

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE BILL 367  
Health Care Committee Substitute Adopted 4/21/15

Short Title: ABLE Act for NC.

(Public)

Sponsors:

Referred to:

March 24, 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.** Article 6 of Chapter 147 of the General Statutes is amended by adding a new section to read:

**"§ 147-86.5. Achieving a Better Life Experience Trust Fund.**

(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 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 pursuant to this section.
- (2) Account owner. – The person who enters into an ABLE savings agreement pursuant to the provisions of this section. The account owner must be the designated beneficiary. A trustee or guardian may be appointed a signatory of an ABLE account to act on behalf of an account owner or a designated beneficiary who is a minor or lacks capacity to enter into an agreement.
- (3) 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.
- (4) Designated beneficiary. – The eligible individual who established and owns an ABLE account.
- (5) Disability certification. – With respect to an individual, documentation that satisfies each of the following conditions:
  - a. A certification to the satisfaction of the Secretary of the Treasury of the United States by the individual or the parent or guardian of the individual that the individual has a medically determinable physical or mental impairment that (i) results in marked and severe functional limitations and can be expected to result in death or (ii) has lasted or can be expected to last for a continuous period of not less than 12 months.
  - b. The individual is blind or disabled within the meaning of section 1614(a)(2) of the Social Security Act, and the blindness or disability



1                   occurred before the individual attained 26 years of age. A copy of the  
2                   individual's diagnosis, signed by a physician, relating to the  
3                   individual's relevant impairment or impairments meeting the criteria  
4                   of section 1861(r)(1) of the Social Security Act.

5           (6)   Eligible individual. – An individual who, for a taxable year, either (i) is  
6           entitled to benefits based on blindness or disability under Title II or XVI of  
7           the Social Security Act, 42 U.S.C. § 301 et seq., and the blindness or  
8           disability is a preexisting condition that occurred before the date on which  
9           the individual attained 26 years of age or (ii) has a disability certification  
10           filed with the Secretary of the Treasury of the United States for the taxable  
11           year.

12           (7)   Member of the family. – A brother, sister, stepbrother, or stepsister.

13           (8)   Qualified disability expense. – An expense related to an eligible individual's  
14           blindness or disability that is incurred for the benefit of the eligible  
15           individual who is the designated beneficiary.

16           (c)   Achieving a Better Life Experience (ABLE) Trust Fund. – There is established an  
17   ABLE Trust Fund to be administered by the State Treasurer to enable contributors to save  
18   funds to meet the costs of the qualified disability expenses of eligible individuals.

19           (d)   Accounts. – The following provisions apply to an ABLE account:

20           (1)   An account owner or contributor may establish an account by making an  
21           initial contribution to the ABLE Trust Fund, signing an application form  
22           approved by the State Treasurer, and naming the designated beneficiary. If  
23           the contributor is not the account owner, the account owner shall also sign  
24           the application form.

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

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

28           (4)   Contributions to an account shall not exceed (i) maximum contribution  
29           limits applicable to program accounts in accordance with the Achieving a  
30           Better Life Experience Program as provided under the Tax Increase  
31           Prevention Act of 2014, Pub. L. No. 113-295 and (ii) the amount reasonably  
32           necessary to meet the designated beneficiary's qualified disability expenses.

33           (5)   An account owner may change the designated beneficiary of an account to  
34           an eligible individual who is a member of the family of the former  
35           designated beneficiary. At the direction of an account owner, all or a portion  
36           of an account may be transferred to another account of which the designated  
37           beneficiary is a member of the family of the designated beneficiary of the  
38           transferee account if the transferee account was created pursuant to this  
39           section or in accordance with the Achieving a Better Life Experience  
40           Program as provided under the Tax Increase Prevention Act of 2014, Pub. L.  
41           No. 113-295.

42           (e)   Contributions. – The State Treasurer is authorized to accept, hold, invest, and  
43   disburse contributions, and interest earned on such contributions, from contributors as trustee of  
44   the ABLE Trust Fund. The State Treasurer shall hold all contributions to the ABLE Trust Fund,  
45   and any earnings thereon, in a separate trust fund and shall invest the contributions in  
46   accordance with this section. The assets of the ABLE Trust Fund shall at all times be preserved,  
47   invested, and expended solely for the purposes of the Trust Fund and shall be held in trust for  
48   the contributors and their designated beneficiaries. Nothing in this Article shall be construed to  
49   prohibit the State Treasurer from accepting, holding, and investing contributions from  
50   contributors who reside outside of North Carolina. Neither the contributions to the ABLE Trust  
51   Fund, nor the earnings thereon, shall be considered State moneys, assets of the State, or State

1 revenue for any purpose. An account or a legal or beneficial interest in an account is not subject  
2 to attachment, levy, or execution by a creditor of designated beneficiary.

3 (f) Investments. – The State Treasurer shall determine an appropriate investment  
4 strategy for the ABLE Trust Fund. The strategy may include a combination of fixed income  
5 assets and preferred or common stocks issued by any company incorporated, or otherwise  
6 located within or without the United States, or other appropriate investment instruments to  
7 achieve long-term return through a combination of capital appreciation and current income.  
8 Unless prohibited by federal law, contributions to the ABLE Trust Fund may be invested in the  
9 individual, common, or collective trust funds of an investment manager provided that the  
10 investment manager meets both of the following conditions:

11 (1) The investment manager has assets under management of at least one  
12 hundred million dollars (\$100,000,000) at all times.

