



ADOPTED

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 97

AMENDMENT NO. 11
(to be filled in by
Principal Clerk)

H97-AMC-74 [v.3]

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Amends Title [NO]
PCS
Senator J. Davis
~~Senator Sanderson~~

Date June 16, 2015

1 moves to amend the bill on page 356, line 38, to page 360, line 20, by deleting the lines and
2 substituting the following language to read:

3 "SECTION 21.2.(a) Chapter 147 of the General Statutes is amended by adding a
4 new Article to read:

5 "Article 6E.

6 "Achieving Better Life Experience Program Trust.

7 "**§ 147-86.50. Policy and definitions.**

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

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

- 15 (1) ABLE account. – An account established and owned by an eligible
16 individual and maintained under this Article. A guardian or agent under a
17 power of attorney may act on behalf of an account owner.
- 18 (2) Account owner. – The person who enters into an ABLE savings agreement
19 pursuant to the provisions of this Article. The account owner must be the
20 designated beneficiary.
- 21 (3) Board. – The ABLE Program Board of Trustees established in
22 G.S. 147-86.52.
- 23 (4) Contracting state. – A state without a qualified ABLE program that has
24 entered into a contract with North Carolina to provide residents of the
25 contracting state access to a qualified ABLE program.
- 26 (5) Designated beneficiary. – The eligible individual who established and owns
27 an ABLE account.
- 28 (6) Disability certification. – Defined in 26 U.S.C. § 259A(e)(2).
- 29 (7) Eligible individual. – Defined in 26 U.S.C. §259A(e)(1).
- 30 (8) Federal ABLE Act. – Division B of the Tax Increase Prevention Act of
31 2014, P.L. 113-295, the Achieving a Better Life Experience Act of 2014.



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1 (9) Member of the family. – A brother, sister, stepbrother, or stepsister.

2 (10) Qualified disability expense. – As defined in 26 U.S.C. § 529A(e)(5).

3 **"§ 147-86.51 ABLÉ Program.**

4 (a) Achieving a Better Life Experience (ABLE) Program Trust. – There is established
5 an ABLÉ Program Trust to be administered by the ABLÉ Program Board of Trustees
6 established in G.S. 146-86.52 to enable contributors to save funds to meet the costs of the
7 qualified disability expenses of eligible individuals.

8 (b) Accounts. – The following provisions apply to an ABLÉ account:

9 (1) An account owner or contributor may establish an account by making an
10 initial contribution to the ABLÉ Program Trust, signing an application form
11 approved by the Board or its designee, and naming the designated
12 beneficiary. If the contributor is not the account owner, the account owner or
13 the account owner's guardian, trustee, or agent shall also sign the application
14 form.

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

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

18 (4) Contributions to an account shall not exceed maximum contribution limits
19 applicable to program accounts in accordance with the Federal ABLÉ Act.

20 (5) An account owner may change the designated beneficiary of an account to
21 an eligible individual who is a member of the family of the former
22 designated beneficiary. At the direction of an account owner, all or a portion
23 of an account may be transferred to another account of which the designated
24 beneficiary is a member of the family of the designated beneficiary of the
25 transferee account if the transferee account was created pursuant to this
26 section or in accordance with the Federal ABLÉ Act.

27 (c) Contributions. – The Board is authorized to accept, hold, invest, and disburse
28 contributions, and interest earned on such contributions, from contributors as trustees of the
29 ABLE Program Trust. The Board shall hold all contributions to the ABLÉ Program Trust, and
30 any earnings thereon, in the ABLÉ Program Trust and shall invest the contributions in
31 accordance with this section. The assets of the ABLÉ Program Trust shall at all times be
32 preserved, invested, and expended for the purpose of providing benefits to designated
33 beneficiaries and paying reasonable expenses of administering the ABLÉ Program Trust and
34 investing the assets of the ABLÉ Program Trust. Nothing in this Article shall be construed to
35 prohibit the Board from accepting, holding, and investing contributions from contributors who
36 reside outside of North Carolina. Neither the contributions to the ABLÉ Program Trust, nor the
37 earnings thereon, shall be considered State moneys, assets of the State, or State revenue for any
38 purpose. An account or a legal or beneficial interest in an account is not subject to attachment,
39 levy, or execution by a creditor of designated beneficiary.

