

House Bill 122 (COMMITTEE SUBSTITUTE)

By: Representatives Hawkins of the 27th, Newton of the 127th, Hatchett of the 155th, Lott of the 131st, and Bennett of the 94th

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 11 of Chapter 3 of Title 20 and Chapter 9 of Title 30 of the Official Code
2 of Georgia Annotated, relating to the higher education savings plan and Georgia Achieving
3 A Better Life Experience (ABLE), respectively, so as to provide for the governance of the
4 Georgia ABLE program by the board of directors of the Georgia Higher Education Savings
5 Plan; to revise the composition of the board of directors of the Georgia Higher Education
6 Savings Plan; to remove the maximum amount of contributions currently allowed per
7 beneficiary; to authorize the board to establish such maximum amount; to provide for the
8 transfer of rights and obligations; to provide for related matters; to provide for an effective
9 date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 11 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated, relating to the
13 higher education savings plan, is amended by revising subsection (a) of Code Section
14 20-3-633, relating to creation, board of directors, and assignment to Department of
15 Administrative Services, as follows:

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16 "(a)(1) There is created the Georgia Higher Education Savings Plan, as a body corporate
17 and politic and an instrumentality of the state, for purposes of establishing and
18 maintaining the Georgia Higher Education Savings Plan Trust Fund and qualified tuition
19 programs under Section 529 of the Internal Revenue Code as provided by this article.
20 The plan shall be governed by a board of directors consisting of the Governor as
21 chairperson, the ~~Chancellor~~ chancellor of the Board of Regents of the University System
22 of Georgia, the commissioner of the Technical College System of Georgia, the executive
23 director of the Georgia Student Finance Commission, the commissioner of behavioral
24 health and developmental disabilities, the commissioner of community health, the state
25 auditor, the director of the Office of Planning and Budget, the state revenue
26 commissioner, ~~three~~ and four directors who shall be appointed by and serve at the
27 pleasure of the Governor, ~~and the~~ at least one of whom shall be a person with a disability,
28 a family member of a person with a disability, or a disability advocacy professional. The
29 state treasurer ~~who~~ shall act as administrative officer of the board. A majority of the
30 board shall constitute a quorum, and the acts of the majority shall be the acts of the board.
31 (2) Members of the board who are state officials or employees shall receive no
32 compensation for their service on the board but may be reimbursed for expenses incurred
33 by them in the performance of their duties as members of the board. Any members of the
34 board who are not state officials or employees shall receive a daily expense allowance in
35 the amount specified in subsection (b) of Code Section 45-7-21 for each day such
36 ~~member is~~ members are in attendance at a meeting of the board. Expense allowances and
37 other costs authorized in this paragraph shall be paid from moneys in the trust fund."

38 SECTION 2.

39 Said article is further amended by revising paragraph (1) of subsection (b) Code Section
40 20-3-634, relating to savings trust accounts, availability, and terms and provisions, as
41 follows:

"(1) The maximum and minimum contribution allowed on behalf of each beneficiary for the payment of qualified higher education expenses at eligible institutions as defined in Section 529 of the Internal Revenue Code of 1986 or other applicable federal law; provided, however, that no additional contributions may be made to a savings trust account when the total account balance for all accounts for the beneficiary equals or exceeds ~~\$235,000.00~~ a reasonable maximum amount as determined by the board based on current and anticipated education expenses;"

SECTION 3.

Chapter 9 of Title 30 of the Official Code of Georgia Annotated, relating to Georgia Achieving A Better Life Experience (ABLE), is amended by revising Code Section 30-9-3, relating to definitions, as follows:

"30-9-3.

As used in this chapter, the term:

(1) 'ABLE account' means an account established and owned by an eligible individual pursuant to this chapter.

(2) 'Board' means the board of directors of the ~~Georgia ABLE Program Corporation~~ Georgia Higher Education Savings Plan established pursuant to Article 11 of Chapter 3 of Title 20.

(3) 'Corporation' means the Georgia ABLE Program Corporation created pursuant to Code Section 30-9-4.

(4) 'Designated beneficiary' means the eligible individual who establishes an ABLE account or to whom an ABLE account is transferred.

(5) 'Eligible individual' means an eligible individual as defined in Section 529A of the Internal Revenue Code.

(6) 'Georgia ABLE program' or 'program' means a qualified ABLE program established pursuant to this chapter.

(7) 'Internal Revenue Code' has the meaning provided in Code Section 48-1-2.

(8) 'Participation agreement' means the agreement between the board and an eligible individual participating in the Georgia ABLE Program Trust Fund or his or her fiduciary.

(9) 'Qualified ABLE Program' means a program established pursuant to Section 529A of the Internal Revenue Code.

(10) 'Qualified disability expense' means an expense as defined in Section 529A of the Internal Revenue Code.

(11) 'Trust fund' means the Georgia ABLE Program Trust Fund."

SECTION 4.

Said chapter is further amended by revising Code Section 30-9-4, relating to Georgia ABLE Program Corporation created, board of directors and its membership, and powers, duties, and administration, as follows:

"30-9-4.

