

Regular Session, 2014

HOUSE BILL NO. 833

BY REPRESENTATIVES FOIL, ANDERS, BARROW, BURFORD, COX, HARRIS,  
HAVARD, HENSGENS, HILL, HOFFMANN, LEBAS, JAY MORRIS, POPE,  
WHITNEY, PATRICK WILLIAMS, AND WILLMOTT

EXCEPTIONAL PERSONS: Creates the ABLE Account savings program for persons with  
significant disabilities

1 AN ACT

2 To enact R.S. 36:259(Y) and 802.24 and Chapter 19 of Title 46 of the Louisiana Revised  
3 Statutes of 1950, to be comprised of R.S. 46:1721 through 1740, relative to a savings  
4 program for persons with disabilities; to provide for definitions, findings, and  
5 purposes; to create the ABLE Account Program and the ABLE Account Authority  
6 to administer such program; to provide for composition, powers, and duties of the  
7 ABLE Account Authority; to provide for equivalency of certain aspects of the ABLE  
8 Account Program to aspects of the Louisiana Student Assistance and Revenue Trust  
9 Program; to establish program rules; to provide for qualified expenses; to provide for  
10 transfer of entities to the Department of Health and Hospitals for the purpose of  
11 conferring rulemaking authority; to provide for promulgation of rules; to provide for  
12 effectiveness contingent upon certain actions by congress; and to provide for related  
13 matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 36:259(Y) and 802.24 are hereby enacted to read as follows:

16 §259. Transfer of agencies and functions to Department of Health and Hospitals

17 \* \* \*

1           Y. The ABLE Account Authority (R.S. 46:1725) is hereby placed within the  
2           Department of Health and Hospitals and shall exercise and perform its powers,  
3           duties, functions, and responsibilities in the manner provided in R.S. 36:802.24.

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5           §802.24. Transfer; ABLE Account Authority

6           The ABLE Account Authority, transferred by the provisions of R.S.  
7           36:259(Y), is transferred to and placed within the Department of Health and  
8           Hospitals and shall continue to be composed and selected as provided by law, and  
9           shall continue to exercise all of the powers, duties, functions, and responsibilities as  
10          provided in Chapter 19 of Title 46 of the Louisiana Revised Statutes of 1950.

11          Section 2. Chapter 19 of Title 46 of the Louisiana Revised Statutes of 1950,  
12          comprised of R.S. 46:1721 through 1740, is hereby enacted to read as follows:

13                                   CHAPTER 19. ABLE ACCOUNT PROGRAM FOR  
14                                   DISABILITY-RELATED EXPENSES

15          §1721. Short title

16                                   This Chapter shall be known and may be cited as the "Achieving a Better Life  
17                                   Experience in Louisiana Act" or the "Louisiana ABLE Act".

18          §1722. Definitions

19                                   As used in this Chapter, the following terms have the meaning ascribed to  
20                                   them in this Section:

21                                   (1) "ABLE Account" means a special savings account for financing of  
22                                   certain qualified expenses of persons with disabilities as specifically provided in this  
23                                   Chapter.

24                                   (2) "ABLE Account Program" and "program" mean the special savings  
25                                   account program provided for in this Chapter.

26                                   (3) "Authority" means the ABLE Account Authority created by this Chapter  
27                                   to administer the ABLE Account Program.

28                                   (4) "Beneficiary" means the ABLE Account owner or the person entitled to  
29                                   apply the savings accrued in an ABLE Account, if not the account owner.

1           (5) "Department" means the Department of Health and Hospitals.

2           (6) "Person with a disability" means a person who meets either of the  
3           following criteria:

4           (a) Has a medically determinable physical or mental impairment which  
5           results in marked and severe functional limitations, and which can be expected to  
6           result in death or which has lasted or can be expected to last for a continuous period  
7           of not less than twelve months.

8           (b) Is blind.

