

## Achieving a Better Life Experience Act

The Act establishes ABLE savings trust accounts to be administered by the Virginia College Savings Plan to facilitate the saving of private funds for paying the qualified disability expenses of certain disabled individuals. Under the federal Achieving a Better Life Experience Act of 2014, Congress authorized states to establish ABLE savings trust accounts to assist individuals and families in saving and paying for the education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, and other expenses of individuals who were disabled or blind prior to the age of 26. Earnings on contributions to ABLE savings trust accounts are exempt from federal income tax. Because Virginia conforms to the federal income tax laws, earnings on contributions to ABLE savings trust accounts will also be excluded from Virginia taxable income.

Submitted as:

Virginia

[HB 2306](#)

Status: Signed into law on March 17, 2015.

### Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Definitions.*]  
2 As used in this chapter, unless the context requires a different meaning:  
3 “ABLE savings trust account” means an account established pursuant to this chapter to  
4 assist individuals and families to save private funds to support individuals with disabilities to  
5 maintain health, independence, and quality of life, with such account used to apply distributions  
6 for qualified disability expenses for an eligible individual, both as defined in § 529A of the  
7 Internal Revenue Code of 1986, as amended, or other applicable federal law.  
8 “Board” means the [Board of the Virginia] College Savings Plan. “College savings trust  
9 account” means an account established pursuant to this chapter to assist individuals and families  
10 to enhance the accessibility and affordability of higher education, with such account used to  
11 apply distributions from the account toward qualified higher education expenses at eligible  
12 educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as  
13 amended, or other applicable federal law.  
14 “Contributor” means a person who contributes money to a savings trust account  
15 established pursuant to this chapter on behalf of a qualified beneficiary and who is listed as the  
16 owner of the savings trust account.  
17 “Plan” means the [Virginia] College Savings Plan.  
18 “Prepaid tuition contract” means the contract entered into by the Board and a purchaser  
19 pursuant to this chapter for the advance payment of tuition at a fixed, guaranteed level by the  
20 purchaser for a qualified beneficiary to attend any two-year or four-year public institution of  
21 higher education in the [Commonwealth] to which the qualified beneficiary is admitted.

1           “Purchaser” means a person who makes or is obligated to make advance payments in  
2 accordance with a prepaid tuition contract and who is listed as the owner of the prepaid tuition  
3 contract.

4           “Qualified beneficiary” or “beneficiary” means (i) a resident of the [Commonwealth], as  
5 determined by the Board, who is the beneficiary of a prepaid tuition contract and who may apply  
6 advance tuition payments to tuition as set forth in this chapter; (ii) a beneficiary of a prepaid  
7 tuition contract purchased by a resident of the [Commonwealth], as determined by the Board,  
8 who may apply advance tuition payments to tuition as set forth in this chapter; or (iii) a  
9 beneficiary of a savings trust account established pursuant to this chapter.

10           “Savings trust account” means an ABLE savings trust account or a college savings trust  
11 account.

12           “Savings trust agreement” means the agreement entered into by the Board and a  
13 contributor establishing a savings trust account.

14           “Tuition” means the quarter, semester, or term charges imposed for undergraduate tuition  
15 by any two-year or four-year public institution of higher education in the [Commonwealth] and  
16 all mandatory fees required as a condition of enrollment of all students. A beneficiary may apply  
17 benefits under a prepaid tuition contract and distributions from a savings trust account toward  
18 graduate-level tuition and toward tuition costs at such eligible educational institutions, as that  
19 term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code  
20 of 1986, as amended, as determined by the Board in its sole discretion.

