

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/12/2015**

Amendment to: HB 1373

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$40,950	\$0	\$95,550
<b>Expenditures</b>	\$0	\$0	\$0	\$50,000	\$0	\$100,000
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
<b>Counties</b>	\$0	\$0	\$0
<b>Cities</b>	\$0	\$0	\$0
<b>School Districts</b>	\$0	\$0	\$0
<b>Townships</b>	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed HB 1373 relates to BND administering the ND Achieving a Better Life Experience (ABLE) Plan for qualified State disability expense programs.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Estimated revenue for the 2015-17 and 2017-19 biennium's of \$136,500 is based on an administrative fee of .20 basis points. The legislation is estimated to have expenditures for the 2015-17 and 2017-19 biennium's of \$150,000 to market and administer the ND ABLE Plan. This bill does not require a legislative appropriation.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Estimated revenue for the 2015-17 and 2017-19 biennium's of \$136,500 is based on an administrative fee of .20 basis points on net assets. Net assets are estimated at \$27,300,000 by the end of the 2017-19 biennium from an estimated 975 accounts opened annually with an average annual contribution of \$7,000.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Estimated expenditures for the 2015-17 and 2017-19 biennium's of \$150,000 covers travel, marketing, creation of materials, web site, and other administrative costs to start the ND ABLE Plan.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Bank of North Dakota will fund estimated expenditures for Engrossed HB 1373, therefore this bill does not require a legislative appropriation.

**Name:** James Barnhardt

**Agency:** Bank of North Dakota

**Telephone:** 701.328.5882

**Date Prepared:** 02/12/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/19/2015**

Bill/Resolution No.: HB 1373

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$40,950	\$0	\$95,550
Expenditures	\$0	\$0	\$0	\$50,000	\$0	\$100,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB1373 relates to BND administering the ND Achieving a Better Life Experience (ABLE) Plan for qualified State disability expense programs.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Estimated Revenue for the 2015-17 and 2017-19 biennium's of \$136,500 is based on an administrative fee of .20 basis points. The Legislation does not include an appropriation but is estimated to have expenditures for the 2015-17 and 2017-19 biennium's of \$150,000 to market and administer the ND ABLE Plan.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Estimated Revenue for the 2015-17 and 2017-19 biennium's of \$136,500 is based on an administrative fee of .20 basis points on net assets. Net assets are estimated at \$27,300,000 by the end of the 2017-19 biennium from an estimated 975 accounts opened annually with an average annual contribution of \$7,000.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Estimated expenditures for the 2015-17 and 2017-19 biennium's of \$150,000 covers travel, marketing, creation of materials and a web site and other administrative costs to start the ND ABLE Plan.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

HB1373 does not specify an appropriation.

**Name:** James Barnhardt

**Agency:** Bank of North Dakota

**Telephone:** 701.328.5882

**Date Prepared:** 01/22/2015

**2015 HOUSE FINANCE AND TAXATION**

**HB 1373**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1373  
1/26/2015  
22498

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Mary Buckner*

## Explanation or reason for introduction of bill/resolution:

A Bill relating to creation of the North Dakota achieving a better life experience plan and an individual income tax deduction for contributions to the North Dakota achieving a better life experience plan; relating to the North Dakota achieving a better life experience plan.

## Minutes:

Attachment #1, 2

**Chairman Headland:** Opened hearing.

**Representative Dosch:** Introduced bill. This bill is a piece of enabling legislation that allows the Bank of North Dakota to implement a new federal program. They are also going to propose some amendments that I'm fine with and encourage you to adopt as well.

**James Barnhardt, College SAVE Plan Administrator at Bank of North Dakota:** Provided testimony in support to include fiscal note, amendments, and copy of the bill. See attachment #1. (Ended testimony at 5:15)

**Representative Trottier:** Can you quickly walk through an example of an individual doing this?

**James Barnhardt:** Sure. In a 529 plan a participant or an account owner establishes an account for a named beneficiary, in most cases a young child up to a teenage child. They would then use those funds being set aside and investing and growing tax free if used for a qualified withdrawal to be used later on when that child goes to school. The legislation that Congress passed modeled it after 529 plans and was even going to be an amendment to existing 529 plans but they thought it would be better to just create their own code. In this case the beneficiary would actually be the account owner who can establish that account as a caregiver or as a parent for that person if need be. Then in the same manner as the existing 529 plans, they can set aside up to certain amounts that can be used for education but can also be used for a host of other related medical, disability and caregiving expenses. That's the big difference between the two plans.

**Representative Steiner:** You're saying right now they are limited to \$2,000 a year for assets as a disabled person? Is that what you're talking about with the federal means test?

**James Barnhardt:** As this is being so new I cannot pretend to be an expert yet. It is my understanding that right now you can only set aside so much money without it having a significant impact on money you might receive from federal programs or other programs. This legislation definitely makes sure that up to \$100,000 there would be no impact and maybe limited impact after that. In setting forth the program and administering it we would follow that legislation and work to make sure we are doing everything properly.

**Chairman Headland:** Further testimony in support?

**Roxane Romanick, Executive Director for Designer Genes of North Dakota:** Provided testimony in support. See attachment #2. (Ended testimony at 13:25)

**Chairman Headland:** Is there a companion bill to this that creates a solution to this problem?

**Roxane Romanick:** I'm not sure.

**Chairman Headland:** Further testimony in support of 1373?

**Kirsten Dvorak, parent of a child with autism:** I'm in favor of the bill. My son is very high functioning; however, he does need support. I believe 1373 is very important.

**Chairman Headland:** Further testimony in support?

**David Boeck, lawyer for Protection and Advocacy Project:** We strongly support this bill. I agree with the suggestion from Ms. Romanick that it would be very beneficial if the Bank of North Dakota develops strong ties with the disability community to get input in defining who is eligible and what costs are available to be spent under the program.

**Chairman Headland:** That's why I was wondering if there was legislation to help in that area. We'll find that out.

**David Boeck:** I think a lot of this is going to be determined under the federal able act.

**Chairman Headland:** Further testimony in support? Is there any opposition to the bill? Seeing none we will close this hearing on HB 1373.

# 2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1373  
2/9/2015  
23500

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A bill relating to creation of the North Dakota achieving a better life experience plan and an individual income tax deduction for contributions to the North Dakota achieving a better life experience plan; relating to the North Dakota achieving a better life experience plan.