(a)(1) There is created the Georgia ABLE Program Corporation, as a body corporate and politic and an instrumentality of the state, for purposes of establishing and administering the Georgia ABLE Program. ~~The~~ Prior to the effective date of this Code section, the corporation shall be governed by a board of directors consisting of the commissioner of behavioral health and developmental disabilities; the commissioner of community health; the state auditor; the director of the Office of Planning and Budget; the state revenue commissioner; the state treasurer; and three directors who shall be appointed by and serve at the pleasure of the Governor, who shall include at least two persons who are persons with a disability, a family member of a person with a disability, or a disability advocacy professional; provided, however, that the board of directors of the Georgia ABLE Program Corporation shall cease to exist on the effective date of this Code section. ~~The board shall elect a chairperson from its membership. The state treasurer shall act as administrative officer of the board. A majority of the board shall constitute a quorum,~~

94 ~~and the acts of the majority shall be the acts of the board. On and after the effective date~~
95 ~~of this Code section, the corporation shall be governed by the board of directors of the~~
96 ~~Georgia Higher Education Savings Plan established pursuant to Article 11 of Chapter 3~~
97 ~~of Title 20.~~

98 ~~(2) Members of the board who are state officials or employees shall receive no~~
99 ~~compensation for their service on the board but may be reimbursed for expenses incurred~~
100 ~~by them in the performance of their duties as members of the board. Any members of the~~
101 ~~board who are not state officials or employees shall receive a daily expense allowance in~~
102 ~~the amount specified in subsection (b) of Code Section 45-7-21 for each day such~~
103 ~~member is in attendance at a meeting of the board. Expense allowances and other costs~~
104 ~~authorized in this paragraph shall be paid from moneys in the trust fund.~~

105 (2)(A) The rights, privileges, entitlements, and duties of parties to contracts, leases,
106 agreements, and other transactions entered into before the effective date of this Code
107 section by the board of directors of the Georgia ABLE Program Corporation as it
108 existed on the day prior to the effective date of this Code section shall continue to exist,
109 and none of these rights, privileges, entitlements, and duties shall be impaired or
110 diminished by reason of the transfer of the functions of this chapter to the board of
111 directors of the Georgia Higher Education Savings Plan. In all such instances, the
112 board of directors of the Georgia Higher Education Savings Plan shall be substituted
113 for the board of directors of the Georgia ABLE Program Corporation, and the board of
114 directors of the Georgia Higher Education Savings Plan shall succeed to all such rights,
115 privileges, entitlements, and duties under such contracts, leases, agreements, and other
116 transactions.

117 (B) All rules, orders, and actions adopted pursuant to this chapter by the board of
118 directors of the Georgia ABLE Program Corporation as it existed on the day prior to
119 the effective date of this Code section shall remain in full force and effect as rules,
120 orders, and actions of the board of directors of the Georgia Higher Education Savings

Plan unless amended, repealed, or superseded by rule, order, or action of the board of directors of the Georgia Higher Education Savings Plan.

(C) All property, real and personal; funds; accounts receivable; liabilities; and obligations of the board of directors of the Georgia ABLE Program Corporation as it existed on the day prior to the effective date of this Code section shall become the property, funds, accounts receivable, liabilities, and obligations of the board of directors of the Georgia Higher Education Savings Plan on the effective date of this Code section.

(b) The board shall have the authority necessary or convenient to carry out the purposes and provisions of this chapter and the purposes and objectives of the trust fund, including, but not limited to, the authority to:

(1) Have a seal and alter the same at its pleasure; bring and defend actions; make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of its powers; and make and amend bylaws;

(2) Adopt such rules and regulations as are necessary to implement this chapter, subject to applicable federal laws and regulations;

(3) Contract for necessary goods and services; employ necessary personnel; engage the services of consultants and other qualified persons and entities for administrative and technical assistance in carrying out its responsibilities under this chapter; and contract with state or federal departments or agencies, upon such terms, for such consideration, and for such purposes as it deems advisable;

(4) Solicit and accept gifts, including bequests or other testamentary gifts made by will, trust, or other disposition grants, loans, and other funds or aid from any endowment or other public or private source or participate in any other way in any federal, state, or local governmental program in carrying out the purposes of this chapter;

(5) Define the terms and conditions under which payments may be withdrawn or refunded from an ABLE account or the trust fund established under this chapter and impose reasonable charges for a withdrawal or refund;

(6) Regulate the receipt of contributions or payments to the trust fund;

(7) Require and collect fees and charges to cover the reasonable costs of administering ABLE accounts and impose a 10 percent penalty on the earnings portion included within a withdrawal of funds for nonqualified disability expenses or for entering into a participation agreement on a fraudulent basis;

(8) Procure insurance against any loss in connection with the property, assets, and activities of the trust fund or the corporation;

(9) Establish other policies, procedures, and criteria and perform such other acts as necessary or appropriate to implement and administer this chapter; and

(10) Authorize the state treasurer to carry out any or all of the powers and duties enumerated in this chapter for efficient and effective administration of the program and trust fund.

(c) The corporation is assigned to the Department of Administrative Services for administrative purposes only."

SECTION 5.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.