

2015 Regular Session

HOUSE BILL NO. 598

BY REPRESENTATIVES FOIL, BARRAS, BARROW, BERTHELOT, WESLEY BISHOP, BROADWATER, BROWN, BURFORD, HENRY BURNS, CARMODY, CARTER, CHANEY, CONNICK, GISCLAIR, GUINN, HALL, HARRISON, HAVARD, HAZEL, HOFFMANN, HOWARD, JEFFERSON, MIKE JOHNSON, JONES, NANCY LANDRY, LEGER, MONTOUCET, REYNOLDS, SIMON, SMITH, ST. GERMAIN, THIBAUT, THIERRY, AND WILLMOTT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EXCEPTIONAL PERSONS: Provides for implementation of the ABLE Account savings program for persons with disabilities

1 AN ACT

2 To amend and reenact R.S. 36:802.24 and R.S. 46:1722(1), (2), and (7)(introductory

3 paragraph) and (h), 1723, and 1725(B)(2), to enact R.S. 17:3093.1, R.S.

4 36:651(T)(6), and R.S. 46:1722(8) and (9) and 1726 through 1729, and to repeal R.S.

5 36:259(Y) and R.S. 46:1722(4) through (6), 1724, and 1725(D), relative to the ABLE

6 Account Program established by the Louisiana ABLE Act; to provide for

7 implementation of the ABLE Account Program in conformance with applicable

8 federal laws; to provide relative to the composition and functions of the ABLE

9 Account Authority; to provide for cooperative endeavors between the ABLE

10 Account Authority and the Louisiana Tuition Trust Authority; to provide for

11 concurrent operation and management of the ABLE Account Program and the

12 Louisiana Student Tuition Assistance and Revenue Trust Program; to authorize

13 rulemaking and oversight thereof by certain legislative committees; to provide

14 relative to treatment by certain assistance programs of funds in ABLE Accounts; to

15 provide relative to tax treatment of amounts deposited in ABLE Accounts; to provide

16 for legislative intent; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 17:3093.1 is hereby enacted to read as follows:

3 §3093.1. START Program and ABLE Account Program; co-location and concurrent
4 operation

5 The authority is hereby authorized to enter into any contract, memorandum
6 of understanding, or other type of agreement as may be necessary to provide for the
7 co-location of administrative and clerical functions and concurrent operation and
8 management of the START Program and the ABLE Account Program of this state
9 established pursuant to Section 529A of the Internal Revenue Code and Chapter 19
10 of Title 46 of the Louisiana Revised Statutes of 1950 and administered by the ABLE
11 Account Authority placed within the Department of Education by the provisions of
12 R.S. 36:651(T).

13 Section 2. R.S. 36:802.24 is hereby amended and reenacted and R.S. 36:651(T)(6)
14 is hereby enacted to read as follows:

15 §651. Transfer of boards, commissions, departments, and agencies to Department
16 of Education; boards, commissions, and agencies within Department of
17 Education

18 * * *

19 T. The following agencies are placed within the Department of Education
20 and shall perform and exercise their powers, duties, functions, and responsibilities
21 as provided by law:

22 * * *

23 (6) The ABLE Account Authority (R.S. 46:1721 et seq.).

24 * * *

25 §802.24. Transfer; ABLE Account Authority

26 The ABLE Account Authority, transferred by the provisions of ~~R.S.~~
27 ~~36:259(Y)~~ R.S. 36:651(T), is transferred to and placed within the ~~Department of~~
28 ~~Health and Hospitals~~ Department of Education and shall continue to be composed
29 and selected as provided by law, and shall continue to exercise all of the powers,

1 duties, functions, and responsibilities as provided in Chapter 19 of Title 46 of the
2 Louisiana Revised Statutes of 1950.

3 Section 3. R.S. 46:1722(1), (2), and (7)(introductory paragraph) and (h), 1723, and
4 1725(B)(2) are hereby amended and reenacted and R.S. 46:1722(8) and (9) and 1726 through
5 1729 are hereby enacted to read as follows:

6 §1722. Definitions

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

9 (1) "ABLE Account" means a special savings account for financing of
10 certain qualified expenses of persons with disabilities as specifically provided in this
11 Chapter that conforms with all applicable standards and requirements set forth for
12 ABLE Accounts in the Stephen Beck, Jr., ABLE Act of 2014 (Public Law 113-295,
13 Division B).