## Minutes:

No attachments

**Chairman Headland:** This is the creating a better life experience plan that was brought to us by Representative Dosch and fully supported by the Bank of North Dakota.

**Representative Schneider:** MADE A MOTION FOR A DO PASS.

**Representative Trottier:** SECONDED.

**ROLL CALL VOTE: 9 YES 5 NO 0 ABSENT**  
**MOTION CARRIES FOR DO PASS**

**Representative Schneider will carry this bill.**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Fort Totten Room, State Capitol

HB 1373  
2/10/2015  
23614

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Mary Bruecker*

## Explanation or reason for introduction of bill/resolution:

A bill relating to creation of the North Dakota achieving a better life experience plan and an individual income tax deduction for contributions to the North Dakota achieving a better life experience plan; relating to the North Dakota achieving a better life experience plan.

## Minutes:

Attachment #1

**Chairman Headland:** There was further action needed on this bill so could I get a motion to reconsider our actions?

**Vice Chairman Owens:** **MADE A MOTION TO RECONSIDER OUR ACTIONS OF A DO PASS.**

**Representative Dockter:** **SECONDED.**

**VOICE VOTE: MOTION CARRIED.**

**Representative Schneider:** Distributed proposed amendments 15.0879.01001 and explained. See attachment #1. In our haste to get this good bill out we failed to deal with the amendment that was requested by the Bank of North Dakota. They said it was an error to put in a tax deduction and it wasn't included in the fiscal note. This type of account is not yet ready for a tax deduction issue. We would be taking out information regarding a tax deduction.

**Chairman Headland:** It's removing everything on page two.

**Vice Chairman Owens:** **MADE A MOTION TO ADOPT THE AMENDMENT 15.0879.01001.**

**Representative Haak:** **SECONDED.**

**VOICE VOTE: MOTION CARRIES.**

**Vice Chairman Owens:** **MADE A MOTION FOR A DO PASS AS AMENDED.**

**Representative Dockter: SECONDED.**

**ROLL CALL VOTE: 13 YES 1 NO 0 ABSENT  
MOTION CARRIES FOR DO PASS AS AMENDED.**

**Representative Schneider will carry this bill.**

JS  
2/10/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1373

Page 1, line 1, remove "and a new subdivision to subsection 2"

Page 1, line 2, remove "of section 57-38-30.3"

Page 1, line 3, remove "and an individual income tax deduction for"

Page 1, remove lines 4 and 5

Page 1, line 6, remove "Dakota achieving a better life experience plan"

Page 1, line 6, after the first semicolon insert "and"

Page 1, line 6, remove "; and to"

Page 1, line 7, remove "provide an effective date"

Page 1, line 20, remove "Contributions made during the taxable year to a disabled individual savings"

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 16

Renumber accordingly

Date: 2-9-15  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1373

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Schneider Seconded By Rep. Trottier

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS		✓	REP STRINDEN	✓	
REP DOCKTER		✓	REP MITSKOG	✓	
REP TOMAN	✓		REP SCHNEIDER	✓	
REP FROSETH		✓			
REP STEINER	✓				
REP HATLESTAD		✓			
REP KLEIN		✓			
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. Schneider

If the vote is on an amendment, briefly indicate intent:

Date: 2-10-15  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1373

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep Owens    Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Voice vote = Motion carried.

Date: 2-10-15  
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1373

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15,0879.01001  
Removing all on page 2 01001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep. Owens Seconded By Rep. Haak

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Voice vote = Motion carries.*

Date: 2-10-15  
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1373

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0879.01001

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Owens Seconded By Rep. Darter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS	✓		REP STRINDEN	✓	
REP DOCKTER	✓		REP MITSKOG	✓	
REP TOMAN	✓		REP SCHNEIDER	✓	
REP FROSETH		✓			
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Schneider

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1373: Finance and Taxation Committee (Rep. Headland, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1373 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "and a new subdivision to subsection 2"

Page 1, line 2, remove "of section 57-38-30.3"

Page 1, line 3, remove "and an individual income tax deduction for"

Page 1, remove lines 4 and 5

Page 1, line 6, remove "Dakota achieving a better life experience plan"

Page 1, line 6, after the first semicolon insert "and"

Page 1, line 6, remove "; and to"

Page 1, line 7, remove "provide an effective date"

Page 1, line 20, remove "Contributions made during the taxable year to a disabled individual savings"

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 16

Re-number accordingly

**2015 SENATE FINANCE AND TAXATION**

**HB 1373**

# 2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee  
Lewis and Clark Room, State Capitol

HB1373  
3/17/2015  
Job #24968

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Alice Grove*

## Explanation or reason for introduction of bill/resolution:

Relating to creation of the North Dakota achieving a better life experience plan; and to provide a continuing appropriation.

## Minutes:

Attachments #1, #2, #3, #4, #5, #6

**Chairman Cook** opened the hearing on HB1373.

**Rep. Mark Dosch, Dist. 32** --I'm here today to introduce HB1373 on behalf of the Bank of North Dakota. It allows them to take advantage of a new federal program called Achieving a Better Life Experience. The Bank of North Dakota is here today. They will be going through and explaining the bill to you and what it does and answering any questions you may have.

**Sen. Cook** -- What does it do to the people of North Dakota?

**Rep. Dosch** -- It will help them with the developmentally disabled.

**Sen. Cook** -- Can you tell us how?

**Rep. Dosch** -- What it does is it allows them to take advantage of a new IRS code that allows for contributions to a savings plan for them.

**Sen. Kyle Davison, Dist. 41** -- I was asked by a constituent to support this bill. They had an 18 year old daughter who was riding a gym car and they were going around a roundabout and she was riding on the side of it and she fell off and hit her head on the curb and she had brain damage. She was an all-state basketball player. Now they are caretakers to their daughter and she is doing pretty well. What this bill is it allows families like this that raise money to put that money away for their children and grow tax free. The original bill had that people would get a tax deduction and, to their credit, they weren't interested in a tax deduction. They are interested in the long term security of their children, when they pass away. That there is money that grows interest free. They do some fund raising. They would appreciate a yes vote.

