

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 556*
Committee Substitute Favorable 6/18/15
Senate Finance Committee Substitute Adopted 7/21/15
Fourth Edition Engrossed 7/28/15

Short Title: Achieving a Better Life Experience Act.

(Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 147 of the General Statutes is amended by adding a new Article to read:

"Article 6E.

"Achieving a Better Life Experience Program Trust.

"§ 147-86.50. Policy and definitions.

(a) Policy. – The General Assembly of North Carolina hereby finds and declares that encouraging and assisting individuals and families in saving private funds for the purpose of supporting individuals with disabilities, as authorized in the federal Achieving a Better Life Experience (ABLE) Act, to maintain health, independence, and a better quality of life is fully consistent with and furthers the long-established policy of the State to provide tools that strengthen opportunities for personal economic development and long-term financial planning.

(b) Definitions. – The following definitions apply in this section:

- (1) ABLE account. – An account established and owned by an eligible individual and maintained under this Article. A guardian or agent under a power of attorney may act on behalf of an account owner.
- (2) Account owner. – The person who enters into an ABLE savings agreement pursuant to the provisions of this Article. The account owner must be the designated beneficiary.
- (3) Board. – The ABLE Program Board of Trustees established in G.S. 147-86.52.
- (4) Contracting state. – A state without a qualified ABLE program that has entered into a contract with North Carolina to provide residents of the contracting state access to a qualified ABLE program.
- (5) Designated beneficiary. – The eligible individual who established and owns an ABLE account.
- (6) Disability certification. – Defined in 26 U.S.C. § 529A(e)(2).
- (7) Eligible individual. – Defined in 26 U.S.C. § 529A(e)(1).
- (8) Federal ABLE Act. – Division B of the Tax Increase Prevention Act of 2014, P.L. 113-295, the Achieving a Better Life Experience Act of 2014.
- (9) Member of the family. – A brother, sister, stepbrother, or stepsister.
- (10) Qualified disability expense. – Defined in 26 U.S.C. § 529A(e)(5).



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1 **"§ 147-86.51. ABLÉ Program.**

2 (a) Achieving a Better Life Experience (ABLE) Program Trust. – There is established
3 an ABLÉ Program Trust to be administered by the ABLÉ Program Board of Trustees
4 established in G.S. 146-86.52 to enable contributors to save funds to meet the costs of the
5 qualified disability expenses of eligible individuals.

6 (b) Accounts. – The following provisions apply to an ABLÉ account:

7 (1) An account owner or contributor may establish an account by making an
8 initial contribution to the ABLÉ Program Trust, signing an application form
9 approved by the Board or its designee, and naming the designated
10 beneficiary. If the contributor is not the account owner, the account owner or
11 the account owner's guardian, trustee, or agent shall also sign the application
12 form.

13 (2) Any person may make contributions to an account after the account is
14 opened.

15 (3) Contributions to an account shall be made only in cash.

16 (4) Contributions to an account shall not exceed maximum contribution limits
17 applicable to program accounts in accordance with the federal ABLÉ Act.

18 (5) An account owner may change the designated beneficiary of an account to
19 an eligible individual who is a member of the family of the former
20 designated beneficiary. At the direction of an account owner, all or a portion
21 of an account may be transferred to another account of which the designated
22 beneficiary is a member of the family of the designated beneficiary of the
23 transferee account if the transferee account was created pursuant to this
24 section or in accordance with the federal ABLÉ Act.

25 (c) Contributions. – The Board is authorized to accept, hold, invest, and disburse
26 contributions, and interest earned on such contributions, from contributors as trustees of the
27 ABLE Program Trust. The Board shall hold all contributions to the ABLÉ Program Trust, and
28 any earnings thereon, in the ABLÉ Program Trust and shall invest the contributions in
29 accordance with this section. The assets of the ABLÉ Program Trust shall at all times be
30 preserved, invested, and expended for the purpose of providing benefits to designated
31 beneficiaries and paying reasonable expenses of administering the ABLÉ Program Trust and
32 investing the assets of the ABLÉ Program Trust. Nothing in this Article shall be construed to
33 prohibit the Board from accepting, holding, and investing contributions from contributors who
34 reside outside of North Carolina. Neither the contributions to the ABLÉ Program Trust, nor the
35 earnings thereon, shall be considered State monies, assets of the State, or State revenue for any
36 purpose. An account or a legal or beneficial interest in an account is not subject to attachment,
37 levy, or execution by a creditor of the designated beneficiary.