14 (2) "ABLE Account Program" and "program" mean the special savings
15 account program provided for in this Chapter that meets applicable standards and
16 requirements necessary for designation as a "qualified ABLE program" as defined
17 in the Stephen Beck, Jr., ABLE Act of 2014 (Public Law 113-295, Division B).

18 * * *

19 (7) "Qualified disability expense" means ~~any~~ an expense made for a purpose
20 authorized in federal law and regulation relative to ABLE Accounts for the benefit
21 of a person with a disability who is a designated beneficiary ~~as defined and~~
22 ~~specifically provided for in rules and regulations of the authority.~~ Qualified
23 participating in the ABLE Account Program. If authorized by federal law and
24 regulation, qualified disability expenses may include, ~~without limitation,~~ the
25 following:

26 * * *

27 (h) Any other expenses ~~which~~ that are consistent with the purposes of this
28 Chapter, authorized by federal law, approved by the authority, and provided for in
29 duly promulgated administrative rules.

1 (8) "Designated beneficiary" shall have the meaning ascribed in 26 U.S.C.
2 529A(e).

3 (9) "Eligible individual" means a person with a disability who meets the
4 criteria necessary to qualify as an eligible individual provided in 26 U.S.C. 529A(e).

5 §1723. ABLE Account Program; creation; purpose; legislative intent

6 A. The ABLE Account Program is hereby created and shall be administered
7 by the ABLE Account Authority, referred to hereafter as "the authority", to
8 encourage and assist individuals and families in saving private funds for the purpose
9 of supporting persons with disabilities in endeavors to maintain health,
10 independence, and quality of life.

11 B. The purposes of the ABLE Account Program, referred to hereafter as ~~the~~
12 "the program", include all of the following:

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

15 (2) To provide secure funding for disability-related expenses on behalf of
16 designated beneficiaries ~~with disabilities~~ that will supplement, but not supplant,
17 benefits provided through private insurance, the ~~Medicaid~~ medical assistance
18 program ~~under~~ administered by this state in accordance with Title XIX of the Social
19 Security Act, the supplemental security income program under Title XVI of such
20 Act, the beneficiary's employment, and other sources.

21 (3) To comply fully with all provisions of the Stephen Beck, Jr., ABLE Act
22 of 2014 (Public Law 113-295, Division B), and all regulations issued pursuant
23 thereto.

24 C.(1) It is the intention of the legislature that the program shall be ~~treated in~~
25 ~~the same manner as~~ a qualified ~~tuition~~ ABLE program as defined in Section ~~529~~
26 529A of the federal Internal Revenue Code, as amended. Any provision of this
27 Chapter determined to be in conflict with any requirement of the ~~code~~ Internal
28 Revenue Code as applicable to a qualified ~~tuition~~ ABLE program shall be superseded
29 by such code provision to the extent necessary to assure that the program continues

1 to meet requirements for tax-advantaged status in accordance with the code's
2 definition of a qualified ~~tuition~~ ABLE program.

3 (2) Any requirement of this Chapter determined to be more restrictive than
4 the requirements of the federal Internal Revenue Code as applicable to a qualified
5 ~~tuition~~ ABLE program may be modified by the authority through rules promulgated
6 in accordance with the Administrative Procedure Act to conform with code
7 requirements.

8 §1725. ABLE Account Authority; creation; powers

9 * * *

10 B.

11 * * *

12 (2) The membership of the authority shall consist of the following ~~seven~~
13 persons:

14 (a) The chairperson of the Louisiana Developmental Disabilities Council or
15 his designee.

16 (b) The executive director of the governor's office of disability affairs or his
17 designee.

18 (c) The executive director of The Arc of Louisiana or his designee.

19 (d) The executive director of People First of Louisiana or his designee.

20 (e) A person with a disability selected by the executive director of People
21 First of Louisiana.

22 (f) A parent or family member of a person with a disability selected by the
23 chairperson of the Louisiana Developmental Disabilities Council.

24 ~~(e)~~ (g) One member who is affiliated with Louisiana Rehabilitation Services
25 or the Disability Navigator Program, or any successors of these, appointed by the
26 executive director of the Louisiana Workforce Commission.

27 ~~(d)~~ (h) An officer of a bank in Louisiana who is a member of the Louisiana
28 Bankers Association and who is nominated by the association.

1 ~~(e)~~ (i) One member of the House of Representatives appointed by the
2 speaker.

3 ~~(f)~~ (j) One member of the Senate appointed by the president.