**Sen. Cook** -- The bill, I know, does a lot of things for some people, but you can read this bill and there is no indication of what it does. We are used to reading tax bills here. We will wait until the Bank of North Dakota testifies.

**James Barnhardt, College SAVE Plan Administrator, Bank of North Dakota** -- I am here today to provide further details on this legislation and in support of engross HB1373 (Attachment #1)

**Sen. Laffen** -- \$14,000, is that per year or total?

**James Barnhardt** -- In a normal 529 plan people can make contributions up to what their means are. With the State of North Dakota, we allow \$269,000 in maximum contributions, one-time or over the lifetime of the account. With these ABLE accounts, the federal government established different limits and those limits are \$14,000 in yearly contributions.

**Sen. Cook** -- \$14,000 per individual, or per beneficiary?

**James Barnhardt** -- Per beneficiary so that is all that could be established for that beneficiary in that particular year. I don't want to misspeak on that because there is a lot of details and a lot of things that this bill is still being vetted out by our national organization, the college saving plan network, and a lot of legal and compliance folks. There are no rules and regulations established for this plan, at the moment, and we are already going back to Congress with some suggestions on tweaking this so that it can be more accessible for families with disabled individuals. One of the things that I did point out was that beneficiaries need to be the account owners which is obviously not the case in a 529 plan. You, as a parent or a grandparent, would normally establish an account for a child or a beneficiary but this legislation was passed as the beneficiary being the account owner. We are not sure if people are going to have to establish a trust or if they are going to need guardianship. How does a young child become an account owner of something like this? There are things to be worked out.

**Sen. Cook** -- If this bill passes and the governor signs it into law, when do you see all of your rules and everything becoming final and actually delivering benefits to people.

**James Barnhardt** -- I would say it would be at least 6 months to a year, if not longer. I was just down in a conference in Austin, Texas, at the college savings foundation conference. Obviously the ABLE plan was the topic of discussion among many of the administrators and people that were down there. I don't think there's any guidelines on how quickly those rules will be established. I believe they are trying to move quicker than usual.

**Sen. Triplett** -- When was this legislation passed by Congress?

**James Barnhardt** -- The legislation was just passed at the end of December. People had known about the bill for about 8 years. It got a lot of traction this past fall with a lot of co-sponsors and it quickly passed in December. At that time we were made aware of it. To date, 20 states are currently working on legislation.

**Sen. Triplett** -- Would it be beneficial to you if we were to put an effective date on the bill, consistent with when the federal guidelines are put out, or do you not need that type of instruction?

**James Barnhardt** -- I believe that we can do that on our own. We are going to watch what other states are doing. (meter 13:25-14:43)

**Sen. Laffen** -- Are there any rules related to how the money goes into the account? Can a parent just write a \$14,000 check and put it in the account or does it have to be fund raised? Or are those rules to be written yet?

**James Barnhardt** -- The ABLE legislation was originally drafted and going to be part of the 529 plans. Many people said that would not be to the best benefit of the disabled community. But, with that in mind, people can just write a check. They can put in as little as \$25. (meter15:37-16:05)

**Sen. Oehlke** -- It seems to me that pretty much anyone in this situation would probably be involved with a trust department somewhere and there would be a trust account and then the trust department would probably use this as one of the tools they have in their toolbox to provide for future needs. Would you be working with trust departments like that?

**James Barnhardt** -- Yes. Even with our existing 529 plan, we do occasionally speak with trust departments and give them guidance or have them assist us in promoting the 529 plan. (meter16:46-16:57)

**Sen. Dotzenrod** -- I was glad to see in your testimony that you capitalize achieving a better life experience and then you use the acronym ABLE as a formal name. It seems to me in the bill, we have a better life experience plan with no capital letters. It doesn't appear to be a formal name for something that has some sort of status under the law. It seems that we should capitalize that and have that as a formal title. It has a definition. (meter17:35-18:33)

**James Barnhardt** -- That is incorrect. The federal government established these plans so that each state must create their own disability act, and what we are calling it, I do agree with you, the intent was to make it the North Dakota Achieving a Better Life Experience plan. So that we don't cause confusion with 529 and 529A and that sort of thing. But residents or individuals in their state must use their state adopted plan or the plan that the state contracts with another state for. (meter 19:13-20:31)

**Sen. Cook** -- That 529 deduction for the save plan, that wasn't done by the Bank of North Dakota. That was done in legislative code, correct?

**James Barnhardt** -- Yes. All 529 plans offer a tax deferred earnings as long as the money is used for qualified higher education contributions. (meter 20:57-21:10)

**Sen. Cook** -- This looks like enabling legislation that enables you to set up a plan. We are not enabling you to set up any sort of North Dakota tax credits.

**James Barnhardt** -- That is correct.

**Sen. Triplett** -- Since the Bank of North Dakota is, we believe, unique in the country. Who, in other states, is doing what you are doing, in terms of thinking this through. Would it be a state human services department or who is taking the lead in other states?

**James Barnhardt** -- From what I understand, with the college savings plan network, the vast majority of 529 plan administrators in their states are also taking this on. As a separate program, administered separately from their 529 plan. (meter 22:04-22:37)

**Sen. Laffen** -- Please clarify for me, the contributions going into the plan are not tax deductible in any way, it's just the earnings in the plan? There's not tax on the growth?

**James Barnhardt** -- The earnings only are not federally taxed or state taxed, if they are used for qualified distributions. And with the ABLE legislation it's much more far reaching than just college education expenses.

**Pamela Kolling, Exec. Director of The Arc of Dickinson -- (Attachment #2)**

**Sen. Triplett** -- What I am hearing you say is that the real benefit to this program is not the tax advantage for the incomes that might be earned but it's the ability to have up to \$100,000 in an account that does not throw you off Medicaid.

**Pamela Kolling** -- Medicaid or any of those programs because in Josette's case, it's really tough and you don't want to put that on other people to have to reapply.

**Sen. Cook** -- Would having this plan in place have made it easier for you, would you still had to spend the money you did with legal fees?

**Pamela Kolling** -- Not the irrevocable special needs trust because what Josette's trust does is that any money that was in there, once she passes away, would go back to the state for her care. The third party special needs trust is for any money that, let's just say my ex-husband dies, and he has this farm, and so he wouldn't put it into that irrevocable trust, he could put it into the third party special needs trust because he can now delegate that to go to the 3<sup>rd</sup> party special needs trust and then once Josette passes on, what's ever in there, could go to the siblings.