40 (d) Limitations. – The Board, in administering the ABLÉ Program Trust, shall ensure
41 each of the following:

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- 1 (1) A rollover from an ABLE account shall constitute a qualified rollover if the
2 rollover distribution is in accordance with the Federal ABLE Act.
- 3 (2) A person may make contributions for a taxable year for the benefit of an
4 individual who is an eligible individual for the taxable year to an ABLE
5 account that is established to meet the qualified disability expenses of the
6 designated beneficiary of the account.
- 7 (3) A designated beneficiary is limited to one ABLE account.
- 8 (4) An ABLE account may be established only for a designated beneficiary who
9 is a resident of North Carolina or a resident of a contracting state.
- 10 (5) Except as permitted under the Federal ABLE Act a person does not direct
11 the investment of any contributions to or earnings from the Achieving a
12 Better Life Experience Program more than two times each year.
- 13 (6) An account or a legal or beneficial interest in an account is not assignable,
14 pledged, or otherwise used to secure or obtain a loan or other advancement.
- 15 (7) Separate records and accounting are maintained for each ABLE account.
- 16 (8) Reports are made no less frequently than annually to each ABLE account
17 owner.
- 18 (9) A trustee or guardian appointed as a signatory of an ABLE account does not
19 have or acquire any beneficial interest in the account and administers the
20 account for the benefit of the designated beneficiary.

21 **"§ 147-86.52 ABLE Program Board of Trustees.**

22 (a) Board. – There is established a Board of Trustees to provide oversight of the general
23 administration and proper operation of the ABLE program and to determine the appropriate
24 investment strategy for the ABLE Program Trust. The Board of Trustees shall consist of the
25 following six members:

- 26 (1) The State Treasurer, ex officio, or his or her designee, as Chair.
- 27 (2) The Commissioner of Banks, ex officio, or his or her designee.
- 28 (3) The Secretary of the North Carolina Department of Health and Human
29 Services, ex officio, or his or her designee.
- 30 (4) A person appointed by the Governor having experience in investments and
31 finance.
- 32 (5) A person appointed by the President Pro Tempore of the Senate having
33 experience in advocacy for the disabled.
- 34 (6) A person appointed by the Speaker of the House of Representatives that is
35 an immediate family member of an eligible individual or a guardian of an
36 eligible individual.

37 (b) Terms. – The members of the Board, except those members serving in an ex officio
38 capacity, shall be appointed for terms of three years and shall serve until their successors are
39 appointed and qualified. Vacancies are filled in the same manner as the original appointment.
40 No appointed member of the Board may serve longer than any of the following:

- 41 (1) Two consecutive three-year terms.

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1 (2) Three consecutive terms of any length, in the event that one or more of the
2 terms is for fewer than three years in duration or the member serves a partial
3 term as result of filling a vacancy.

4 (3) Eight consecutive years, regardless of term lengths.

5 (c) Duties – The Board of Trustees is authorized to:

6 (1) Delegate the authority to the State Treasurer to develop and perform all
7 functions necessary and desirable to (i) administer the ABLÉ Program Trust
8 in such a manner as to meet and comply with the requirements of the Federal
9 ABLE Act and federal regulations under the act, (ii) implement the
10 investment strategy of the Board, and (ii) provide other services as the Board
11 shall deem necessary to facilitate participation in the ABLÉ Program Trust.

12 (2) Notwithstanding provisions of Article 3 of Chapter 143, engage the services
13 of consultants on a contract basis for rendering professional and technical
14 assistance and advice.

15 (3) Retain the services of auditors, attorneys, investment counseling firms,
16 custodians, or other persons or firms possessing specialized skills or
17 knowledge necessary for the proper administration of investment programs
18 that the Board administers pursuant to this Article.

19 (4) Develop marketing plans and promotion material.

20 (5) Establish the methods by which the funds held in accounts shall be
21 dispersed.

22 (6) Establish the method by which funds shall be allocated to pay for
23 administrative costs.

24 (7) Do all things necessary and proper to carry out the purposes of this act.

