

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

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Article 6 of Chapter 147 of the General Statutes is amended by
5 adding a new section to read:

6 **"§ 147-86.5. Achieving a Better Life Experience Trust Fund."**

7 (a) Policy. – The General Assembly of North Carolina hereby finds and declares that
8 encouraging and assisting individuals and families in saving private funds for the purpose of
9 supporting individuals with disabilities to maintain health, independence, and a better quality of
10 life is fully consistent with and furthers the long-established policy of the State to provide tools
11 that strengthen opportunities for personal economic development and long-term financial
12 planning.

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

14 (1) ABLE account. – An account established and owned by an eligible
15 individual and maintained pursuant to this section.

16 (2) Account owner. – The person who enters into an ABLE savings agreement
17 pursuant to the provisions of this section. The account owner must be the
18 designated beneficiary. A trustee or guardian may be appointed a signatory
19 of an ABLE account to act on behalf of an account owner or a designated
20 beneficiary who is a minor or lacks capacity to enter into an agreement.

21 (3) Contracting state. – A state without a qualified ABLE program that has
22 entered into a contract with North Carolina to provide residents of the
23 contracting state access to a qualified ABLE program.

24 (4) Designated beneficiary. – The eligible individual who established and owns
25 an ABLE account.

26 (5) Disability certification. – With respect to an individual, documentation that
27 satisfies each of the following conditions:

28 a. A certification to the satisfaction of the Secretary of the Treasury of
29 the United States by the individual or the parent or guardian of the
30 individual that the individual has a medically determinable physical
31 or mental impairment that (i) results in marked and severe functional
32 limitations and can be expected to result in death or (ii) has lasted or
33 can be expected to last for a continuous period of not less than 12
34 months.

35 b. The individual is blind or disabled within the meaning of section
36 1614(a)(2) of the Social Security Act, and the blindness or disability



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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 or 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 ABLE 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 ABLE Trust Fund and the payment of interest or other return
8 on any contribution to the ABLE 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 ABLE 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.