**David Boeck, State employee and lawyer for the Protection & Advocacy Project -- (Attachment #3)** In support of this bill.

**Sen. Oehlke** -- The age 26, was that established because that correlates with the Affordable Care Act? Or did the age 26 come out of some other reason?

**David Boeck** -- I don't actually know. I haven't heard of any connection with the Affordable Care Act.

**Sen. Dotzenrod** -- In your testimony you said the funds could only be spent for disability expenses. Is there going to be any controversy or is there someone watching or how

would that mechanism of being sure that these expenses were legitimate and there wasn't someone manipulating the account? Is there an oversight process?

**David Boeck** -- I think that is yet to be put in place at the federal level.

**Royce Schultze, Executive Director of Dakota Center for Independent Living here in Bismarck -- (Attachment #4)** In favor of HB1373.

**Pat Weinberg & Luke Weinberg--** In favor of HB1373. **(Attachment #5)**

**Sen. Oehlke** -- Luke, Harry Potter. Up in my desk, in the chamber, I have a box for you of Harry Potter's bertie botts every flavor beans. If you stay around until this hearing is over and follow me upstairs, I'll make sure you get that, ok?

**Luke Weinberg** -- Yes sir.

**Roxane Romanick, Executive Director, Designer Genes of ND, Inc. (Attachment #6)**

No further testimony.

**Sen. Cook** -- James, I just have 2 more little questions: the bill took 8 years to move through Congress, do you remember the bill number that finally passed?

**James Barnhardt** -- I do not. It was a private individual that got it started many years ago.

**Sen. Cook** -- Regarding the investment strategy, Bank of North Dakota establishes a targeted rate of return that they want or is that left up to Vanguard? How risky is it going to be invested?

**James Barnhardt** -- At this stage, we have no idea what sort of investments are going to be recommended. In our current 529 plan, it is an investment strategy, in order to keep up with the rising cost of college tuition, and fees and room and board.

**Sen. Cook** -- Fairly risky.

**James Barnhardt** -- It can be risky. You can be in anything from a 100% stock portfolio to a mix of stocks and bonds. All the way down to a money market. Or, cash and bonds. That's something that is going to have to be determined through our program management and administration. We will take into account the experts in the field.

**Sen. Cook** -- State investment board for PERS determines it's 8% annual return that they want investment that will yield that. If that is going to be done, you will set that? The Bank of North Dakota will establish that?

**James Barnhardt** -- We do not establish an actual set rate of return. People do have the opportunity to lose money in their investments and have lost money in the past. All of our funds, to date, since 2006 have returned a fair percentage.

**Sen. Oehlke** -- Looking at the act in question, it does say that you do not need to be under the age of 26 to be eligible for an ABLE account. You could be over the age of 26 but must have the documentation of disability that indicates age of onset was before the age of 26. It comes up under achieving a better life experience ABLE act.

**Chairman Cook** closed the hearing on HB1373.

# 2015 SENATE STANDING COMMITTEE MINUTES

**Finance and Taxation Committee**  
Lewis and Clark Room, State Capitol

HB1373  
3/23/2015  
Job #25243

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Alice Grove*

## Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

**Chairman Cook** opened the committee work on HB1373.

**Sen. Laffen** -- This was the bill that created, actually federal legislation, enabled states to create a 529A program called Achieving a Better Life Experience. What it does is allows accounts to be set up for disabled who were disabled before the age of 26. You could have an account set up and money could go in there. It's taxed as it goes in but any of the earnings then accumulate tax free over a long period of time and that money can be used to take care of that person once you are gone. Mostly I think this would be used for parents who have children with disabilities. They would start to set up life accounts for them after they are gone. It doesn't really cost us all that much and the testimony that I remembered hearing was that this is expensive to set up on your own, through lawyers, and this would achieve some of that much simpler.

**Sen. Triplett** -- I think the best value in this, from a legal standpoint, is that it would keep people who are on SSI from getting bounced on and off as they got little bits of gift money. Without regard to the bits of interest being tax free, I think, just the fact of the accounts being able to protect some asset levels, while allowing people to maintain their membership is valuable. (meter 1:47-2:05). If we are ready to move, I would move a do pass.

**Sen. Bekkedahl** -- Seconded.

**Sen. Cook** -- We have a lot of rules that have to be written yet for this bill.

**Sen. Dotzenrod** -- One of the things that surprised me when I first read this bill was that they had small letters on better life experience plan. When I first read that I thought well people can just draw up a plan of their own and then I found out that that better life experience actually referred to something specific. That's a proper name. Not just something that you make up.

**Sen. Cook** -- Capital A, capital B, capital L, capital E.

**Sen. Triplett** -- I think that the folks from legislative council have this drafting policy where they really don't like using capitals, even for things that we all would routinely use capitals for. It drives me nuts too.

No further discussion.

**Roll call vote on HB1373. 7-0-0. Carried**

**Carrier: Sen. Laffen**

Date: 3.23-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1373

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By: Sen. Triplett    Seconded By Sen. Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Laffen

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1373, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)**  
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1373 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**HB 1373**

HB 1373  
1-26-15  
#1 p.1

TESTIMONY TO THE  
HOUSE FINANCE AND TAX COMMITTEE

JANUARY 26, 2015

JAMES BARNHARDT – ADMINISTRATOR, COLLEGE SAVE PLAN

BANK OF NORTH DAKOTA

Chairman Headland and Committee members my name is James Barnhardt, College SAVE Plan Administrator at Bank North Dakota. I am here today to support passage of House Bill 1373 and to introduce an amendment to remove language pertaining to a tax deduction referenced in House Bill 1373 as it was not the intent of the original bill to include the tax deduction. The fiscal note addresses revenue and expenditures without the tax deduction.

The Bill supports the Achieving a Better Life Experience (ABLE) legislation passed by Congress and signed into law by President Obama which allows states to establish and maintain savings programs for families and individuals to save for disability-related expenses of a disabled individual in a federal tax-advantaged account.

The ABLE Legislation is modeled after 529 higher education savings program legislation and established 529A Internal Revenue Service code which provides similar federal income tax advantages of 529 plans by growing contributions tax deferred and tax exempt when used for qualified disability expenses.