21  
22 Section 2. [*College Savings Plan established; governing board; terms.*]

23 A. To enhance the accessibility and affordability of higher education for all citizens of the  
24 [Commonwealth], there is hereby established as a body politic and corporate and an  
25 independent agency of the [Commonwealth], the [state] College Savings Plan (the Plan).  
26 Certain moneys of the Plan that are contributions to savings trust accounts made pursuant to  
27 this chapter, except as otherwise authorized or provided in this chapter, shall be deposited as  
28 soon as practicable in a separate account or accounts in banks or trust companies organized  
29 under the laws of the [Commonwealth], national banking associations, federal home loan  
30 banks, or to the extent then permitted by law, savings institutions organized under the laws of  
31 the [Commonwealth] or the United States. The savings program moneys in such accounts  
32 shall be paid out on checks, drafts payable on demand, electronic wire transfers, or other  
33 means authorized by officers or employees of the Plan.

34  
35 All other moneys of the Plan, including payments received pursuant to prepaid tuition  
36 contracts, bequests, endowments, grants from the United States government or its agencies or  
37 instrumentalities, and any other available sources of funds, public or private, shall be first  
38 deposited in the state treasury in a special nonreverting fund (the Fund). Such moneys then  
39 shall be deposited as soon as practicable in a separate account or accounts in banks or trust  
40 companies organized under the laws of the [Commonwealth], national banking associations,  
41 federal home loan banks, or to the extent then permitted by law, savings institutions  
42 organized under the laws of the [Commonwealth] or the United States. Benefits related to  
43 prepaid tuition contracts and Plan operating expenses shall be paid from the Fund. Any  
44 moneys remaining in the Fund at the end of a biennium shall not revert to the general fund  
45 but shall remain in the Fund. Interest and income earned from the investment of such funds  
46 shall remain in the Fund and be credited to it.

- 1 B. The Plan shall be administered by an 11-member Board, as follows: [the Director of the State  
2 Council of Higher Education for Virginia or his designee; the Chancellor of the Virginia  
3 Community College System or his designee; the State Treasurer or his designee; the State  
4 Comptroller or his designee; and seven nonlegislative citizen members, four to be appointed  
5 by the Governor, one to be appointed by the Senate Committee on Rules and two to be  
6 appointed by the Speaker of the House of Delegates, with significant experience in finance,  
7 accounting, law, or investment management]. Appointments shall be for terms of four years,  
8 except that appointments to fill vacancies shall be for the unexpired terms. No person shall be  
9 appointed to serve for or during more than two successive four-year terms, but after the  
10 expiration of a term of three years or less, or after the expiration of the remainder of a term to  
11 which appointed to fill a vacancy, two additional terms may be served by such member if  
12 appointed thereto. Ex officio members of the Board shall serve terms coincident with their  
13 terms of office.
- 14 C. Members of the Board shall receive no compensation but shall be reimbursed for actual  
15 expenses incurred in the performance of their duties. The Board shall elect from its  
16 membership a chairman and a vice-chairman annually. A majority of the members of the  
17 Board shall constitute a quorum.

18  
19 Section 3. [*Powers and duties of Board.*]

20 The Board shall administer the Plan established by this chapter and shall develop and implement  
21 programs for (i) the prepayment of undergraduate tuition, as defined in [Insert citation], at a  
22 fixed, guaranteed level for application at a two-year or four-year public institution of higher  
23 education in the [Commonwealth]; (ii) contributions to college savings trust accounts established  
24 pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from  
25 the account toward qualified higher education expenses at eligible educational institutions, both  
26 as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable  
27 federal law; and (iii) contributions to ABLE savings trust accounts established pursuant to this  
28 chapter on behalf of a qualified beneficiary in order to apply distributions from the account  
29 toward qualified disability expenses for an eligible individual, both as defined in § 529A of the  
30 Internal Revenue Code of 1986, as amended, or other applicable federal law. In addition, the  
31 Board shall have the power and duty to:

- 32 1. Invest moneys in the Plan in any instruments, obligations, securities, or property  
33 deemed appropriate by the Board;
- 34 2. Develop requirements, procedures, and guidelines regarding prepaid tuition contracts  
35 and savings trust accounts, including, but not limited to, residency and other  
36 eligibility requirements; the number of participants in the Plan; the termination,  
37 withdrawal, or transfer of payments under a prepaid tuition contract or savings trust  
38 account; time limitations for the use of tuition benefits or savings trust account  
39 distributions; and payment schedules;
- 40 3. Enter into contractual agreements, including contracts for legal, actuarial, financial,  
41 and consulting services and contracts with other states to provide savings trust  
42 accounts for residents of contracting states;
- 43 4. Procure insurance against any loss in connection with the Plan's property, assets, or  
44 activities and indemnifying Board members from personal loss or accountability from  
45 liability arising from any action or inaction as a Board member;

