



# HOUSE BILL 556: Achieving a Better Life Experience Act

2015-2016 General Assembly

**Committee:**

**Introduced by:**

**Analysis of:** S.L. 2015-203

**Date:**

**Prepared by:** Heather Fennell

Staff Attorney

**SUMMARY:** *S.L. 2015-203 authorizes the establishment of the Achieving a Better Life Experience (ABLE) Trust Fund, administered by the ABLE Board of Trustees, to assist and encourage the contribution of private funds to accounts from which specified expenses may be paid for individuals with disabilities.*

*This act became effective August 11, 2015.*

**CURRENT LAW:** Congress enacted the Achieving a Better Life Experience (ABLE) Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295. The federal law authorizes qualified ABLE plans for the following purposes: (1) 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; and (2) 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, the Supplemental Security Income (SSI) program, the beneficiary's employment, and other sources. The ABLE Program allows individuals and families to establish savings accounts for disability related expenses. There is not a federal tax deduction for contributions into the accounts, but the gains on funds invested in the accounts are not subject to tax if the distributions from the fund are used for eligible disability related expenses. More information on the federal ABLE Program is in the background section at the end of the summary.

**SESSION LAW ANALYSIS:** S.L. 2015-203 creates Article 6E of Chapter 147 of the NC General Statutes to establish the Achieving a Better Life Experience (ABLE) Trust Fund in North Carolina.

**Policy – G.S. 147-86.50** outlines the policy of the General Assembly to encourage and assist individual and families in saving private funds to support individuals with disabilities in maintaining health, independence, and a better quality of life, and establishes definitions for the administration of the program.

**ABLE Accounts – G.S. 147-86.51** outlines the framework for the ABLE program, including how accounts are established and maintained, and the limitations on the program.

The following provisions apply to ABLE accounts:

- An account owner or contributor may establish an account by making an initial contribution, signing an approved application form, and naming the designated beneficiary.
- Any person may make contributions to an account after the account is opened.
- Contributions to an account must be made in cash.
- Contributions to an account must not exceed the maximum contribution limits applicable to program accounts in accordance with the federal law.
- An account owner may change the designated beneficiary of an account to an eligible individual who is a member of the family of the former designated beneficiary.

The following limitations apply to ABLE accounts:

- Rollovers from an ABLE account to another ABLE account is allowed to the extent allowed under federal law.

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- An individual must be eligible for an ABLÉ account in the taxable year in which the contribution is made.
- A designated beneficiary is limited to one ABLÉ account.
- An ABLÉ account may only be established for a designated beneficiary who is a resident of North Carolina or a resident of a contracting state.
- Except as permitted under the federal ABLÉ Act, an account owner may not direct the investment of any contributions to or earnings in an ABLÉ Account more than twice each year.
- An account or a legal or beneficial interest in an account is not assignable, pledged, or otherwise used to secure or obtain a loan or other advancement.
- Separate records and accounting are maintained for each ABLÉ account.
- Reports are made no less frequently than annually to each ABLÉ account owner.
- A trustee or guardian appointed as a signatory of an ABLÉ account does not have or acquire any beneficial interest in the account and administers the account for the benefit of the designated beneficiary.

**ABLE Program Board of Trustees – G.S. 147-86.52** establishes the ABLÉ Program Board of Trustees. The Board will provide oversight over the program, including the development of an investment strategy for funds in the ABLÉ Program Trust. The investment strategy may include a combination of fixed income assets and preferred or common stocks, or other appropriate investment instruments to achieve long-term return through a combination of capital appreciation and current income.

With consent of the State Treasurer, the Board may enter into agreements with other states to either allow State residents to participate in other states' ABLÉ programs, or allow the residents of other states to participate in North Carolina's ABLÉ program.

The Board will consist of the following 6 members:

- The State Treasurer, or designee.
- The Commissioner of Banks, or designee.
- The Secretary of DHHS.
- A person appointed by the Governor with experience in investment and finance.
- A person appointed by the Senate with experience in advocacy for the disabled.
- A person appointed by the House that is an immediate family member or guardian of an individual eligible for an ABLÉ Account.