The College Savings Plan Network (CSPN), of which the Bank is a member, worked closely with bill sponsors and committees to remove much of the concern and confusion of amending the 529 code. This allowed for a substantially revised version of the ABLE Act to be presented and create the new 529A section. The Bank and CSPN are proud to have been a small part of the process and look forward to establishing the new program and working closely with North Dakota's disabled community.

As with any new legislation, there are many questions as to how the program will need to be established, who can open accounts, how can we certify eligible individuals that meet program guidelines and appropriately administer, manage, promote and market the ND ABLE Plan. We are confident that with our expertise in the 529 higher education arena, with support from a national network of professionals through CSPN and state interagency relationships we can successfully launch the program and comply with internal revenue standards for qualified state disability expense programs.

With that being said, there is a much work to be done to create the program and much to learn about the disabled community and the rules and policies that must be followed. Nationally private organizations are reviewing the federal legislation so as to determine if they will be able to offer record keeping and investment services, other states are proceeding with plans to offer contractual services to states that are passing similar legislation and several committees have been formed through CSPN to

look at legal, compliance and a host of questions that need to be answered before these programs can be successfully launched.

As a brief overview, eligible individuals who may take advantage of the ND ABLE Plan are defined as disabled, being entitled to benefits based on blindness or disability under titles of the Social Security Act, or has a disability certification filed with the Treasury Secretary, became disabled before age 26 or is certified as blind.

The similarities between a 529 and 529A account end after the tax advantages mentioned earlier. For the ND ABLE Plan the beneficiary is the account owner, there can only be one account established for the beneficiary, the account must be established in the beneficiary's home state or a state we contract with, annual contributions are limited to \$14,000 per beneficiary and qualified distributions cover much more than college expenses including housing, transportation, employment trainings, assistive technology, health, prevention and wellness, financial management and administrative services, legal fees, oversight and monitoring expenses and funeral and burial expenses.

As with a traditional 529 plan, non-qualified withdrawals in the ABLE Plan are taxed with a 10 percent penalty but these taxes and penalties can be avoided on non-qualified distributions if they are returned to the account before the federal tax filing deadline.

Two more important programs are as follows: upon the death of a beneficiary the state can make a claim for funds in the account up to the net amount the state paid in medical assistance and ABLE accounts are excluded from being counted for means-tested federal programs so that eligibility can be maintained. ABLE account balances and withdrawals are completely excluded for the purpose of Medicaid and other benefit programs. Regarding Supplemental Security Income, the first \$100,000 in ABLE account balances are excluded from counting as resources as are most account withdrawals.

In closing, the complexity to launch this new national program along with oversight, recordkeeping and investing will not be easy but we will work diligently to understand the nuances of aid being offered to families with disabilities, follow federal legislation and work closely with our national counterparts to create the best possible ND ABLE Plan to assist these families in need. We are excited and proud to be a part of this new program and offer our full support of passage of House Bill 1373.

Thank you for your consideration and I am available for questions.

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/19/2015**

Bill/Resolution No.: HB 1373

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$40,950	\$0	\$95,550
Expenditures	\$0	\$0	\$0	\$50,000	\$0	\$100,000
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB1373 relates to BND administering the ND Achieving a Better Life Experience (ABLE) Plan for qualified State disability expense programs.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Estimated Revenue for the 2015-17 and 2017-19 biennium's of \$136,500 is based on an administrative fee of .20 basis points. The Legislation does not include an appropriation but is estimated to have expenditures for the 2015-17 and 2017-19 biennium's of \$150,000 to market and administer the ND ABLE Plan.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Estimated Revenue for the 2015-17 and 2017-19 biennium's of \$136,500 is based on an administrative fee of .20 basis points on net assets. Net assets are estimated at \$27,300,000 by the end of the 2017-19 biennium from an estimated 975 accounts opened annually with an average annual contribution of \$7,000.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Estimated expenditures for the 2015-17 and 2017-19 biennium's of \$150,000 covers travel, marketing, creation of materials and a web site and other administrative costs to start the ND ABLE Plan.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

HB1373 does not specify an appropriation.

**Name:** James Barnhardt

**Agency:** Bank of North Dakota

**Telephone:** 701.328.5882

**Date Prepared:** 01/22/2015

#1p.5

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1373

Page 1, line 3, after "plan" remove "an individual income tax deduction for"

Page 1, remove lines 4 through 5

Page 1, line 6, remove "Dakota achieving a better life experience plan;"

Page 1, line 6, after "appropriation" replace "; and to" with "."

Page 1, remove line 7

Page 1, line 20, after "section." Remove "Contributions made during the taxable year to a disabled individual savings"

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 16

Renumber accordingly

#1 p. 6

Sixty-fourth  
Legislative Assembly  
of North Dakota

\_\_\_\_\_ BILL NO. \_\_\_\_\_

Introduced by

A BILL for an Act to create and enact section 6-09-38.1 to the North Dakota Century Code relating to tax-exempt savings accounts for certain disabled individuals.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** Section 6-09-38.1 of the North Dakota Century Code is created and enacted as follows:

**North Dakota Achieving a Better Life Experience Plan – Administration – Rules – Continuing appropriation.**

The Bank of North Dakota shall adopt rules to administer, manage, promote, and market a North Dakota Achieving a Better Life Experience (ABLE) plan. The Bank shall ensure that the North Dakota ABLE plan is maintained in compliance with internal revenue service standards for qualified state disability expense programs. The Bank, as trustee of the North Dakota ABLE plan, may impose an annual administrative fee to recover expenses incurred in connection with operation of the plan. Administrative fees received by the Bank are appropriated on a continuing basis to be used as provided in this section.



HB 1373  
1-26-15  
#2 p.1

## HB 1373

**North Dakota Achieving a Better Life Experience (ABLE) Plan  
House of Representatives Finance and Taxation Committee  
Monday, January 26, 2015**

Chairman Headland and Members of the Senate Finance and Taxation Committee:

My name is Roxane Romanick and I'm representing Designer Genes of ND, Inc., as their Executive Director. Designer Genes represents 140 individuals with Down syndrome and their families across the state of North Dakota. This represents approximately 25% of the Down syndrome population in ND. Designer Genes' mission is to strengthen opportunities for individuals with Down syndrome and those who support them to earn, learn, and belong.