38 (d) Limitations. – The Board, in administering the ABLÉ Program Trust, shall ensure
39 each of the following:

40 (1) A rollover from an ABLÉ account shall constitute a qualified rollover if the
41 rollover distribution is in accordance with the federal ABLÉ Act.

42 (2) A person may make contributions for a taxable year for the benefit of an
43 individual who is an eligible individual for the taxable year to an ABLÉ
44 account that is established to meet the qualified disability expenses of the
45 designated beneficiary of the account.

46 (3) A designated beneficiary is limited to one ABLÉ account.

47 (4) An ABLÉ account may be established only for a designated beneficiary who
48 is a resident of North Carolina or a resident of a contracting state.

49 (5) Except as permitted under the federal ABLÉ Act, a person does not direct
50 the investment of any contributions to or earnings from the Achieving a
51 Better Life Experience Program more than two times each year.

- 1 (6) An account or a legal or beneficial interest in an account is not assignable,
2 pledged, or otherwise used to secure or obtain a loan or other advancement.
3 (7) Separate records and accounting are maintained for each ABLE account.
4 (8) Reports are made no less frequently than annually to each ABLE account
5 owner.
6 (9) A trustee or guardian appointed as a signatory of an ABLE account does not
7 have or acquire any beneficial interest in the account and administers the
8 account for the benefit of the designated beneficiary.

9 **"§ 147-86.52. ABLE Program Board of Trustees.**

10 (a) Board. – There is established a Board of Trustees to provide oversight of the general
11 administration and proper operation of the ABLE Program and to determine the appropriate
12 investment strategy for the ABLE Program Trust. The Board of Trustees shall consist of the
13 following six members:

- 14 (1) The State Treasurer, ex officio, or the State Treasurer's designee, as chair.
15 (2) The Commissioner of Banks, ex officio, or the Commissioner of Banks'
16 designee.
17 (3) The Secretary of the North Carolina Department of Health and Human
18 Services, ex officio, or the Secretary's designee.
19 (4) A person appointed by the Governor having experience in investments and
20 finance.
21 (5) A person appointed by the President Pro Tempore of the Senate having
22 experience in advocacy for the disabled.
23 (6) A person appointed by the Speaker of the House of Representatives that is
24 an immediate family member of an eligible individual or a guardian of an
25 eligible individual.

26 (b) Terms. – The members of the Board, except those members serving in an ex officio
27 capacity, shall be appointed for terms of three years and shall serve until their successors are
28 appointed and qualified. Vacancies are filled in the same manner as the original appointment.
29 No appointed member of the Board may serve longer than any of the following:

- 30 (1) Two consecutive three-year terms.
31 (2) Three consecutive terms of any length, in the event that one or more of the
32 terms is for less than three years in duration or the member serves a partial
33 term as a result of filling a vacancy.
34 (3) Eight consecutive years, regardless of term lengths.

35 (c) Duties. – The Board of Trustees is authorized to:

- 36 (1) Delegate the authority to the State Treasurer to develop and perform all
37 functions necessary and desirable to (i) administer the ABLE Program Trust
38 in such a manner as to meet and comply with the requirements of the federal
39 ABLE Act and federal regulations under the Act, (ii) implement the
40 investment strategy of the Board, and (iii) provide other services as the
41 Board shall deem necessary to facilitate participation in the ABLE Program
42 Trust.
43 (2) Notwithstanding provisions of Article 3 of Chapter 143 of the General
44 Statutes, engage the services of consultants on a contract basis for rendering
45 professional and technical assistance and advice.
46 (3) Retain the services of auditors, attorneys, investment counseling firms,
47 custodians, or other persons or firms possessing specialized skills or
48 knowledge necessary for the proper administration of investment programs
49 that the Board administers pursuant to this Article.
50 (4) Develop marketing plans and promotional material.