9           (7) "Qualified disability expense" means any expense made for the benefit  
10          of a person with a disability who is a designated beneficiary as defined and  
11          specifically provided for in rules and regulations of the authority. Qualified  
12          disability expenses may include, without limitation, the following:

13          (a) Assistive technology and personal support service expenses for devices  
14          and services that facilitate maintenance of health, independence, and quality of life.

15          (b) Education expenses, including tuition for preschool through  
16          post-secondary education, which shall include higher education expenses and  
17          expenses for books, supplies, and educational materials related to preschool and  
18          secondary education, tutors, and special education services.

19          (c) Employment support expenses related to obtaining and maintaining  
20          employment, including job-related training, assistive technology, and personal  
21          assistance supports.

22          (d) Health, prevention, and wellness expenses including but not limited to  
23          the following, provided that the equipment and services herein conform with any  
24          applicable rules and regulations of the Department of Health and Hospitals and the  
25          Louisiana Rehabilitation Services program of the Louisiana Workforce Commission:

26                (i) Premiums for health insurance.

27                (ii) Medical, vision, dental, and mental healthcare expenses.

28                (iii) Habilitation and rehabilitation services.

29                (iv) Durable medical equipment.

- 1           (v) Therapy.
- 2           (vi) Respite care.
- 3           (vii) Long term services and supports.
- 4           (viii) Nutritional management.
- 5           (ix) Communication services and devices, adaptive equipment, and assistive  
6 technology.
- 7           (x) Personal assistance.
- 8           (e) Housing expenses for a primary residence, including rent, purchase of a  
9 primary residence or an interest in a primary residence, mortgage payments, real  
10 property taxes, and utility charges.
- 11           (f) Miscellaneous expenses, including expenses for financial management  
12 and administrative services; legal fees; expenses for oversight; monitoring; home  
13 improvements, modifications, maintenance, and repairs at primary residence; and  
14 funeral and burial expenses.
- 15           (g) Transportation expenses, including the use of mass transit, the purchase  
16 or modification of vehicles, and moving expenses.
- 17           (h) Any other expenses which are consistent with the purposes of this  
18 Chapter, approved by the authority, and provided for in duly promulgated  
19 administrative rules.
- 20           §1723. ABLÉ Account Program; creation; purpose; legislative intent
- 21           A. The ABLÉ Account Program is hereby created and shall be administered  
22 by the ABLÉ Account Authority, referred to hereafter as "authority" to encourage  
23 and assist individuals and families in saving private funds for the purpose of  
24 supporting persons with disabilities in endeavors to maintain health, independence,  
25 and quality of life.
- 26           B. The purposes of the ABLÉ Account Program, referred to hereafter as the  
27 "program", include all of the following:
- 28           (1) To pay qualified disability expenses so that persons with disabilities may  
29 maintain health, independence, and quality of life.

1           (2) To provide secure funding for disability-related expenses on behalf of  
2           designated beneficiaries with disabilities that will supplement, but not supplant,  
3           benefits provided through private insurance, the Medicaid program under title XIX  
4           of the Social Security Act, the supplemental security income program under title  
5           XVI of such Act, the beneficiary's employment, and other sources.

6           C.(1) It is the intention of the legislature that the program shall be treated in  
7           the same manner as a qualified tuition program defined in Section 529 of the federal  
8           Internal Revenue Code, as amended. Any provision of this Chapter determined to  
9           be in conflict with any requirement of the code as applicable to a qualified tuition  
10          program shall be superseded by such code provision to the extent necessary to assure  
11          that the program continues to meet requirements for tax-advantaged status in  
12          accordance with the code's definition of a qualified tuition program.

13          (2) Any requirement of this Chapter determined to be more restrictive than  
14          the requirements of the federal Internal Revenue Code as applicable to a qualified  
15          tuition program may be modified by the authority through rules promulgated in  
16          accordance with the Administrative Procedure Act to conform with code  
17          requirements.