I'm here to ask your support for HB 1373. Designer Genes is in very interested in seeing the ABLE Act be enacted in North Dakota. We have closely followed the passage in Congress and were able to advocate for the bill a number of times with our Congressional delegation. As you might already know, the federal bill had a historically high number of bi-partisan co-sponsors and all three of our ND Congressional delegation was on that list. They all voted "yes" this past December. We would like to thank the bill sponsors and the Bank of ND for moving forward with HB 1373 so close on the heels of the federal bill passing.

While I speak to you today as the director of Designer Genes, I also speak to you as a mom of a 15-year old daughter, who has more hopes and dreams than you can imagine. Elizabeth is a freshman at Century High School. Yesterday, she was looking at recording equipment to launch her career as a music producer and the day before she was browsing through colleges. We have raised her to believe that you shouldn't limit your dreams, because it's those dreams that get us to the realities that can make our lives full and happy. Because of the advocacy at the federal level, the ABLE plan can now become one of the tools that Elizabeth may need to move forward on seeing her dreams come true.

Much is yet to be learned about the ABLE plan, since the dust has just settled in Washington and they are just starting to work on the regulations. The issues that Designer Genes is the most concerned in regards to state implementation include the determination of who may start a plan and the processes that will be put in place to make this determination. We are also concerned about the types of expenses that will be allowed and how the plan will be administered.

Since public comment will be allowed at the federal level on the upcoming regulations, we would like to assure that public comment is also allowed on the state administrative code that will be written in North Dakota to implement the ABLE plan. Because the key components involve issues related to understanding disabilities, we believe that a partnership between the Bank of North Dakota and North Dakota's disability experts (including consumers and their families) will be essential. Please keep this as a consideration as you move forward on HB 1373.

Thank you for your time.  
Roxane Romanick

**Designer Genes of North Dakota • P.O. Box 515, Bismarck, ND 58502  
701-391-7421 • romanick@bis.midco.net • www.designergenesnd.com**

15.0879.01001  
Title.

Prepared by the Legislative Council staff for  
Representative Schneider  
February 10, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1373

Page 1, line 1, remove "and a new subdivision to subsection 2"

Page 1, line 2, remove "of section 57-38-30.3"

Page 1, line 3, remove "and an individual income tax deduction for"

Page 1, remove lines 4 and 5

Page 1, line 6, remove "Dakota achieving a better life experience plan"

Page 1, line 6, after the first semicolon insert "and"

Page 1, line 6, remove "; and to"

Page 1, line 7, remove "provide an effective date"

Page 1, line 20, remove "Contributions made during the taxable year to a disabled individual savings"

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 16

Renumber accordingly

/.

TESTIMONY TO THE  
SENATE FINANCE AND TAX COMMITTEE

March 17, 2015

ENGROSSED BILL HB 1373

JAMES BARNHARDT – ADMINISTRATOR, COLLEGE SAVE PLAN  
BANK OF NORTH DAKOTA

Chairman Cook and Committee members my name is James Barnhardt, College SAVE Plan Administrator at Bank North Dakota. I am here today to support passage of Engrossed House Bill 1373,

The Bill supports the Achieving a Better Life Experience (ABLE) legislation passed by Congress and signed into law by President Obama which allows states to establish and maintain savings programs for families and individuals to save for disability-related expenses of a disabled individual in a federal tax-advantaged account.

The ABLE Legislation is modeled after 529 higher education savings program legislation and established 529A Internal Revenue Service code which provides similar federal income tax advantages of 529 plans by growing contributions tax deferred and tax exempt when used for qualified disability expenses.

To date 16 states have introduced legislation to create the ABLE plans. An additional two states are drafting legislation and two others have passed legislation.

As with any new legislation, there are many questions as to how the program will need to be established, who can open accounts, how can we certify eligible individuals that meet program guidelines and appropriately administer, manage, promote and market the ND ABLE Plan. We are confident that with our expertise in the 529 higher education arena, with support from a national network of professionals through the College Savings Plan Network (CSPN) and state interagency relationships we can successfully launch the program and comply with internal revenue standards for qualified state disability expense programs.

With that being said, there is a much work to be done to create the program and much to learn about the disabled community and the rules and policies that must be followed. Nationally private organizations are reviewing the federal legislation so as to determine if they will be able to offer record keeping and investment services, other states are proceeding with plans to offer contractual services to states that are passing similar legislation and several committees have been formed through CSPN to look at legal, compliance and a host of questions that need to be answered before these programs can be successfully launched.

As a brief overview, eligible individuals who may take advantage of the ND ABLE Plan are defined as disabled, being entitled to benefits based on blindness or disability under titles of the Social Security Act,

1.2  
HB 1373  
3-17-15

or has a disability certification filed with the Treasury Secretary, became disabled before age 26 or is certified as blind.

The similarities between a 529 and 529A account end after the tax advantages mentioned earlier. For the ND ABLE Plan the beneficiary is the account owner, there can only be one account established for the beneficiary, the account must be established in the beneficiary's home state or a state we contract with, annual contributions are limited to \$14,000 per beneficiary and qualified distributions cover much more than college expenses including housing, transportation, employment trainings, assistive technology, health, prevention and wellness, financial management and administrative services, legal fees, oversight and monitoring expenses and funeral and burial expenses.

As with a traditional 529 plan, non-qualified withdrawals in the ABLE Plan are taxed with a 10 percent penalty but these taxes and penalties can be avoided on non-qualified distributions if they are returned to the account before the federal tax filing deadline.

Two more important features are as follows: upon the death of a beneficiary the state can make a claim for funds in the account up to the net amount the state paid in medical assistance and ABLE accounts are excluded from being counted for means-tested federal programs so that eligibility can be maintained. ABLE account balances and withdrawals are completely excluded for the purpose of Medicaid and other benefit programs. Regarding Supplemental Security Income, the first \$100,000 in ABLE account balances are excluded from counting as resources as are most account withdrawals.

As disclosed in the Fiscal Note, the Bank of North Dakota projects initial start-up expenses at \$150,000 over the next two biennium's. All costs will be funded by the Bank with an administrative fee charged to participants when they establish the accounts to offset some of the expenses.

