2015 Regular Session

HOUSE BILL NO. 598

BY REPRESENTATIVES FOIL, BARROW, LEGER, AND THIERRY

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

AN ACT

To amend and reenact R.S. 36:802.24 and R.S. 46:1722(1), (2), and (7)(introductory paragraph) and (h), 1723, and 1725(B)(2), to enact R.S. 17:3093.1, R.S. 36:651(T)(6), and R.S. 46:1722(8) and (9) and 1726 through 1729, and to repeal R.S. 36:259(Y) and R.S. 46:1722(4) through (6), 1724, and 1725(D), relative to the ABLE Account Program established by the Louisiana ABLE Act; to provide for implementation of the ABLE Account Program in conformance with applicable federal laws; to provide relative to the composition and functions of the ABLE Account Authority; to provide for cooperative endeavors between the ABLE Account Authority and the Louisiana Tuition Trust Authority; to provide for concurrent operation and management of the ABLE Account Program and the Louisiana Student Tuition Assistance and Revenue Trust Program; to authorize rulemaking and oversight thereof by certain legislative committees; to provide relative to treatment by certain assistance programs of funds in ABLE Accounts; to provide relative to tax treatment of amounts deposited in ABLE Accounts; to provide for legislative intent; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
Section 1. R.S. 17:3093.1 is hereby enacted to read as follows:

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

The authority is hereby authorized to enter into any contract, memorandum of understanding, or other type of agreement as may be necessary to provide for the co-location of administrative and clerical functions and concurrent operation and management of the START Program and the ABLE Account Program of this state established pursuant to Section 529A of the Internal Revenue Code and Chapter 19 of Title 40 of the Louisiana Revised Statutes of 1950 and administered by the ABLE Account Authority placed within the Department of Education by the provisions of R.S. 36:651(T).

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

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

* * *

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

* * *

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

* * *

§802.24. Transfer; ABLE Account Authority

The ABLE Account Authority, transferred by the provisions of R.S. 36:259(Y) R.S. 36:651(T), is transferred to and placed within the Department of Health and Hospitals Department of Education and shall continue to be composed and selected as provided by law, and shall continue to exercise all of the powers,
duties, functions, and responsibilities as provided in Chapter 19 of Title 46 of the
Louisiana Revised Statutes of 1950.

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

§1722. Definitions

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

(1) "ABLE Account" means a special savings account for financing of
certain qualified expenses of persons with disabilities as specifically provided in this
Chapter, and which conforms with all applicable standards and requirements set forth

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

*          *          *

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

*          *          *

(h) Any other expenses which are consistent with the purposes of this
Chapter, authorized by federal law, approved by the authority, and provided for in
duly promulgated administrative rules.
(8) "Designated beneficiary" shall have the meaning ascribed in 26 U.S.C. 529A(e).

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

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

A. The ABLE Account Program is hereby created and shall be administered by the ABLE Account Authority, referred to hereafter as "the 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.

B. The purposes of the ABLE Account Program, referred to hereafter as the "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, the Medicaid medical assistance program under administered by this state in accordance with Title XIX of the Social Security Act, the supplemental security income program under Title XVI of such Act, the beneficiary's employment, and other sources.

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

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

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

§1725. ABLE Account Authority; creation; powers

* * *

B.

* * *

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

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

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

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

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

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

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

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

(h) An officer of a bank in Louisiana who is a member of the Louisiana
Bankers Association and who is nominated by the association.
(e) (i) One member of the House of Representatives appointed by the speaker.

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

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

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

The authority is hereby authorized to enter into any contract, memorandum of understanding, or other type of agreement 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 Louisiana Student Tuition Assistance and Revenue Trust Program of this state, also known as the START Program, established pursuant to Section 529 of the Internal Revenue Code and Chapter 22-A of Title 17 of the Louisiana Revised Statutes of 1950 and administered by the Louisiana Tuition Trust Authority placed within the Department of Education by the provisions of R.S. 36:651(T).

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

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

(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 establishment and imposition of reasonable residency requirements for beneficiaries of those applying to establish an ABLE Account.

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

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

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

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

(8) Separate accounting for each designated beneficiary.

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

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

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

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

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

(14) 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.

(15) Types and categories of qualified disability expenses.

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

(17) The disposition of abandoned accounts in compliance with federal and state law.
(18) The establishment and imposition of restrictions on investment of

deposits in an ABLE Account and the interest earned thereon.

B. Administrative rules promulgated by the authority shall be subject to

legislative oversight by the House Committee on Health and Welfare and the Senate

Committee on Health and Welfare.

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

In accordance with Section 103 of Title I of Division B of Public Law

113-295, for the purpose of determining eligibility to receive, or the amount of, any

assistance or benefit authorized to be provided to or for the benefit of a designated

beneficiary by a means-tested federal assistance program, the following amounts

shall be disregarded for such purpose with respect to any period during which the

beneficiary maintains, makes contributions to, or receives distributions from an

ABLE Account:

(1) Any amount, including earnings thereon, in the ABLE Account of the

designated beneficiary.

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

(3) Any distribution from the ABLE Account for a qualified disability

expense.

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

income

For tax years beginning on and after January 1, 2016, amounts deposited in

an ABLE Account on behalf of any designated beneficiary shall be excluded from

tax table income for purposes of Louisiana income tax in accordance with applicable

provisions of R.S. 47:293(9)(a).

Section 4. R.S. 36:259(Y) and R.S. 46:1722(4) through (6), 1724, and 1725(D) are

hereby repealed in their entirety.

Section 5.(A) Internal Revenue Service Notice 2015-18, issued on March 23, 2015,

provides the following statements concerning implementation of state ABLE account

programs such as the program provided for in this Act:
(1) The United States Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) are aware that several state legislatures are in the process of enacting enabling legislation in order to ensure that their citizens may create ABLE accounts during 2015.

(2) While the 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, it is anticipated that ABLE 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.

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

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

(B) In consideration of the foregoing, the legislature hereby declares that this Act 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 this Act.

Section 6. The chairperson of the Louisiana Developmental Disabilities Council shall take all such actions as are necessary to ensure that the members of the ABLE Account Authority are seated on or before September 1, 2015, and that the initial convening of the authority occurs no later than December 1, 2015.

Section 7. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
vetoed by the governor and subsequently approved by the legislature, this Act shall become 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 Original 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 chairperson of the La. Developmental Disabilities Council 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.

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
(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))

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