

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE DRS35147-MC-96D (01/30)

Short Title: Achieving A Better Life Experience Act. (Public)

Sponsors: Senators Barringer, Hise, and Apodaca (Primary Sponsors).

Referred to:

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 23 of Chapter 116 of the General Statutes is amended by
5 adding a new section to read:

6 "**§ 116-209.25A. 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 Education Assistance Authority to enable
18 contributors to save funds to meet the costs of the qualified disability expenses of eligible
19 individuals.

20 (d) Accounts. – The following provisions apply to an ABLE Account:

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

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

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

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

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

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

1 thereon, shall be considered State moneys, assets of the State, or State revenue for any purpose.
2 An account or a legal or beneficial interest in an account is not subject to attachment, levy, or
3 execution by a creditor of designated beneficiary.

4 (f) Investments. – The Authority shall determine an appropriate investment strategy for
5 the ABLE Trust Fund. The strategy may include a combination of fixed income assets and
6 preferred or common stocks issued by any company incorporated, or otherwise located within
7 or without the United States, or other appropriate investment instruments to achieve long-term
8 return through a combination of capital appreciation and current income. The Authority may
9 deposit all or any portion of the ABLE Trust Fund for investment either with the State
10 Treasurer, or in the individual, common, or collective trust funds of an investment manager or
11 managers that meet the requirements of this subsection. Contributions to the ABLE Trust Fund
12 on deposit with the State Treasurer shall be invested by the State Treasurer as authorized in
13 G.S. 147-69.2(b)(1) through (6) and the applicable provisions of G.S. 147-69.3. Unless
14 prohibited by federal law, contributions to the ABLE Trust Fund may be invested in the
15 individual, common, or collective trust funds of an investment manager provided that the
16 investment manager meets both of the following conditions:

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

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

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

29 (h) Limitations. – The Authority, in administering the ABLE Trust Fund, shall ensure
30 each of the following:

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

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

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

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

46 (5) Except as permitted under the Achieving a Better Life Experience Program
47 as provided under the Tax Increase Prevention Act of 2014, Pub. L. No.
48 113-295, a person does not direct the investment of any contributions to or
49 earnings from the Achieving a Better Life Experience Program more than
50 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 (i) Disclaimer. – Nothing in this section shall be construed to create any obligation of
10 the Authority, the State Treasurer, the State, or any agency or instrumentality of the State to
11 guarantee for the benefit of any parent, other interested party, or designated beneficiary the rate
12 of return or other return for any contribution to the ABLE Trust Fund and the payment of
13 interest or other return on any contribution to the ABLE Trust Fund.

14 (j) Fees. – The Authority may establish application, account, and administration fees in
15 an amount not to exceed the amount necessary to offset the costs of the program.

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

20 **SECTION 2.** This act is effective when it becomes law. The Authority shall begin
21 accepting contributions authorized under this act when the State Treasurer notifies the
22 Authority that federal regulations regarding the Achieving a Better Life Experience Program,
23 as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, have been
24 issued and provide the guidance necessary to implement the Achieving a Better Life
25 Experience Trust Fund Program established in this act.