25 (d) Investments – The Board shall determine and document in an investment policy
26 statement an appropriate investment strategy for the ABLÉ Program Trust containing one or
27 more forms of investments or strategies for investment from which account owners may select.
28 The Board shall authorize the State Treasurer to be responsible for engaging and discharging
29 investment managers and service providers, including contracting and contract monitoring, to
30 implement the investment strategy established by the Board. All amounts maintained in an
31 account shall be invested according to the account owner's election of one or more of the
32 strategies approved by the Board. Each strategy may include a combination of fixed income
33 assets and preferred or common stocks issued by any company incorporated, or otherwise
34 located within or outside the United States, or other appropriate investment instruments to
35 achieve long-term return through a combination of capital appreciation and current income. If
36 the Board approves multiple forms of investment as investment strategy options, transfers of an
37 account owner's accumulated funds shall be permitted among the various approved forms of
38 investments, subject to reasonable restrictions approved by the Board.

39 (e) Discharge of duties by the Board. – The assets of the ABLÉ Program Trust shall be
40 held in trust for the designated beneficiaries. The assets of the ABLÉ Program Trust shall at all
41 times be preserved, invested, and expended for the exclusive purpose of providing benefits to
42 designated beneficiaries and paying reasonable expenses of administering the ABLÉ Program

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1 Trust and investing the assets of the ABLE Program Trust. Compliance by the Board with this
2 section must be determined in light of the facts and circumstances existing at the time of the
3 Board's decision or action and not by hindsight. The Board shall discharge its duties with
4 respect to the ABLE Program Trust as follows:

- 5 (1) Solely in the interest of the designated beneficiaries.
- 6 (2) With the care, skill, and caution under the circumstances then prevailing
7 which a prudent person acting in a like capacity and familiar with those
8 matters would use in the conduct of an activity of like character and purpose.
- 9 (3) Impartially, taking into account any differing interests of designated
10 beneficiaries.
- 11 (4) Incurring only costs that are appropriate and reasonable.
- 12 (5) In accordance with a good-faith interpretation of the law governing the
13 ABLE Program Trust.

14 (f) Immunity. – A person serving on the ABLE Board of Trustees shall be immune
15 individually from civil liability for monetary damages, and exempt to the extent covered by
16 insurance, for any act or failure to act arising out of that service except where any of the
17 following apply:

- 18 (1) The person was not acting within the scope of that person's official duties.
- 19 (2) The person was not acting in good faith.
- 20 (3) The person committed gross negligence or willful or wanton misconduct that
21 resulted in the damages or injury.
- 22 (4) The person derived an improper personal financial benefit, either directly or
23 indirectly, from the transaction.

24 (g) Report. – The Board shall submit an annual evaluation of the ABLE savings
25 program and prepare and submit an annual report of such evaluation to the Joint Legislative
26 Oversight Committee on Health and Human Services.

27 (h) Other States. – With consent of the State Treasurer, the Board may enter into
28 agreements with other states to either (i) allow North Carolina residents to participate in a plan
29 operated a contracting state with a qualified ABLE program or, (ii) allow residents of other
30 states to participate in the qualified North Carolina ABLE Program Trust.

31 **"§ 147-86.53. Administration of ABLE Program.**

32 (a) Administration. – The Board may delegate to the State Treasurer the authority to
33 develop and perform all functions necessary and desirable to (i) administer the ABLE Program
34 Trust in such a manner as to meet and comply with the requirements of the Federal ABLE Act
35 and federal regulations under the act, (ii) implement the investment strategy established by the
36 Board, and (iii) provide such other services as the State Treasurer shall deem necessary to
37 facilitate participation in the ABLE Program Trust. The State Treasurer is further authorized to
38 obtain the services of such investment managers, investment advisors, service providers, or
39 program managers as may be necessary for the proper administration, marketing, and
40 investment of the ABLE Program Trust.

41 (b) Disclaimer. – Nothing in this section shall be construed to create any obligation of
42 the State Treasurer, the State, or any agency or instrumentality of the State to guarantee for the

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1 benefit of any parent, other interested party, or designated beneficiary the rate of return or other
2 return for any contribution to the ABLE Program Trust and the payment of interest or other
3 return on any contribution to the ABLE Trust Fund.

4 (c) Fees and Costs. – The State Treasurer may establish application, account, and
5 administration fees in an amount not to exceed the amount necessary to offset the costs of the
6 program. The following costs may be paid directly from the ABLE Program Trust:

7 (1) The costs of administration, management, investment, and operation of the
8 ABLE Program Trust.

9 (2) The costs of all actions authorized for the Board.