1 (5) Establish the methods by which the funds held in accounts shall be
2 dispersed.

3 (6) Establish the method by which funds shall be allocated to pay for
4 administrative costs.

5 (7) Do all things necessary and proper to carry out the purposes of this act.

6 (d) Investments. – The Board shall determine and document in an investment policy
7 statement an appropriate investment strategy for the ABLE Program Trust containing one or
8 more forms of investment or strategies for investment from which account owners may select.
9 The Board shall authorize the State Treasurer to be responsible for engaging and discharging
10 investment managers and service providers, including contracting and contract monitoring, to
11 implement the investment strategy established by the Board. All amounts maintained in an
12 account shall be invested according to the account owner's election of one or more of the
13 strategies approved by the Board. Each strategy may include a combination of fixed income
14 assets and preferred or common stocks issued by any company incorporated, or otherwise
15 located within or outside the United States, or other appropriate investment instruments to
16 achieve long-term return through a combination of capital appreciation and current income. If
17 the Board approves multiple forms of investment as investment strategy options, transfers of an
18 account owner's accumulated funds shall be permitted among the various approved forms of
19 investments, subject to reasonable restrictions approved by the Board.

20 (e) Discharge of Duties by the Board. – The assets of the ABLE Program Trust shall be
21 held in trust for the designated beneficiaries. The assets of the ABLE Program Trust shall at all
22 times be preserved, invested, and expended for the exclusive purpose of providing benefits to
23 designated beneficiaries and paying reasonable expenses of administering the ABLE Program
24 Trust and investing the assets of the ABLE Program Trust. Compliance by the Board with this
25 section must be determined in light of the facts and circumstances existing at the time of the
26 Board's decision or action and not by hindsight. The Board shall discharge its duties with
27 respect to the ABLE Program Trust as follows:

28 (1) Solely in the interest of the designated beneficiaries.

29 (2) With the care, skill, and caution under the circumstances then prevailing that
30 a prudent person acting in a like capacity and familiar with those matters
31 would use in the conduct of an activity of like character and purpose.

32 (3) Impartially, taking into account any differing interests of designated
33 beneficiaries.

34 (4) Incurring only costs that are appropriate and reasonable.

35 (5) In accordance with a good-faith interpretation of the law governing the
36 ABLE Program Trust.

37 (f) Immunity. – A person serving on the ABLE Board of Trustees shall be immune
38 individually from civil liability for monetary damages, and exempt to the extent covered by
39 insurance, for any act or failure to act arising out of that service except where any of the
40 following apply:

41 (1) The person was not acting within the scope of that person's official duties.

42 (2) The person was not acting in good faith.

43 (3) The person committed gross negligence or willful or wanton misconduct that
44 resulted in the damages or injury.

45 (4) The person derived an improper personal financial benefit, either directly or
46 indirectly, from the transaction.

47 (g) Report. – The Board shall submit an annual evaluation of the ABLE Program and
48 prepare and submit an annual report of such evaluation to the Joint Legislative Oversight
49 Committee on Health and Human Services.

50 (h) Other States. – With consent of the State Treasurer, the Board may enter into
51 agreements with other states to either (i) allow North Carolina residents to participate in a plan

operated by a contracting state with a qualified ABLE program or (ii) allow residents of other states to participate in the qualified North Carolina ABLE Program Trust.

"§ 147-86.53. Administration of ABLE Program.

(a) Administration. – The Board may delegate to the State Treasurer the authority to develop and perform all functions necessary and desirable to (i) administer the ABLE Program Trust in such a manner as to meet and comply with the requirements of the federal ABLE Act and federal regulations under the Act, (ii) implement the investment strategy established by the Board, and (iii) provide such other services as the State Treasurer shall deem necessary to facilitate participation in the ABLE Program Trust. The State Treasurer is further authorized to obtain the services of such investment managers, investment advisors, service providers, or program managers as may be necessary for the proper administration, marketing, and investment of the ABLE Program Trust.