- 1           5. Make arrangements with two-year and four-year public institutions in the  
2           [Commonwealth] to fulfill obligations under prepaid tuition contracts and to apply  
3           college savings trust account distributions, including, but not limited to, payment  
4           from the Plan of the then actual in-state undergraduate tuition cost on behalf of a  
5           qualified beneficiary of a prepaid tuition contract to the institution in which the  
6           beneficiary is admitted and enrolled and application of such benefits towards  
7           graduate-level tuition and towards tuition costs at such eligible educational  
8           institutions, as that term is defined in 26 U.S.C. § 529 or any other applicable section  
9           of the Internal Revenue Code of 1986, as amended, as determined by the Board in its  
10          sole discretion;
- 11          6. Develop and implement scholarship and/or matching grant programs, as the Board  
12          may deem appropriate, to further its goal of making higher education more affordable  
13          and accessible to all citizens of the [Commonwealth];
- 14          7. Apply for, accept, and expend gifts, grants, or donations from public or private  
15          sources to enable it to carry out its objectives;
- 16          8. Promulgate regulations and procedures and to perform any act or function consistent  
17          with the purposes of this chapter; and
- 18          9. Reimburse, at its option, all or part of the cost of employing legal counsel and such  
19          other costs as are demonstrated to have been reasonably necessary for the defense of  
20          any Board member, officer, or employee of the Plan upon the acquittal, dismissal of  
21          charges, nolle prosequi, or any other final disposition concluding the innocence of  
22          such member, officer or employee who is brought before any regulatory body,  
23          summoned before any grand jury, investigated by any law-enforcement agency,  
24          arrested, indicted, or otherwise prosecuted on any criminal charge arising out of any  
25          act committed in the discharge of his official duties which alleges a violation of state  
26          or federal securities laws. The Board shall provide for the payment of such legal fees  
27          and expenses out of funds appropriated or otherwise available to the Board.

28  
29 Section 4. [*Standard of care; investment and administration of Plan.*]

- 30 A. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for  
31 the benefit of the Plan, the Board, and any person, investment manager, or committee to  
32 whom the Board delegates any of its investment authority, shall act as trustee and shall  
33 exercise the judgment of care under the circumstances then prevailing, which persons of  
34 prudence, discretion, and intelligence exercise in the management of their own affairs, not in  
35 regard to speculation but to the permanent disposition of funds, considering the probable  
36 income as well as the probable safety of their capital. If the annual accounting and audit  
37 required by [Insert citation] reveal that there are insufficient funds to ensure the actuarial  
38 soundness of the Plan, the Board shall be authorized to adjust the terms of subsequent  
39 prepaid tuition contracts, arrange refunds for current purchasers to ensure actuarial  
40 soundness, or take such other action the Board deems appropriate.
- 41 B. The assets of the Plan shall be preserved, invested, and expended solely pursuant to and for  
42 the purposes of this chapter and shall not be loaned or otherwise transferred or used by the  
43 [Commonwealth] for any other purpose. Within the standard prescribed in subsection A, the  
44 Board, and any person, investment manager, or committee to whom the Board delegates any  
45 of its investment authority, is authorized to acquire and retain every kind of property and  
46 every kind of investment, specifically including but not limited to (i) debentures and other