10 (3) The costs of all actions delegated to the State Treasurer and his or her staff
11 by the Board under this section. Such costs shall be allocated among the
12 designated beneficiaries in such manner as may be prescribed by the Board.
13 The Board shall no less than annually approve a budget and allocation of
14 costs.

15 (d) Means-Tested Programs. – Notwithstanding any other provision of law, an ABLE
16 account shall not be considered a resource for purposes of means tested State benefits.
17 Distributions for qualified disability expenses shall not be considered income for any State
18 benefits eligibility program that limits eligibility based on income.

19 (e) Claim for Medical Assistance Benefits. – To the extent provided in subsection 26
20 U.S.C. § 529(f) upon the death of a designated beneficiary, the State shall have a claim for
21 payment from the beneficiary's account in an amount equal to the total medical assistance paid
22 for the designated beneficiary after the establishment of the account. The State may file its
23 claim for repayment from the account with the State Treasurer within 60 days of receiving
24 notice from the State Treasurer of the death of the designated beneficiary. Any remaining funds
25 in the beneficiary's account shall be distributed as provided in the account agreement, or
26 distributed to the beneficiary's estate if no other designation is made.

27 (f) Notice of the Death of a Designated Beneficiary. – Within 30 days of the date the
28 State Treasurer receives notice of the death of a designated beneficiary, the State Treasurer
29 shall provide notice of the designated beneficiary's death to the Division of Medical Assistance,
30 Department of Health and Human Services.

31 (g) Notice to Account Owner for Designated Beneficiary Receiving Medicaid. – Notice
32 of the State's right to file a claim against the estate following the death of a designated
33 beneficiary who received medical assistance must be provided to the account owner. The notice
34 shall be on a form prescribed by the Division of Medical Assistance, Department of Health and
35 Human Services, and shall explain:

36 (1) The types of Medicaid payments subject to a claim against the estate.

37 (2) That a claim will not be made if the individual is survived by a legal spouse,
38 a child or children under the age of 21, or a blind or disabled child or
39 children of any age who became blind or disabled before age 21 and still live
40 on the property of the deceased designated beneficiary.

41 (3) That a claim against the estate is limited to specified conditions.

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(4) That a claim against the estate may be waived in the case of undue hardship and the procedure for claiming an undue hardship.

(h) Account information. – The information related to individual ABLE accounts are not public records as defined in Chapter 132 of the General Statutes."

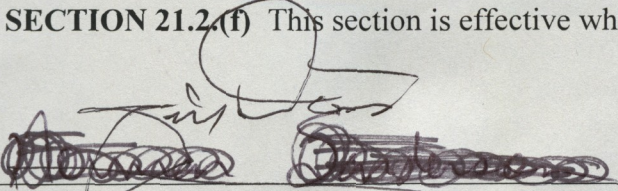
SECTION 21.2.(b) The Department of Health and Human Services shall provide information and assistance to the Department of State Treasurer and shall enter into a data sharing agreement with the Department of the State Treasurer for the purpose of the ongoing implementation of this section. The Department of State Treasurer shall consult with other departments as needed.

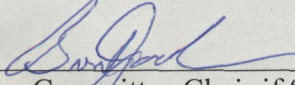
SECTION 21.2.(c) The Department of State Treasurer and the Department of Health and Human Services are authorized to adopt rules necessary to implement this section.

SECTION 21.2.(d) The State Treasurer shall begin accepting contributions authorized under this section when federal regulations regarding the Achieving a Better Life Experience 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 Achieving a Better Life Experience Trust Fund Program established in this section. If the federal regulations are materially inconsistent with this section, the Board may delay implementation of this section until a change in this section has been made. If the Board delays implementation, the Board shall provide a written report to the Governor, the Speaker of the House, and the President Pro Tempore of the Senate identifying the changes in this section that must be made to be consistent with federal regulation.

SECTION 21.2.(e) The Board authorized in G.S. 147-86.52 shall be organized immediately after a majority of the members have been qualified or appointed, and have taken the oath of offices. The terms for the trustees that are appointed shall be for initial terms to expire June 30, 2018.

SECTION 21.2.(f) This section is effective when it becomes law."

SIGNED 
Amendment Sponsor

SIGNED 
Committee Chair if Senate Committee Amendment

ADOPTED FAILED _____ TABLED _____

Comm. Amend. 11
Adopted and Engrossed
Pursuant to Rule 45.1
JUN 16 2015
