



This Bill Analysis reflects the contents of the bill as it was presented in committee.

SENATE BILL 367: Achieving A Better Life Experience Act

2015-2016 General Assembly

Committee:	Senate Ref to Health Care. If fav, re-ref to Finance	Date:	April 20, 2015
Introduced by:	Sens. Barringer, Hise, Apodaca	Prepared by:	Theresa Matula Committee Staff
Analysis of:	PCS to First Edition S367-CSSH-28		

SUMMARY: *Senate Bill 367 authorizes the establishment of the Achieving a Better Life Experience (ABLE) Trust Fund, administered by State Treasurer, to assist and encourage the contribution of private funds to accounts from which specified expenses may be paid for individuals with disabilities.*

[As introduced, this bill was identical to H556, as introduced by Reps. Avila, Lambeth, Hanes, Meyer, which is currently in House Finance.]

CURRENT LAW: The federal law authorizing qualified ABLE plans was enacted in late 2014 with 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. (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 following are some elements of the ABLE program:

- A qualified ABLE plan is organized under Section 529A of the Internal Revenue Code.
- 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.
- Defines "qualified disability expenses" as 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 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.



Senate Bill 367

Page 2

BILL ANALYSIS: House Bill 367 amends Article 6 of Chapter 147 of the NC General Statutes to add a new section (G.S. 147-86.5), to establish the Achieving a Better Life Experience (ABLE) Trust Fund in North Carolina.

Content for the subsections of G.S. 147-86.5 is outlined as follows.

Subsection (a) 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.

Subsection (b) establishes **definitions** for the following: ABLE account, account owner, contracting state, designated beneficiary, disability certification, designated beneficiary, disability certification, eligible individual, member of the family, qualified disability expense.

Specifically, an *account owner* is the beneficiary and the person who enters into an ABLE savings agreement, a trustee or guardian may be appointed a signatory of an account to act on behalf of an account owner who is a minor or lacks capacity to enter into an agreement.

Disability certification for the individual is documentation that satisfies each of the following conditions:

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

An *eligible individual* 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.

Subsection (c) establishes the **ABLE Trust Fund** to be administered by the State Treasurer.

Subsection (d) outlines the following provisions that 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 (i) maximum contribution limits applicable to program accounts in accordance with the federal law¹ and (ii) the amount reasonably necessary to meet the designated beneficiary's qualified disability expenses.
- 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. At the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee

¹ Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295.

Senate Bill 367

Page 3

account if the transferee account was created pursuant to this section or in accordance with the Act.¹

Subsection (e) authorizes the State Treasurer to **accept, hold, invest and disburse contributions** and interest earned and specifies the treatment of ABLE Trust Fund assets.

Subsection (f) authorizes the State Treasurer to determine an appropriate **investment strategy** which 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.

Subsection (g) requires the State Treasurer to develop and perform all functions necessary to **administer** the ABLE Trust Fund, provide other services necessary to facilitate participation in the Trust Fund, and authorizes State Treasurer to obtain services of investment advisors or program managers.

Subsection (h) requires the State Treasurer to ensure the following **limitations**:

- A rollover from an ABLE account is administered as provided.
- Contributions for a taxable year are made as specified.
- A designated beneficiary is limited to one ABLE account.
- An ABLE account is established only for a designated beneficiary who is a resident of North Carolina or a resident of a contracting state.
- Except as permitted under the Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113 295, a person does not direct the investment of any contributions to or earnings from the Achieving a Better Life Experience Program more than two times 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 ABLE account.
- Reports are made no less frequently than annually to each ABLE account owner.
- A trustee or guardian appointed as a signatory of an ABLE account does not have or acquire any beneficial interest in the account and administers the account for the benefit of the designated beneficiary.

Subsection (i) is a **disclaimer** providing that nothing in the section creates an obligation of the State or other specified entities.

Subsection (j) authorizes the State Treasurer to establish application, account, and administration **fees** not to exceed the amount necessary to offset the costs of the program.

Subsection (k) pertains to **means-tested programs** and specifies that 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.

Subsection (l) clarifies, as provided in the federal law, that the **State has a claim for** payment from the beneficiary's account equal to the medical assistance paid.

Subsection (m) establishes requirements for the **notification of the death** of a designated beneficiary,

Subsection (n) requires **notice of the State's right to file a claim against the estate be provided to the account owner** for a designated beneficiary receiving medical assistance

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.

Senate Bill 367

Page 4

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

EFFECTIVE DATE: This bill would become effective when it becomes law. 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.²

² 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.