1 corporate obligations of foreign or domestic corporations; (ii) common or preferred stocks  
2 traded on foreign or domestic stock exchanges; (iii) not less than all of the stock or 100  
3 percent ownership of a corporation or other entity organized by the Board under the laws of  
4 the [Commonwealth] for the purposes of acquiring and retaining real property that the Board  
5 is authorized under this chapter to acquire and retain; and (iv) securities of any open-end or  
6 closed-end management type investment company or investment trust registered under the  
7 federal Investment Company Act of 1940, as amended, including such investment companies  
8 or investment trusts which, in turn, invest in the securities of such investment companies or  
9 investment trusts, which persons of prudence, discretion, and intelligence acquire or retain  
10 for their own account. Within the limitations of the foregoing standard, the Board may retain  
11 property properly acquired, without time limitation and without regard to its suitability for  
12 original purchase. This section shall not be construed to prohibit the investment of the Plan,  
13 by purchase or otherwise, in bonds, notes, or other obligations of the [Commonwealth] or its  
14 agencies and instrumentalities. All provisions of this subsection shall apply to the portion of  
15 the Plan assets attributable to savings trust account contributions and the earnings thereon.

- 16 C. The selection of services related to the operation and administration of the Plan, including,  
17 but not limited to, contracts or agreements for the management, purchase, or sale of  
18 authorized investments or actuarial, recordkeeping, or consulting services, shall be governed  
19 by the foregoing standard and shall not be subject to the provisions of the [state] Public  
20 Procurement Act ([Insert Citation]).
- 21 D. No Board member nor any person, investment manager, or committee to whom the Board  
22 delegates any of its investment authority who acts within the standard of care set forth in  
23 subsection A shall be held personally liable for losses suffered by the Plan on investments  
24 made pursuant to this chapter.
- 25 E. To the extent necessary to lawfully administer the Plan and in order to comply with federal,  
26 state, and local tax reporting requirements, the Plan may obtain all necessary social security  
27 account or tax identification numbers and such other data as the Plan deems necessary for  
28 such purposes, whether from a contributor or purchaser or from another state agency.

29  
30 Section 5. [*Prepaid tuition contracts and college and ABLE savings trust agreements; terms;*  
31 *termination; etc.*]

- 32 A. Each prepaid tuition contract made pursuant to this chapter shall include the following terms  
33 and provisions:
- 34 1. The amount of payment or payments and the number of payments required from a  
35 purchaser on behalf of a qualified beneficiary;
  - 36 2. The terms and conditions under which purchasers shall remit payments, including the  
37 dates of such payments;
  - 38 3. Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties;
  - 39 4. The name and date of birth of the qualified beneficiary on whose behalf the contract is  
40 made;
  - 41 5. Terms and conditions for a substitution for the qualified beneficiary originally named;
  - 42 6. Terms and conditions for termination of the contract, including any refunds, withdrawals,  
43 or transfers of tuition prepayments, and the name of the person or persons entitled to  
44 terminate the contract;
  - 45 7. The time period during which the qualified beneficiary must claim benefits from the  
46 Plan;