4 ~~(g)~~ (k) The state treasurer who shall be an ex officio voting member of the
5 authority.

6 * * *

7 §1726. ABLE Account Program and START Program; co-location and concurrent
8 operation

9 The authority is hereby authorized to enter into any contract, memorandum
10 of understanding, or other type of agreement as may be necessary to provide for the
11 co-location of administrative and clerical functions and concurrent operation and
12 management of the ABLE Account Program and the Louisiana Student Tuition
13 Assistance and Revenue Trust Program of this state, also known as the START
14 Program, established pursuant to Section 529 of the Internal Revenue Code and
15 Chapter 22-A of Title 17 of the Louisiana Revised Statutes of 1950 and administered
16 by the Louisiana Tuition Trust Authority placed within the Department of Education
17 by the provisions of R.S. 36:651(T).

18 §1727. Rulemaking; compliance with federal requirements; legislative oversight

19 A. The authority shall, by adoption of rules pursuant to the Administrative
20 Procedure Act, provide for the following functions, policies, and requirements of the
21 program and shall ensure through such rules that all of the following aspects of the
22 program comply with all applicable provisions of Section 529A of the Internal
23 Revenue Code and with any regulations pertaining to qualified ABLE programs
24 issued pursuant thereto:

25 (1) Individual eligibility factors, including the age limit before which a
26 person's disability must have occurred in order to be deemed an eligible individual
27 for purposes of the program.

28 (2) Applicant documentation and other standards relating to determination
29 of eligibility for the program.

1 (3) The establishment and imposition of reasonable residency requirements
2 for beneficiaries of those applying to establish an ABLE Account.

3 (4) The establishment and imposition of reasonable limits on the number of
4 ABLE Account participants.

5 (5) The number of ABLE Accounts per eligible individual.

6 (6) The establishment and imposition of limits on maximum annual
7 contributions to an ABLE Account.

8 (7) The establishment and imposition of limits on the amount that may
9 accrue in an ABLE Account on behalf of any designated beneficiary.

10 (8) Separate accounting for each designated beneficiary.

11 (9) A limitation on the number of times per year a designated beneficiary
12 may direct the investment of contributions made to his ABLE Account.

13 (10) A prohibition on pledging of any interest in an ABLE Account or any
14 portion thereof to be used as security for a loan.

15 (11) Safeguards to prevent aggregate contributions on behalf of a designated
16 beneficiary in excess of the limit provided for in 26 U.S.C. 529A(b).

17 (12) The establishment and imposition of restrictions on the substitution of
18 one designated beneficiary for another.

19 (13) The establishment and imposition of restrictions on the transfer of
20 ownership of ABLE Accounts.

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

24 (15) Types and categories of qualified disability expenses.

25 (16) Prevention of fraud and abuse with respect to amounts claimed as
26 qualified disability expenses.

27 (17) The disposition of abandoned accounts in compliance with federal and
28 state law.

1 (18) The establishment and imposition of restrictions on investment of
2 deposits in an ABLE Account and the interest earned thereon.

3 B. Administrative rules promulgated by the authority shall be subject to
4 legislative oversight by the House Committee on Health and Welfare and the Senate
5 Committee on Health and Welfare.

6 §1728. ABLE Account funds; treatment under certain federal assistance programs

7 In accordance with Section 103 of Title I of Division B of Public Law
8 113-295, for the purpose of determining eligibility to receive, or the amount of, any
9 assistance or benefit authorized to be provided to or for the benefit of a designated
10 beneficiary by a means-tested federal assistance program, the following amounts
11 shall be disregarded for such purpose with respect to any period during which the
12 beneficiary maintains, makes contributions to, or receives distributions from an
13 ABLE Account:

14 (1) Any amount, including earnings thereon, in the ABLE Account of the
15 designated beneficiary.

16 (2) Any contributions to the ABLE Account of the designated beneficiary.

17 (3) Any distribution from the ABLE Account for a qualified disability
18 expense.

19 §1729. Amounts deposited in ABLE Accounts; Louisiana income tax; tax table
20 income

21 For tax years beginning on and after January 1, 2016, amounts deposited in
22 an ABLE Account on behalf of any designated beneficiary shall be excluded from
23 tax table income for purposes of Louisiana income tax in accordance with applicable
24 provisions of R.S. 47:293(9)(a).

25 Section 4. R.S. 36:259(Y) and R.S. 46:1722(4) through (6), 1724, and 1725(D) are
26 hereby repealed in their entirety.