18          §1724. General program rules

19           A. For purposes of any other provision of law which may pertain, in effect,  
20           to the program, except as otherwise provided in this Section, the program and the  
21           ABLE Accounts thereof shall be treated in the same manner as a qualified tuition  
22           program and the accounts provided for in the Louisiana Student Tuition Assistance  
23           and Revenue Trust Program law, R.S. 17:3091 et seq.

24           B. Qualified disability expenses paid from an ABLE Account shall be treated  
25           in the same manner as qualified higher education expenses are treated.

26           C. Maximum contributions to ABLE Accounts shall be no higher than the  
27           limit established by the state for the Louisiana Student Tuition Assistance and  
28           Revenue Trust Program, R.S. 17:3091 et seq.

1        §1725. ABLE Account Authority; creation; powers

2            A. There is hereby created the ABLE Account Authority, which shall have  
3        the powers enumerated in this Chapter.

4            B.(1) The authority shall operate under the same laws, rules, and guidelines  
5        and with the same officer selection and employment policies as the Louisiana  
6        Student Financial Assistance Commission, R.S. 17:3021 et seq., except when  
7        inconsistent with this Chapter.

8            (2) The membership of the authority shall consist of the following persons:

9            (a) The members of the Louisiana Developmental Disabilities Council.

10          (b) One member who is affiliated with Louisiana Rehabilitation Services or  
11        the Disability Navigator Program, or any successors of these, appointed by the  
12        executive director of the Louisiana Workforce Commission.

13          (c) An officer of a bank in Louisiana who is a member of the Louisiana  
14        Bankers' Association and who is nominated by the association.

15          (d) One member of the House of Representatives appointed by the speaker.

16          (e) One member of the Senate appointed by the president.

17          (f) The state treasurer who shall be an ex officio voting member of the  
18        authority.

19          (3) The authority shall meet at least annually at the call of the chairman and  
20        at such other times as the chairman or the authority determines necessary. The  
21        authority may establish and delegate to an executive committee such duties and  
22        responsibilities as the authority determines appropriate.

23          (4) A majority of the authority shall constitute a quorum of the authority, and  
24        the affirmative vote of a majority of the members present shall be necessary for any  
25        action taken by the authority. A majority of the executive committee shall constitute  
26        a quorum of the executive committee, and the affirmative vote of a majority of the  
27        executive committee members present shall be necessary for any action taken by the  
28        executive committee. No vacancy in the membership of the authority or the

1 executive committee shall impair the rights of a quorum to exercise all rights and  
2 perform all duties of the authority or the executive committee respectively.

3 C. In addition to any other powers conferred by this Chapter, the authority  
4 may do any of the following:

5 (1) Purchase insurance from insurers licensed to do business in this state  
6 providing for coverage against any loss in connection with the authority's property,  
7 assets, or activities or to further ensure the value of ABLE Accounts.

8 (2) Indemnify or purchase policies on behalf of members, officers, and  
9 employees of the authority from insurers licensed to do business in this state  
10 providing for coverage for any liability incurred in connection with any civil action,  
11 demand, or claim against a director, officer, or employee by reason of an act or  
12 omission by the director, officer, or employee that was not manifestly outside the  
13 scope of his employment or official duties or with malicious purpose, in bad faith,  
14 or in a wanton or reckless manner.

15 (3) Make, execute, and deliver contracts, conveyances, and other instruments  
16 necessary to the exercise and discharge of the powers and duties of the authority.

17 (4) Promote, advertise, and publicize the ABLE Account Program.

18 (5) Solicit, accept, and expend gifts or grants.

19 D.(1) The authority shall, by adoption of rules pursuant to the Administrative  
20 Procedure Act, provide for the following:

21 (a) The establishment and imposition of reasonable residency requirements  
22 for beneficiaries of those applying to establish an ABLE Account.

23 (b) The establishment and imposition of reasonable limits on the number of  
24 ABLE Account participants.

25 (c) The establishment and imposition of limits on the amount which may  
26 accrue in an ABLE Account on behalf of any beneficiary.