In closing, the complexity to launch this new national program along with oversight, recordkeeping and investing will not be easy but we will work diligently to understand the nuances of aid being offered to families with disabilities, follow federal legislation and work closely with our national counterparts to create the best possible ND ABLE Plan to assist these families in need. We are excited and proud to be a part of this new program and offer our full support of passage of Engrossed House Bill 1373.

Thank you for your consideration and I am available for questions.



The Arc of Dickinson  
P.O. Box 1421  
140 2<sup>nd</sup> St W  
Dickinson, ND 58601  
Phone/Fax: 701-483-4272  
  
www.arcdickinson.com

*Achieve with us.*

**Senate Finance and Taxation Committee  
March 17, 2015  
HB 1373**

Chairman Cook and members of the Senate Finance and Taxation Committee, my name is Pamela Kolling. I am the Executive Director of The Arc of Dickinson, and the parent and legal guardian of Josette Copenhaver, a young lady who has Cerebral Palsy which severely affects her daily life and ability to make financial decisions. She was born in 1988, thirteen weeks premature and was a triplet. Her brother, Luke passed away after three days, and her sister passed away after the fifth day of birth.

My family has endured many trials throughout the journey of Josette's life. Our main focus was to ensure Josette's happiness and health. When Josette approached the age of 18, I needed to do two things, apply for guardianship and protect her current and future assets. Both of these actions required a lawyer. By the time I was done I had incurred about eight thousand dollars in legal fees. (I set up an Irrevocable Special Needs Trust, a Third Party Special Needs Trust, a Living Trust, and Full Guardianship)

Testifying today opens my "Pandora's Box" of emotions. The loss, the pain, and financial burden were and are great.

I feel, as a state, we are now in a position where we can, lighten the financial burden for parents, and people with disabilities, who are struggling to improve their financial position without fear of losing their benefits.

Chairman Cook and members of the Senate Finance and Taxation Committee, I am asking for your Do-Pass recommendation for HB1373, the Achieving a Better Life Experience Act.

Senate Finance and Taxation Committee  
Sixty-Fourth Legislative Assembly of North Dakota  
House Bill No. 1373  
March 17, 2015

Good morning, Chairman Cook and Members of the Senate Finance and Taxation Committee: I am David Boeck, a State employee and lawyer for the Protection & Advocacy Project. The Protection & Advocacy Project is an independent state agency that acts to protect people with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of people with disabilities.

House Bill 1372 arises from a new federal program that could be made available in North Dakota after enactment of this bill. It is very similar to the education-related 529 savings program currently available in North Dakota. The Bank of North Dakota operates the North Dakota 529 program and is already working with other states to develop the ABLE (Achieving a Better Life Experience) program here. The U.S. Department of the Treasury will promulgate federal regulations to implement the ABLE program.

The bill would benefit individuals who

- a. satisfy the criteria for disability under the Social Security Act
- or
- b. are blind or

3.2  
HB 1373  
3.17.15

- c. before age 26, had the "medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind."

See Public Law 113-295, section 102.

Funds from an ABLE account could be spent only for "disability expenses." A federal tax penalty applies to any funds spent for any other purpose.

This program would improve incentives for individuals with disabilities to try employment if possible despite individual disabilities. I support this legislation.

Please let me know if you have any questions. Thank you.

Testimony

House Bill 1373-Achieving a Better Life Experience (ABLE)

Senate Finance and Taxation Committee

Senator Cook, Chairman

March 17, 2015

Chairman Cook, members of the Senate Finance and Taxation Committee, my name is Royce Schultze, Executive Director of Dakota Center for Independent Living, Inc. (DCIL). We provide services to people with disabilities in South Central and South Western North Dakota. I am here today to provide testimony in favor of HB 1373. We provide money management and representative payee services to individuals with disabilities and we run into issues with individuals reaching the asset limit for SSI and/or Medicaid. The passage of HB 1373 would allow these individuals to put their money into Achieving a Better Life Experience account and save money for their future needs instead of having to do a spend down just to keep under the asset limits of SSI and Medicaid. In some instances, individuals will spend their money to get underneath the asset limit on items they probably don't need but have to spend it so they do not lose their SSI benefits or Medicaid coverage.

I encourage you to support HB 1373!

Royce Schultze, Executive Director

Dakota Center for Independent Living, Inc.

(701) 222-3636

5.  
3.17.15

My name is Pat Weinberg and I am here today with my son Luke to persuade you to vote in favor of the HB 1373 the ABLE act for ND.

The Achieving a Better Life Experience is the means for fulfilling the hopes and dreams that we all have as individuals - but are out of reach for those subject to the assets limits test while receiving social services.

The \$2,000 asset limit established in 1972 remains the same today in 2015. It creates a barrier to fulfilling those hopes and dreams, where as the ABLE Act will provide an avenue for those to become a reality.

One of Luke's dreams is to travel to visit the Wizarding World of Harry Potter in Florida.

With the cost of travel, a travel companion, entrance fees, food etc. an estimated total of \$2,750, his dream can only come true with an ABLE account.

It will provide the vehicle for him to save part of his check from where he works at Sam's Club every month, to finance his own dream trip, and others, over the course of his life.

Please vote in favor of HB 1373. Thank you for your time.



**HB 1373**  
**North Dakota Achieving a Better Life Experience (ABLE) Plan**  
**Senate Finance and Taxation Committee**  
**Tuesday, March 17, 2015**

Chairman Cook and Members of the Senate Finance and Taxation Committee:

My name is Roxane Romanick and I'm representing Designer Genes of ND, Inc., as their Executive Director. Designer Genes represents 140 individuals with Down syndrome and their families across the state of North Dakota. This represents approximately 25% of the Down syndrome population in ND. Designer Genes' mission is to strengthen opportunities for individuals with Down syndrome and those who support them to earn, learn, and belong.

I'm here to ask your support for HB 1373. Designer Genes is in very interested in seeing the Achieving a Better Life Experience (ABLE) Act enacted in North Dakota. We have closely followed the passage in Congress and were able to advocate for the bill a number of times with our Congressional delegation. The federal bill had a historically high number of bi-partisan co-sponsors and all three of our ND Congressional delegation was on that list. They all voted "yes" this past December. We would like to thank the bill sponsors and the Bank of ND for moving forward with HB 1373 so close on the heels of the federal bill passing.