27 Section 5.(A) Internal Revenue Service Notice 2015-18, issued on March 23, 2015,
28 provides the following statements concerning implementation of state ABLE account
29 programs such as the program provided for in this Act:

1 (1) The United States Department of the Treasury (Treasury Department) and the
2 Internal Revenue Service (IRS) are aware that several state legislatures are in the process of
3 enacting enabling legislation in order to ensure that their citizens may create ABLE accounts
4 during 2015.

5 (2) While the Treasury Department and the IRS are working on guidance related to
6 Section 529A of the Internal Revenue Code providing for qualified ABLE programs as of
7 the date of issuance of IRS Notice 2015-18, it is anticipated that ABLE programs may be in
8 operation in some states before such guidance can be issued.

9 (3) The Treasury Department and the IRS do not intend for the lack of guidance to
10 discourage states from enacting their enabling legislation and creating their ABLE programs.

11 (4) The Treasury Department and the IRS are assuring states that enact legislation
12 creating an ABLE program in accordance with Section 529A of the Internal Revenue Code,
13 and individuals establishing ABLE accounts in accordance with such legislation, that they
14 will not fail to receive the benefits of Section 529A merely because the state legislation or
15 the account documents do not fully comport with the guidance when it is issued.

16 (5) The Treasury Department and the IRS intend to provide transition relief with
17 regard to necessary changes to ensure that state programs and accounts meet the
18 requirements in the guidance to be issued, including providing sufficient time after issuance
19 of the guidance in order for changes to be implemented.

20 (B) In consideration of the foregoing, the legislature hereby declares that this Act
21 is intended to comply to the maximum extent possible with all federal laws, regulations, and
22 policies relative to ABLE accounts in effect on the effective date of this Act.

23 Section 6. The executive director of The Arc of Louisiana shall take all such actions
24 as are necessary to ensure that the members of the ABLE Account Authority are seated on
25 or before September 1, 2015, and that the initial convening of the authority occurs no later
26 than December 1, 2015.

27 Section 7. This Act shall become effective upon signature by the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

- 1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 2 effective on the day following such approval.

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)]

HB 598 Reengrossed

2015 Regular Session

Foil

Abstract: Provides for the state ABLE Account savings program for persons with disabilities to be implemented in conformance with provisions of federal law providing for the program.

Present law known as the "Achieving a Better Life Experience in Louisiana Act" or "Louisiana ABLE Act", R.S. 46:1721 et seq., establishes a governance framework and broad guidelines for a state ABLE Account savings program for persons with disabilities. Provides that the purposes of the program include all of 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, Medicaid, the Supplemental Security Income program, the beneficiary's employment, and other sources.

Proposed law revises and updates present law to provide for full implementation of the ABLE Account program in a manner consistent with provisions of the Stephen Beck, Jr., ABLE Act of 2014 (Pub. L. 113-295), enacted Dec. 19, 2014, and referred to hereafter as "the federal ABLE Act".

Proposed law revises definitions in present law in the following manner to provide for consistency with the federal ABLE Act:

- (1) Amends definitions of "ABLE Account", "ABLE Account Program" and "program", and "qualified disability expense".
- (2) Adds definitions of "designated beneficiary" and "eligible individual".
- (3) Repeals definitions of "beneficiary", "department", and "person with a disability".

Present law sets forth purposes of the ABLE Account Program, referred to hereafter as "the program". Proposed law retains present law and adds full compliance with the federal ABLE Act as a purpose of the program.

Present law provides for treatment of the program consistent with Section 529 of the Internal Revenue Code relative to qualified tuition programs. Proposed law revises present law to provide for treatment of the program consistent with Section 529A of the Internal Revenue Code, as enacted by the federal ABLE Act, relative to qualified ABLE programs. Deletes all provisions of present law providing for equivalency of the program with qualified tuition programs provided for in the Internal Revenue Code.

Present law creates and provides for a seven-member ABLE Account Authority, referred to hereafter as "the authority" as the governance authority for the program. Provides that the authority shall operate under the same laws, rules, and guidelines and with the same officer selection and employment policies as the La. Student Financial Assistance Commission, except when inconsistent with present law and proposed law pertaining to the program.