13 (2) The investment manager is subject to the jurisdiction and regulation of the  
14 United States Securities and Exchange Commission.

15 (g) Administration. – The State Treasurer shall develop and perform all functions  
16 necessary and desirable to (i) administer the ABLE Trust Fund in such a manner as to meet and  
17 comply with the requirements of the Achieving a Better Life Experience Program as provided  
18 under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295 and federal regulations  
19 under the act and (ii) provide such other services as the State Treasurer shall deem necessary to  
20 facilitate participation in the ABLE Trust Fund. The State Treasurer is further authorized to  
21 obtain the services of such investment advisors or program managers as may be necessary for  
22 the proper administration and marketing and investment strategy for the ABLE Trust Fund.

23 (h) Limitations. – The State Treasurer, in administering the ABLE Trust Fund, shall  
24 ensure each of the following:

25 (1) A rollover from an ABLE account does not apply to an amount paid or  
26 distributed from the ABLE account to the extent that, not later than 60 days  
27 after the date of the payment or distribution, the amount received is paid into  
28 another ABLE account for the benefit of the same designated beneficiary or  
29 an eligible individual who is a member of the family of the designated  
30 beneficiary. The limitation of this subdivision does not apply to a transfer if  
31 the transfer occurs within 12 months after the date of a previous transfer  
32 under this subchapter for the benefit of the designated beneficiary.

33 (2) A person may make contributions for a taxable year for the benefit of an  
34 individual who is an eligible individual for the taxable year to an ABLE  
35 account that is established to meet the qualified disability expenses of the  
36 designated beneficiary of the account.

37 (3) A designated beneficiary is limited to one ABLE account.

38 (4) An ABLE account may be established only for a designated beneficiary who  
39 is a resident of North Carolina or a resident of a contracting state.

40 (5) Except as permitted under the Achieving a Better Life Experience Program  
41 as provided under the Tax Increase Prevention Act of 2014, Pub. L. No.  
42 113-295, a person does not direct the investment of any contributions to or  
43 earnings from the Achieving a Better Life Experience Program more than  
44 two times each year.

45 (6) An account or a legal or beneficial interest in an account is not assignable,  
46 pledged, or otherwise used to secure or obtain a loan or other advancement.

47 (7) Separate records and accounting are maintained for each ABLE account.

48 (8) Reports are made no less frequently than annually to each ABLE account  
49 owner.

1           (9) A trustee or guardian appointed as a signatory of an ABLÉ account does not  
2           have or acquire any beneficial interest in the account and administers the  
3           account for the benefit of the designated beneficiary.

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

9           (j) Fees. – The State Treasurer may establish application, account, and administration  
10           fees in an amount not to exceed the amount necessary to offset the costs of the program.

11           (k) Means-Tested Programs. – Notwithstanding any other provision of law, assets of  
12           and distributions for qualified disability expenses from an ABLÉ account shall be disregarded  
13           for purposes of determining whether a designated beneficiary's financial circumstances meet  
14           the eligibility requirements of other State assistance programs.

15           (l) Claim for Medical Assistance Benefits. – To the extent provided in subsection  
16           529A(f) of the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, upon the death of a  
17           designated beneficiary, the State shall have a claim for payment from the beneficiary's account  
18           in an amount equal to the total medical assistance paid for the designated beneficiary after the  
19           establishment of the account. The State may file its claim for repayment from the account with  
20           the State Treasurer within 60 days of receiving notice from the State Treasurer of the death of  
21           the designated beneficiary.

22           (m) Notice of the Death of a Designated Beneficiary. – Within 15 days of the date the  
23           State Treasurer receives notice of the death of a designated beneficiary, the State Treasurer  
24           shall provide notice of the designated beneficiary's death to the Division of Medical Assistance,  
25           Department of Health and Human Services.

26           (n) Notice to Account Owner for Designated Beneficiary Receiving Medicaid. – Notice  
27           of the State's right to file a claim against the estate following the death of a designated  
28           beneficiary who received medical assistance must be provided to the account owner. The notice  
29           shall be on a form prescribed by the Division of Medical Assistance, Department of Health and  
30           Human Services, and shall explain:

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

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

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

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

39           **SECTION 2.** The Department of Health and Human Services shall provide  
40 information and assistance to the Department of State Treasurer in establishing and  
41 implementing this act. The Department of State Treasurer shall consult with other departments  
42 as needed.

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

45           **SECTION 4.** This act is effective when it becomes law. The State Treasurer shall  
46 begin accepting contributions authorized under this act when federal regulations regarding the  
47 Achieving a Better Life Experience Program, as provided under the Tax Increase Prevention  
48 Act of 2014, Pub. L. No. 113-295, have been issued and provide the guidance necessary to  
49 implement the Achieving a Better Life Experience Trust Fund Program established in this act.