- 1 8. The number of credit hours or quarters, semesters, or terms contracted for by the
- 2 purchaser;
- 3 9. All other rights and obligations of the purchaser and the trust; and
- 4 10. Any other terms and conditions which the Board deems necessary or appropriate,
- 5 including those necessary to conform the contract with the requirements of Internal
- 6 Revenue Code § 529, as amended, which specifies the requirements for qualified state
- 7 tuition programs.
- 8 B. Each college savings trust agreement made pursuant to this chapter shall include the
- 9 following terms and provisions:
  - 10 1. The maximum and minimum contribution allowed on behalf of each qualified beneficiary
  - 11 for the payment of qualified higher education expenses at eligible institutions, both as
  - 12 defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable
  - 13 federal law;
  - 14 2. Provisions for withdrawals, refunds, transfers, and any penalties;
  - 15 3. The name, address, and date of birth of the qualified beneficiary on whose behalf the
  - 16 savings trust account is opened;
  - 17 4. Terms and conditions for a substitution for the qualified beneficiary originally named;
  - 18 5. Terms and conditions for termination of the account, including any refunds, withdrawals,
  - 19 or transfers, and applicable penalties, and the name of the person or persons entitled to
  - 20 terminate the account;
  - 21 6. The time period during which the qualified beneficiary must use benefits from the
  - 22 savings trust account;
  - 23 7. All other rights and obligations of the contributor and the Plan; and
  - 24 8. Any other terms and conditions which the Board deems necessary or appropriate,
  - 25 including those necessary to conform the savings trust account with the requirements of §
  - 26 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.
- 27 C. Each BLE savings trust agreement made pursuant to this chapter shall include the following
- 28 terms and provisions:
  - 29 1. The maximum and minimum annual contribution and maximum account balance allowed
  - 30 on behalf of each qualified beneficiary for the payment of qualified disability expenses,
  - 31 as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other
  - 32 applicable federal law;
  - 33 2. Provisions for withdrawals, refunds, transfers, return of excess contributions, and any
  - 34 penalties;
  - 35 3. The name, address, and date of birth of the qualified beneficiary on whose behalf the
  - 36 savings trust account is opened;
  - 37 4. Terms and conditions for a substitution for the qualified beneficiary originally named;
  - 38 5. Terms and conditions for termination of the account, including any transfers to the state
  - 39 upon the death of the qualified beneficiary, refunds, withdrawals, transfers, applicable
  - 40 penalties, and the name of the person or persons entitled to terminate the account;
  - 41 6. The time period during which the qualified beneficiary must use benefits from the
  - 42 savings trust account;
  - 43 7. All other rights and obligations of the contributor and the Plan; and
  - 44 8. Any other terms and conditions that the Board deems necessary or appropriate, including
  - 45 those necessary to conform the savings trust account with the requirements of § 529A of
  - 46 the Internal Revenue Code of 1986, as amended, or other applicable federal law.

- 1 D. In addition to the provisions required by subsection A, each prepaid tuition contract shall  
2 include provisions for the application of tuition prepayments (i) at accredited, nonprofit,  
3 independent institutions of higher education located in [state], including actual interest and  
4 income earned on such prepayments and (ii) at public and at accredited, nonprofit,  
5 independent institutions of higher education located in other states, including principal and  
6 reasonable return on such principal as determined by the Board. Payments authorized for  
7 accredited, nonprofit, independent institutions located in [state] may not exceed the projected  
8 highest payment made for tuition at a public institution of higher education in [state] in the  
9 same academic year, less a fee to be determined by the Board. Payments authorized for  
10 public and for accredited, nonprofit, independent institutions of higher education located in  
11 other states may not exceed the projected average payment made for tuition at a public  
12 institution of higher education in [state] in the same academic year, less a fee to be  
13 determined by the Board.
- 14 E. All prepaid tuition contracts and savings trust agreements shall specifically provide that, if  
15 after a specified period of time the contract or savings trust agreement has not been  
16 terminated nor the qualified beneficiary's rights exercised, the Board, after making  
17 reasonable effort to contact the purchaser or contributor and the qualified beneficiary or their  
18 agents, shall report such unclaimed moneys to the State Treasurer pursuant to [Insert  
19 citation.]
- 20 F. Notwithstanding any provision of law to the contrary, money in the Plan shall be exempt  
21 from creditor process and shall not be liable to attachment, garnishment, or other process, nor  
22 shall it be seized, taken, appropriated, or applied by any legal or equitable process or  
23 operation of law to pay any debt or liability of any purchaser, contributor or beneficiary,  
24 provided, however, that the state of residence of the beneficiary of an ABLÉ savings trust  
25 account shall be a creditor of such account in the event of the death of the beneficiary.
- 26 G. No contract or savings trust account shall be assigned for the benefit of creditors, used as  
27 security or collateral for any loan, or otherwise subject to alienation, sale, transfer,  
28 assignment, pledge, encumbrance, or charge.
- 29 H. The Board's decision on any dispute, claim, or action arising out of or related to a prepaid  
30 tuition contract or savings trust agreement made or entered into pursuant to this chapter or  
31 benefits thereunder shall be considered a case decision as defined in [Insert citation.] and all  
32 proceedings related thereto shall be conducted pursuant to [the Administrative Process Act].  
33 Judicial review shall be exclusively provided pursuant to [the Administrative Process Act].