27 (d) The establishment and imposition of restrictions on the substitution of  
28 one beneficiary for another.

1           (e) The establishment and imposition of restrictions on the transfer of  
2           ownership of ABLE Accounts.

3           (f) The determination of the rate of interest to be paid on ABLE Accounts  
4           of record at the close of a calendar year, provided that such rate is not a negative rate  
5           and is approved by the state treasurer.

6           (g) The disposition of abandoned accounts in compliance with state law.

7           (h) The establishment and imposition of restrictions on investment of  
8           deposits in an ABLE Account and the interest earned thereon.

9           (2) The authority may, through the exclusive means of adoption of rules  
10           pursuant to the Administrative Procedure Act, provide for the implementation and  
11           administration of this Chapter.

12           §§1726 through 1740. [Reserved.]

13           Section 2. The effectiveness of the provisions of Section 1 of this Act shall be  
14 contingent upon enactment of amendments to Section 529 of the federal Internal Revenue  
15 Code that establish tax-advantaged savings accounts for persons with disabilities as provided  
16 in the Achieving a Better Life Experience Act of 2013, or any Act of the United States  
17 Congress that is substantially similar thereto.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Foil

HB No. 833

**Abstract:** Creates the ABLE Account savings program for persons with significant disabilities.

Proposed law shall be known and may be cited as the "Achieving a Better Life Experience in Louisiana Act" or the "Louisiana ABLE Act".

Proposed law creates the ABLE Account Program (program), to be administered by the ABLE Account Authority (authority), to encourage and assist individuals and families in saving private funds for the purpose of supporting persons with disabilities in endeavors to maintain health, independence, and quality of life. Provides that the purposes of proposed law include the following:

- (1) To pay qualified disability expenses so that persons with disabilities may maintain health, independence, and quality of life.



- (2) To provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program, the supplemental security income program, the beneficiary's employment, and other sources.

Proposed law defines "qualified disability expense" as any expense made for the benefit of a person with a disability including, without limitation, the following:

- (1) Assistive technology and personal support service expenses for devices and services that facilitate maintenance of health, independence, and quality of life.
- (2) Education expenses, including tuition for preschool through post-secondary education, which shall include higher education expenses and expenses for books, supplies, and educational materials related to preschool and secondary education, tutors, and special education services.
- (3) Employment support expenses related to obtaining and maintaining employment, including job-related training, assistive technology, and personal assistance supports.
- (4) Health, prevention, and wellness expenses including but not limited to the following, provided that the equipment and services conform with any applicable rules and regulations of the Dept. of Health and Hospitals and the La. Rehabilitation Services program of the La. Workforce Commission:
  - (a) Premiums for health insurance.
  - (b) Medical, vision, dental, and mental healthcare expenses.
  - (c) Habilitation and rehabilitation services.
  - (d) Durable medical equipment.
  - (e) Therapy.
  - (f) Respite care.
  - (g) Long term services and supports.
  - (h) Nutritional management.
  - (i) Communication services and devices, adaptive equipment, and assistive technology.
  - (j) Personal assistance.
- (5) Housing expenses for a primary residence, including rent, purchase of a primary residence or an interest in a primary residence, mortgage payments, real property taxes, and utility charges.
- (6) Miscellaneous expenses, including expenses for financial management and administrative services; legal fees; expenses for oversight; monitoring; home improvements, modifications, maintenance, and repairs at primary residence; and funeral and burial expenses.
- (7) Transportation expenses, including the use of mass transit, the purchase or modification of vehicles, and moving expenses.

- (8) Any other expenses which are consistent with the purposes of proposed law, approved by the authority, and provided for in rule.

Proposed law provides legislative intent that the program be treated in the same manner as a qualified tuition program defined in Section 529 of the federal Internal Revenue Code. Stipulates that any requirement of proposed law determined to be more restrictive than the requirements of the Internal Revenue Code as applicable to a qualified tuition program may be modified by the authority through rules promulgated in accordance with the APA to conform with code requirements.