For purposes of organization of the executive branch of state government, present law, R.S. 36:802.24, transfers the authority to and places it within the Dept. of Health and Hospitals. Proposed law amends present law to transfer the authority to and place it within the Dept. of Education. Further, proposed law adds the following four persons to the membership of the authority:

- (1) The executive director of The Arc of Louisiana or his designee.
- (2) The executive director of People First of Louisiana or his designee.
- (3) A person with a disability selected by the executive director of People First of Louisiana.
- (4) A parent or family member of a person with a disability selected by the chairperson of the Louisiana Developmental Disabilities Council.

Proposed law requires the executive director of The Arc of La. to take all such actions as are necessary to ensure that the members of the ABLE Account Authority are seated on or before Sept. 1, 2015, and that the initial convening of the authority occurs no later than Dec. 1, 2015.

Proposed law authorizes the authority to enter into any contract, memorandum of understanding, or other type of agreement with the La. Tuition Trust Authority as may be necessary to provide for the co-location of administrative and clerical functions and concurrent operation and management of the ABLE Account Program and the La. Student Tuition Assistance and Revenue Trust Program, also known as the START Program, established pursuant to Section 529 of the Internal Revenue Code and present law.

Present law specifies aspects of the program that the authority shall provide for in administrative rule. Proposed law retains present law; stipulates that all functions, policies, and requirements of the program provided for in rule must comport with the federal ABLE Act and all federal regulations issued pursuant thereto; and adds the following as aspects of the program that the authority shall provide for in rule:

- (1) Individual eligibility factors, including the age limit before which a person's disability must have occurred in order to be deemed an eligible individual for purposes of the program.
- (2) Applicant documentation and other standards relating to determination of eligibility for the program.
- (3) The number of ABLE Accounts per eligible individual.
- (4) The establishment and imposition of limits on maximum annual contributions to an ABLE Account.
- (5) Separate accounting for each designated beneficiary.
- (6) A limitation on the number of times per year a designated beneficiary may direct the investment of contributions made to his ABLE Account.

- (7) A prohibition on pledging of any interest in an ABLE Account or any portion thereof to be used as security for a loan.
- (8) Safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit provided for in the federal ABLE Act.
- (9) Types and categories of qualified disability expenses.
- (10) Prevention of fraud and abuse with respect to amounts claimed as qualified disability expenses.

Proposed law provides that rules promulgated by the authority shall be subject to oversight by the legislative committees on health and welfare.

Consistent with the federal ABLE Act, proposed law provides that for the purpose of determining eligibility to receive any federal means-tested assistance (e.g. Medicaid, Supplemental Security Income, Supplemental Nutrition Assistance Program benefits, etc.), or determining the amount of such assistance, the following amounts shall be disregarded for an ABLE Account beneficiary:

- (1) Any amount, including earnings thereon, in the ABLE Account.
- (2) Any contributions to the ABLE Account.
- (3) Any distribution from the ABLE Account for a qualified disability expense.

Proposed law provides that for tax years beginning on and after Jan. 1, 2016, amounts deposited in an ABLE Account on behalf of any designated beneficiary shall be excluded from tax table income for purposes of La. income tax in accordance with applicable provisions of R.S. 47:293(9)(a).

Proposed law acknowledges that information provided by the Internal Revenue Service (IRS) through IRS Notice 2015-18 indicates, in pertinent part, the following:

- (1) That the U.S. Treasury Department and the IRS are working on guidance related to Section 529A of the Internal Revenue Code providing for qualified ABLE programs as of the date of issuance of IRS Notice 2015-18 (March 23, 2014).
- (2) The IRS anticipates that ABLE Account programs may be in operation in some states before such guidance can be issued.
- (3) The Treasury Department and the IRS do not intend for the lack of guidance to discourage states from enacting their enabling legislation and creating their ABLE programs.

Proposed law provides a legislative declaration in consideration of the foregoing indicating that proposed law is intended to comply to the maximum extent possible with all federal laws, regulations, and policies relative to ABLE Accounts in effect on the effective date of proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 36:802.24 and R.S. 46:1722(1), (2), and (7)(intro. para.) and (h), 1723, and 1725(B)(2); Adds R.S. 17:3093.1, R.S. 36:651(T)(6), and R.S. 46:1722(8) and (9) and 1726-1729; Repeals R.S. 36:259(Y) and R.S. 46:1722(4)-(6), 1724, and 1725(D))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Education to the original bill:

1. Require the executive director of The Arc of La. instead of the chairperson of the La. Developmental Disabilities Council to ensure the seating of the ABLE Account Authority members and the authority's convening.