



# HOUSE BILL 131: Protect NC Ed. Savings & Investment Accounts.

2023-2024 General Assembly

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<b>Committee:</b>	House Rules, Calendar, and Operations of the House	<b>Date:</b>	February 28, 2023
<b>Introduced by:</b>	Reps. Elmore, D. Hall, Winslow	<b>Prepared by:</b>	Brian Gwyn
<b>Analysis of:</b>	PCS to Second Edition H131-CSBE-5		Staff Attorney

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**OVERVIEW:** *The 2nd edition of House Bill 131 would increase protections for funds held in North Carolina Education Savings and Investment Accounts and NC ABLE accounts from claims of creditors and other judgments. The PCS would extend the effective date out to September 1, 2023.*

## SECTION 1. NORTH CAROLINA EDUCATION SAVINGS AND INVESTMENT ACCOUNTS

### CURRENT LAW:

#### Federal Law

Section 529 of the Internal Revenue Code establishes qualified tuition programs (529 Plans), which include programs established and maintained by a State, agency, or instrumentality thereof, allowing individuals to contribute to an account established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account. Qualified higher education expenses include tuition for an elementary or secondary public, private, or religious school. Contributions are not deductible, but earnings on a 529 Plan are exempt from federal taxation.

#### State Law

G.S. 116-209.25 establishes the framework for North Carolina's 529 Plans (NC 529 Plans), consistent with Section 529 of the Internal Revenue Code. NC 529 Plans are administered by the State Education Assistance Authority (SEAA) in order to enable parents and other interested parties to save funds to meet the costs of education expenses of eligible students. NC 529 Plan funds are held in accounts within the State's Parental Savings Trust Fund.

For individuals who are residents of North Carolina, G.S. 1C-1601(a)(10) exempts funds in a college savings plan, which could include an NC 529 Plan or a 529 Plan created by another entity, from the enforcement of claims of creditors (up to \$25,000). The exemption does not apply to funds placed in a college savings plan within the preceding 12 months unless contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of contributions. Additionally, the exemption only applies to the extent that the funds are for a child of the debtor and will actually be used for the child's college or university expenses. The exemption does not apply to the following claims:

- Of the United States or its agencies as provided by federal law.
- Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds.
- Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected.

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# House 131 PCS

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- Of lien by a mechanic for work done on the premises, but only as to the specific property affected.
- For payment of obligations contracted for the purchase of the specific real property affected.
- For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods.
- For statutory liens, on the specific property affected, other than judicial liens.
- For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes.
- For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-1340.38.

**BILL ANALYSIS:** The PCS would exempt funds located in NC 529 Plans or withdrawn from NC 529 Plans and used for purposes permitted by Section 529 of the Internal Revenue Code from the following:

- Liens
- Attachment
- Garnishment
- Levy
- Seizure
- Involuntary sale or assignment by operation or execution of law
- Enforcement of any other judgment or claim to pay any debt or liability of any account owner, beneficiary, or contributor to a plan

For education savings and investment accounts that are not part of the Parental Savings Trust Fund, the protection from creditors would not change. The PCS would make conforming changes to reflect changes in federal law that allow 529 savings account funds to be spent on elementary and secondary expenses, in addition to higher education expenses.

## SECTION 2. ABLE ACCOUNTS

**CURRENT LAW:** Federal law recognizes qualified ABLE programs which are established by States, agencies, or instrumentalities thereof, allowing individuals to contribute to an account established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account. See 26 U.S.C. § 529A. Article 6F of Chapter 147 of the General Statutes establishes the parameters for ABLE accounts in North Carolina.

**BILL ANALYSIS:** The PCS would exempt funds located in an ABLE account or withdrawn from the account and used for expenses permitted under Section 529A of the Internal Revenue Code from the following:

- Liens
- Attachment
- Garnishment
- Levy
- Seizure
- Involuntary sale or assignment by operation or execution of law
- Enforcement of any other judgment or claim to pay any debt or liability of any account owner, beneficiary, or contributor to a plan

**EFFECTIVE DATE:** The PCS would become effective September 1, 2023, and would apply to actions filed on or after that date.