While I speak to you today as the director of Designer Genes, I also speak to you as a mom of a 15 year-old daughter, who has more hopes and dreams than you can imagine. Elizabeth is a freshman at Century High School. Yesterday, she was looking at recording equipment to launch her career as a music producer and the day before she was browsing through colleges. We have raised her to believe that you shouldn't limit your dreams, because it's those dreams that get us to the realities that can make our lives full and happy. Because of the advocacy at the federal level, the ABLE plan can now become one of the tools that Elizabeth may need to move forward on seeing her dreams come true.

Much is yet to be learned about the ABLE plan as they are just starting to work on the regulations. The issue that concerns our organization the most is the disability determination process. We hope that this will be as streamlined as possible so that families and individuals don't face undue burden in opening up an account. We are also concerned about the types of expenses that will be allowed and how the plan will be administered.

Since public comment will be allowed at the federal level on the upcoming regulations, we would like to assure that public comment is also allowed on the state administrative code that will be written in North Dakota to implement the ABLE plan. Because the key components involve issues related to understanding disabilities, we believe that a partnership between the Bank of North Dakota and North Dakota's disability experts (including consumers and their families) will be essential. Please keep this as a consideration as you move forward on HB 1373.

Thank you for your time.  
 Roxane Romanick

# Achieving a Better Life Experience (ABLE) Act Division B of Public Law 113-295, December 19, 2014



6.2  
HB 1373  
3.17.15

## OVERVIEW

The Stephen Beck, Jr., Achieving a Better Life Experience Act<sup>1</sup> (ABLE) Act was signed into law on December 19, 2014 after many years of advocacy and bipartisan work in both the House and Senate. The law allows eligible individuals with disabilities the ability to establish “ABLE accounts” for qualified beneficiaries that resemble the qualified tuition programs, often called “529 accounts”, that have been established under that section of the tax code since 1996. The new ABLE accounts will allow more individual choice and control over spending on qualified disability expenses and limited investment decisions, while protecting eligibility for Medicaid, Supplemental Security Income, and other important federal benefits for people with disabilities. Without these accounts, many people with disabilities have very limited avenues to save and allow for further independence.

**A Form of 529 Account:** The ABLE Act creates a new Section 529A establishing new tax-favored Qualified ABLE Programs in the Internal Revenue Code. The ABLE Program accounts are intended to be easy to open and available in any state, although each state will need to take action to make the accounts available to its residents. Assets in an ABLE account and distributions from the account for qualifying expenses would be disregarded or receive special treatment when determining the beneficiary’s eligibility for most federal means-tested benefits.

### Key Characteristics of ABLE Accounts:

- An eligible individual may have **one ABLE account**, which must be established in the state in which he resides (or in a state that provides ABLE account services for his home state).
- Any person, such as a family member, friend, or the person with a disability, may contribute to an ABLE account for an eligible beneficiary.
- An ABLE account may not receive **annual contributions** exceeding the annual gift-tax exemption (\$14,000 in 2015). A state must also ensure that aggregate contributions to an ABLE account do not exceed the state-based limits for 529 accounts.
- **Eligibility** - An eligible individual is a person (1) who is entitled to benefits on the basis of disability or blindness under the Supplemental Security Income (SSI) program or under the Social Security disability, retirement, and survivors program OR (2) who submits certification that meets the criteria for a disability certification (to be further defined in regulations). An eligible individual’s disability must have occurred before the age 26.
- **Designated Beneficiary** - The eligible individual who established the ABLE account and who is the owner of the account is the “designated beneficiary”.
- **Qualified disability expenses** are any expenses made for the benefit of the designated beneficiary and related to his/her disability, including: education, housing,

---

<sup>1</sup> After Stephen Beck’s death in December 2014, the law was named to honor him, a parent from northern Virginia who helped conceive and develop the ABLE Act and who worked tirelessly for its passage.

6.3  
HR 1373  
3.17.15

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, which are approved by the Secretary of the Treasury under regulations.

- **Tax treatment** - Earnings on an ABLE account and distributions from the account for qualified disability expenses do not count as taxable income of the contributor or the eligible beneficiary. Contributions to an ABLE account must be made in cash from the contributor's after-tax income.
- **Roll-Overs** - Assets in an ABLE account may be rolled over without penalty into another ABLE account for either the designated beneficiary (for instance, when moving to another state) or any of the beneficiary's qualifying family members.

### Federal Treatment of ABLE Account Under Means-Tested Programs, Including Supplemental Security Income & Medicaid:

- **Means-Tested Programs generally** - Assets in an ABLE account and distributions from the account for qualified disability expenses would be disregarded when determining the designated beneficiary's eligibility for most federal means-tested benefits.
- **Supplemental Security Income (SSI):** For SSI, only the first \$100,000 in an ABLE account will be disregarded. Assets above \$100,000 will count as resources under SSI. In addition, if the designated beneficiary's ABLE account balance exceeds \$100,000, the individual's SSI benefits will not be terminated, but instead will be suspended until such time as the individual's resources fall below \$100,000. Further, it is intended that distributions expended for housing purposes will receive the same treatment which all housing costs paid by outside sources receive.
- **Medicaid Eligibility:** A beneficiary will not lose eligibility for Medicaid based on the assets held in their ABLE account, even during the time that SSI benefits are suspended (as described above for an account with over \$100,000).
- **Medicaid Payback Provision:** Subject to certain limits and upon the state's filing of a claim for payment, any assets remaining in an ABLE account upon the death of the qualified beneficiary must be used to reimburse the state for Medicaid payments it made on behalf of the beneficiary. The amount of any Medicaid payback is calculated based on amounts paid by Medicaid after the creation of the ABLE Account and shall exclude amounts paid by the beneficiary as premiums to a Medicaid buy-in program.

### How Soon Will ABLE Accounts Be Available?

- **Federal Regulations:** The Secretary of the Treasury is required to issue regulations or other necessary guidance within six months of enactment of the law, which would require such regulations and/or guidance to be available by mid-June 2015.
- **State Decisions:** Each state will need to decide whether to offer a qualified ABLE program to its residents, and, if so, the state will need to decide whether the program will be state-run; whether to select another entity, such as a financial services firm, to run the program; or whether to contract with another state to allow its own residents to use the qualified ABLE program of another state.