplicity of not having to file tax returns



## Market Data Summary

- According to market data compiled by the firm Strategic Insight,
  - as of June, there were 10,358 ABLÉ accounts with \$36.9 million in assets;
  - in March there were 7,169 ABLÉ accounts with \$25.4 million in assets; and
  - In comparison, in June there were 13.1 million 529 accounts with \$300 billion in assets.





# Future Directions



# Pending Legislation

Three bills to expand on the ABLE Act are now before Congress:

- S. 818/H.R. 1896, the ABLE to Work Act of 2017, would allow an ABLE beneficiary and the beneficiary's family to save more money in an ABLE account if the beneficiary works and earns income. Specifically, an ABLE beneficiary who earns income from a job could save an additional amount equal to the Federal Poverty Level, which is currently \$12,060. The bill would also allow ABLE beneficiaries to qualify for the existing Saver's Credit.
- S. 816/H.R. 1897, the ABLE Financial Planning Act, would allow families to rollover savings in a 529 college savings plan into an ABLE account. Under current law, earnings on a distribution from a college savings plan may be taxed if not the distribution is not spent on qualified education expenses.
- S.817/H.R. 1874, the ABLE Age Adjustment Act, would raise the age limit for ABLE accounts from 26 to 46. This change would enable individuals who are disabled later in life to be eligible for ABLE accounts.





# Are ABLE Accounts the Right Investment?



## Informed Choice

- ABLE accounts are one means for people with disabilities to save.
- Special needs trusts and pooled trusts are other types of investments.
- Each type of investment has its advantages
- Different types of investments may be used singly or in combination.
- The “right choice” is what’s right for the individual.