Proposed law provides that the program and the ABLE Accounts thereof shall be treated in the same manner as a qualified tuition program and the accounts provided for in present law relative to the Louisiana Student Tuition Assistance and Revenue Trust (START) program (R.S. 17:3091 et seq.). Provides that qualified disability expenses paid from an ABLE Account shall be treated in the same manner as qualified higher education expenses are treated. Further provides that maximum contributions to ABLE Accounts shall be no higher than the limit established by the state for the START program.

Proposed law creates the ABLE Account Authority as the administrator of the program; provides that it shall operate under the same laws, rules, and guidelines and with the same officer selection and employment policies as the START program; and provides that the membership of the authority shall consist of the following persons:

- (1) The members of the La. Developmental Disabilities Council.
- (2) One member who is affiliated with La. Rehabilitation Services or the Disability Navigator Program, or any successors of these, appointed by the executive director of the La. Workforce Commission.
- (3) An officer of a bank in La. who is a member of the La. Bankers' Association and who is nominated by the association.
- (4) One member of the House of Representatives appointed by the speaker.
- (5) One member of the Senate appointed by the president.
- (6) The state treasurer who shall be an ex officio voting member of the authority.

Proposed law provides for meetings, quorum, voting, and selection of an executive committee of the authority. Provides that in addition to any other powers conferred by proposed law, the authority may do any of the following:

- (1) Purchase insurance from insurers licensed to do business in this state providing for coverage against any loss in connection with the authority's property, assets, or activities or to further ensure the value of ABLE Accounts.
- (2) Indemnify or purchase policies on behalf of members, officers, and employees of the authority from insurers licensed to do business in this state providing for coverage for any liability incurred in connection with any civil action, demand, or claim against a director, officer, or employee by reason of an act or omission by the director, officer, or employee that was not manifestly outside the scope of his employment or official duties or with malicious purpose, in bad faith, or in a wanton or reckless manner.
- (3) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of the powers and duties of the authority.
- (4) Promote, advertise, and publicize the ABLE Account Program.

- (5) Solicit, accept, and expend gifts or grants.

Proposed law requires the authority, by adoption of rules in accordance with the APA, to provide for the following:

- (1) The establishment and imposition of reasonable residency requirements for beneficiaries of those applying to establish an ABLE Account.
- (2) The establishment and imposition of reasonable limits on the number of ABLE Account participants.
- (3) The establishment and imposition of limits on the amount which may accrue in an ABLE Account on behalf of any beneficiary.
- (4) The establishment and imposition of restrictions on the substitution of one beneficiary for another.
- (5) The establishment and imposition of restrictions on the transfer of ownership of ABLE Accounts.
- (6) The determination of the rate of interest to be paid on ABLE Accounts of record at the close of a calendar year, provided that such rate is not a negative rate and is approved by the state treasurer.
- (7) The disposition of abandoned accounts in compliance with state law.
- (8) The establishment and imposition of restrictions on investment of deposits in an ABLE Account and the interest earned thereon.

Proposed law authorizes the authority, through the exclusive means of adoption of rules pursuant to the APA, to provide for the implementation and administration of proposed law.

The effectiveness of proposed law is contingent upon enactment of amendments to §529 of the federal Internal Revenue Code that establish tax-advantaged savings accounts for persons with disabilities as provided in the Achieving a Better Life Experience Act of 2013, or any Act of the U.S. Congress that is substantially similar.

(Adds R.S. 36:259(Y) and 802.24 and R.S. 46:1721-1740)

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Health and Welfare to the original bill.

1. Added a provision that effectiveness is contingent upon enactment of amendments to §529 of the federal Internal Revenue Code that establish tax-advantaged savings accounts for persons with disabilities as provided in the Achieving a Better Life Experience Act of 2013, or any Act of the U.S. Congress that is substantially similar.
2. Made a technical correction.