The duties of the Board include:

- Delegating the authority to the State Treasurer to administer the ABLÉ Program Trust, implement the investment strategy of the Board, and provide all other services necessary to the program.
- Hire consultants, auditors, attorneys, investment counseling firms, and other individuals with professional skill necessary for the administration of the program.
- Develop marketing plans for the program.
- Establish procedures for the administration of the ABLÉ Accounts.

**Administration by the State Treasurer's Office – G.S. 147-86.53** provides for the administration of the program. If delegated to it by the Board, the State Treasurer's office may administer the ABLÉ Program Trust, implement the investment strategy of the Board, and provide all other services necessary to the program. The Treasurer may establish fees to cover the administration costs of the program. In

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addition to fees for application, account, and administration fees, costs for administering the program may be paid directly out of the ABLE Program Trust.

**Means-tested Program Eligibility** – Notwithstanding any other provision of law, assets of and distributions for qualified disability expenses from an ABLE account must be disregarded for purposes of determining whether a designated beneficiary's financial circumstance meet the eligibility requirements of other State assistance programs that are means-tested.

**Medicaid Clawback** – Upon the death of a beneficiary of an ABLE Account, the State has a claim for payment from the beneficiary's account equal to the medical assistance paid. The State may file a claim for the funds within 60 days of receiving notice from the State Treasurer. Any funds remaining after the State's claim will be distributed as provided in the account agreement, or distributed to the beneficiary's estate if no other designation is made.

**Public Records** – All information related to individual ABLE accounts is not considered a public record under Chapter 132 of the General Statutes.

**Section 2** requires the Department of Health and Human Services to provide information and assistance to the State Treasurer in establishing the act and requires the Treasurer to consult with other departments as needed.

**Section 3** authorizes the State Treasurer and the Department of Health and Human Services to adopt rules.

**Section 4** provides that the State Treasurer may begin accepting contributions to ABLE accounts once federal regulations have been adopted. If the federal regulations conflict with any provision adopted under this act, the Board may delay implementation until the General Assembly can modify the act.

**EFFECTIVE DATE:** This act became effective August 11, 2015. The State Treasurer is required to begin accepting contributions authorized under the act when federal regulations regarding the ABLE Program, as provided under the Tax Increase Prevention Act of 2014, Pub. L. No 113-295, have been issued and provide the guidance necessary to implement the ABLE Trust Fund Program.<sup>1</sup>

**BACKGROUND:** The following are some elements of the federal ABLE program:

- A qualified ABLE program must be established and maintained by the State, or agency or instrumentality of the state.
- A designated beneficiary is limited to one ABLE account.
- Under a qualified ABLE program, payment for qualified disability expenses is exempt from taxation, but an additional tax is imposed on individuals who do not use distributions from an ABLE account for appropriate expenses.
- An eligible individual for the purposes of an ABLE account is an individual who, for a taxable year, either (i) is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act, 42 U.S.C. § 301 et seq., and the blindness or disability is a preexisting condition that occurred before the date on which the individual attained 26 years of age or (ii) has a disability certification filed with the Secretary of the Treasury of the United States for the taxable year.
- "Qualified disability expenses" are expenses related to the eligible individual's blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including: education, housing, transportation, employment training and support, assistive technology and personal support services, health prevention and wellness, financial

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<sup>1</sup> Recently IRS Notice 2015-18 was issued to provide advance notification of a provision anticipated to be included in the proposed regulations to be issued under section 529A of the Internal Revenue Code. The Treasury Department and the IRS continue to work on section 529A guidance.

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management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses approved by the Secretary.

- The amounts in ABLE accounts are disregarded in determining federal programs that are means-tested, except housing expenses under SSI and amounts in an ABLE account exceeding \$100,000. Suspends payment of SSI during any period in which the individual has excess resources in an ABLE account but does not suspend Medicaid.
- Upon the death of a designated beneficiary, all amounts remaining in the ABLE account not in excess of the amount equal to the total medical assistance paid after establishment of the account, net of any premiums paid, shall be distributed to the State upon filing of a claim for payment.

*Theresa Matula, Committee Staff to Senate Health, substantially contributed to this summary.*