

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 AND SENATORS ADLEY, ALARIO, ALLAIN, APPEL, BROWN, BUFFINGTON, CHABERT, CLAITOR, CORTEZ, CROWE, DONAHUE, DORSEY-COLOMB, ERDEY, GUILLORY, LAFLEUR, MILLS, MORRELL, MORRISH, MURRAY, NEVERS, PEACOCK, PETERSON, RISER, GARY SMITH, JOHN SMITH, TARVER, THOMPSON, WALSWORTH, WARD, AND WHITE

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 1730, 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 provide for the  
13 duties of the state treasurer relative to the investment of funds in ABLE Accounts;  
14 to authorize rulemaking and oversight thereof by certain legislative committees; to  
15 provide relative to treatment by certain assistance programs of funds in ABLE  
16 Accounts; to provide relative to tax treatment of amounts deposited in ABLE  
17 Accounts; to provide 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 1730 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 ~~(g)~~ (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 ~~(h)~~ (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.

29 ~~(i)~~ (i) One member of the House of Representatives appointed by the  
30 speaker.

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

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

4   \*        \*        \*

5 §1726. ABLÉ Account Program and START Program; co-location and concurrent  
6 operation

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

16 §1727. Rulemaking; compliance with federal requirements; legislative oversight

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

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

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

28                         (3) The establishment and imposition of reasonable residency requirements  
29 for beneficiaries of those applying to establish an ABLÉ Account.

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

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

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

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

8                   (8) Separate accounting for each designated beneficiary.

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

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

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

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

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

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

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

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

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

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

1           B. Administrative rules promulgated by the authority shall be subject to  
 2           legislative oversight by the Senate Committee on Finance and the House Committee  
 3           on Appropriations.

4           §1728. ABLÉ Account funds; investment

5           The state treasurer shall invest monies deposited in the ABLÉ Accounts in  
 6           the same manner as prescribed by R.S. 17:3091 et seq. for the investment of monies  
 7           deposited in START Program accounts. Funds in ABLÉ accounts shall be invested  
 8           in such investment options and subject to the same requirements and limitations for  
 9           funds deposited in START Program accounts provided in R.S. 17:3091 et seq.,  
 10          except as otherwise provided in this Chapter.

11          §1729. ABLÉ Account funds; treatment under certain federal assistance programs

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

19                 (1) Any amount, including earnings thereon, in the ABLÉ Account of the  
 20                 designated beneficiary.

21                 (2) Any contributions to the ABLÉ Account of the designated beneficiary.

22                 (3) Any distribution from the ABLÉ Account for a qualified disability  
 23                 expense.

24          §1730. Amounts deposited in ABLÉ Accounts; Louisiana income tax; tax table  
 25          income

26          For tax years beginning on and after January 1, 2016, amounts deposited in  
 27          an ABLÉ Account on behalf of any designated beneficiary may be excluded from  
 28          tax table income for purposes of Louisiana income tax if authorized by the  
 29          provisions of R.S. 47:293(9)(a).



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

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

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

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

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

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

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

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

28          Section 6. The executive director of The Arc of Louisiana shall take all such actions  
 29 as are necessary to ensure that the members of the ABLE Account Authority are seated on

1 or before September 1, 2015, and that the initial convening of the authority occurs no later  
2 than December 1, 2015.

3 Section 7. This Act shall become effective upon signature by the governor or, if not  
4 signed by the governor, upon expiration of the time for bills to become law without signature  
5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
7 effective on the day following such approval.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_