(b) Disclaimer. – Nothing in this section shall be construed to create any obligation of the State Treasurer, the State, or any agency or instrumentality of the State to guarantee for the benefit of any parent, other interested party, or designated beneficiary the rate of return or other return for any contribution to the ABLE Program Trust and the payment of interest or other return on any contribution to the ABLE Trust Fund.

(c) Fees and Costs. – The State Treasurer may establish application, account, and administration fees in an amount not to exceed the amount necessary to offset the costs of the program. The following costs may be paid directly from the ABLE Program Trust:

(1) The costs of administration, management, investment, and operation of the ABLE Program Trust.

(2) The costs of all actions authorized by the Board.

(3) The costs of all actions delegated to the State Treasurer and the State Treasurer's staff by the Board under this section. Such costs shall be allocated among the designated beneficiaries in such manner as may be prescribed by the Board. The Board shall no less than annually approve a budget and allocation of costs.

(d) Means-Tested Programs. – Notwithstanding any other provision of law, an ABLE account shall not be considered a resource for purposes of means-tested State benefits. Distributions for qualified disability expenses shall not be considered income for any State benefits eligibility program that limits eligibility based on income.

(e) Claim for Medical Assistance Benefits. – To the extent provided in subsection 26 U.S.C. § 529A(f) upon the death of a designated beneficiary, the State shall have a claim for payment from the beneficiary's account in an amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account. The State may file its claim for repayment from the account with the State Treasurer within 60 days of receiving notice from the State Treasurer of the death of the designated beneficiary. Any remaining funds in the beneficiary's account shall be distributed as provided in the account agreement or distributed to the beneficiary's estate if no other designation is made.

(f) Notice of the Death of a Designated Beneficiary. – Within 30 days of the date the State Treasurer receives notice of the death of a designated beneficiary, the State Treasurer shall provide notice of the designated beneficiary's death to the Department of Health and Human Services, Division of Medical Assistance.

(g) Notice for Designated Beneficiary Receiving Medicaid. – Notice of the State's right to file a claim against the estate following the death of a designated beneficiary who received medical assistance must be provided to the personal representative. The notice shall be on a form prescribed by the Department of Health and Human Services, Division of Medical Assistance, and shall explain the following:

(1) The types of Medicaid payments subject to a claim against the estate.

1 (2) That a claim will not be made if the individual is survived by a legal spouse,
2 a child or children under the age of 21, or a blind or disabled child or
3 children of any age who became blind or disabled before age 21 and still live
4 on the property of the deceased designated beneficiary.

5 (3) That a claim against the estate is limited to specified conditions.

6 (4) That a claim against the estate may be waived in the case of undue hardship
7 and the procedure for claiming an undue hardship.

8 (h) Account Information. – The information related to individual ABLE accounts are
9 not public records as defined in Chapter 132 of the General Statutes."

10 **SECTION 2.** The Department of Health and Human Services shall provide
11 information and assistance to the Department of State Treasurer and shall enter into a
12 data-sharing agreement with the Department of State Treasurer for the purpose of the ongoing
13 implementation of this act. The Department of State Treasurer shall consult with other
14 departments as needed.

15 **SECTION 3.** The Department of State Treasurer and the Department of Health and
16 Human Services are authorized to adopt rules necessary to implement this act.

17 **SECTION 4.** The State Treasurer shall begin accepting contributions authorized
18 under this act when federal regulations regarding the Achieving a Better Life Experience
19 Program, as provided under the Tax Increase Prevention Act of 2014, P.L. No. 113-295, have
20 been issued and provide the guidance necessary to implement the Achieving a Better Life
21 Experience Trust Fund Program established in this act. If the federal regulations are materially
22 inconsistent with this act, the Board may delay implementation of this act until a change in this
23 act has been made. If the Board delays implementation, the Board shall provide a written report
24 to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore
25 of the Senate identifying the changes in this act that must be made to be consistent with federal
26 regulation.

27 **SECTION 5.** The Board authorized in G.S. 147-86.52 shall be organized
28 immediately after a majority of the members have been qualified or appointed and have taken
29 the oath of office. The terms for the trustees that are appointed shall be for initial terms to
30 expire June 30, 2018.

31 **SECTION 6.** This act is effective when it becomes law.