

2016 Regular Session

HOUSE BILL NO. 991

BY REPRESENTATIVE FOIL

EXCEPTIONAL PERSONS: Provides that the La. Tuition Trust Authority shall administer the ABLE account program, which supports persons with disabilities

1 AN ACT

2 To enact Chapter 22 of Title 17 of the Revised Statutes of 1950, to be comprised of R.S.
3 17:3081 through 3089, and R.S. 36:651(G)(5) and to repeal R.S. 17:3093.1, R.S.
4 36:651(T)(6) and 802.24, and Chapter 19 of Title 46 of the Louisiana Revised
5 Statutes of 1950, comprised of R.S. 46:1721 through 1730, relative to programs for
6 persons with disabilities; to provide that the ABLE account program shall be
7 administered by the Louisiana Tuition Trust Authority; to create the ABLE account
8 Advisory council; to provide relative to legislative oversight; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 22 of Title 17 of the Revised Statutes of 1950, comprised of R.S.
12 17:3081 through 3089, is hereby enacted to read as follows:

13 CHAPTER 22. ABLE ACCOUNT PROGRAM FOR DISABILITY-RELATED
14 EXPENSES

15 §3081. 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 §3082. 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 certain
22 qualified expenses of persons with disabilities as specifically provided in this

1 Chapter that conforms with all applicable standards and requirements set forth for
2 ABLE accounts in the ABLE Act.

3 (2) "ABLE account program" and "program" mean the special savings
4 account program provided for in this Chapter that meets applicable standards and
5 requirements necessary for designation as a "qualified ABLE program" as defined
6 in the ABLE Act.

7 (3) "ABLE Act" means the Stephen Beck, Jr., ABLE Act of 2014 (Public
8 Law 113-295, Division B).

9 (4) "Advisory Council" means the ABLE Account Advisory Council as
10 created in this Chapter.

11 (5) "Authority" means the Louisiana Tuition Trust Authority as created in
12 Chapter 22-A of this Title.

13 (6) "Designated beneficiary" has the meaning ascribed in 26 U.S.C. 529A(e).

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

16 (8) "Qualified disability expense" means an expense made for a purpose
17 authorized in federal law and regulation relative to ABLE accounts for the benefit
18 of a person with a disability who is a designated beneficiary participating in the
19 program. If authorized by federal law and regulation, qualified disability expenses
20 may include the following:

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

23 (b) Education expenses, including tuition for preschool through
24 postsecondary education, which shall include higher education expenses and
25 expenses for books, supplies, and educational materials related to preschool and
26 secondary education, tutors, and special education services.

27 (c) Employment support expenses related to obtaining and maintaining
28 employment, including job-related training, assistive technology, and personal
29 assistance supports.

1 (d) Health, prevention, and wellness expenses including but not limited to
2 the following, provided that the equipment and services listed in this Subparagraph
3 conform with any applicable rule or regulation of the Department of Health and
4 Hospitals and the Louisiana Rehabilitation Services program of the Louisiana
5 Workforce Commission:

6 (i) Premiums for health insurance.

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

8 (iii) Habilitation and rehabilitation services.

9 (iv) Durable medical equipment.

10 (v) Therapy.

11 (vi) Respite care.

12 (vii) Long-term services and supports.

13 (viii) Nutritional management.

14 (ix) Communication services and devices, adaptive equipment, and assistive
15 technology.

16 (x) Personal assistance.

17 (e) Housing expenses for a primary residence, including rent, purchase of a
18 primary residence or an interest in a primary residence, mortgage payments, real
19 property taxes, and utility charges.

20 (f) Miscellaneous expenses, including expenses for financial management
21 and administrative services; legal fees; expenses for oversight; monitoring; home
22 improvements, modifications, maintenance, and repairs at a primary residence; and
23 funeral and burial expenses.

24 (g) Transportation expenses, including the use of mass transit, the purchase
25 or modification of vehicles, and moving expenses.

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

1 §3083. ABLE account program; creation; purpose; legislative intent

2 A. The ABLE account program is hereby created and shall be administered
3 by the authority to encourage and assist individuals and families in saving private
4 funds for the purpose of supporting persons with disabilities in endeavors to maintain
5 health, independence, and quality of life. The authority shall administer the program
6 in consultation with the advisory council.

7 B. The purposes of the program include all of the following:

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

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

16 (3) To comply fully with all provisions of the ABLE Act and all regulations
17 issued pursuant thereto.

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

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

1 §3084. Louisiana Tuition Trust Authority; rules; compliance with federal
2 requirements

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

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

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

14 (3) The establishment and imposition of reasonable residency requirements
15 for beneficiaries of those applying to establish an ABLE account.

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

18 (5) The number of ABLE accounts per eligible individual.

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

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

23 (8) Separate accounting for each designated beneficiary.

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

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

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

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

3 (13) The establishment and imposition of restrictions on the transfer of
4 ownership of ABLE accounts.

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

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

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

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

13 (18) The establishment and imposition of restrictions on investment of
14 deposits in an ABLE account and the interest earned thereon.

15 §3085. Louisiana Tuition Trust Authority; powers relative to the administration of
16 the program

17 In addition to any other powers conferred by this Chapter, the authority may
18 do any of the following:

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

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

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

3 (4) Promote, advertise, and publicize the program.

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

5 §3086. ABLE account funds; investment

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

12 §3087. ABLE account funds; treatment under certain federal assistance programs

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

20 (1) Any amount, including earnings thereon, in the ABLE account of the
21 designated beneficiary.

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

23 (3) Any distribution from the ABLE account for a qualified disability
24 expense.

25 §3088. Amounts deposited in ABLE accounts; Louisiana income tax; tax table
26 income

27 For tax years beginning on and after January 1, 2016, amounts deposited in
28 an ABLE account on behalf of any designated beneficiary may be excluded from tax

1 table income for purposes of Louisiana income tax if authorized by the provisions
2 of R.S. 47:293(9)(a).

3 §3089. ABLE account advisory council; creation; powers

4 A. There is hereby created the ABLE account advisory council, which shall
5 advise and consult with the authority relative to the authority's administration of and
6 adoption of rules pertaining to the program.

7 B. The membership of the advisory council shall consist of the following
8 persons:

9 (1) The chairperson of the Louisiana Developmental Disabilities Council or
10 his designee.

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

13 (3) The executive director of The Arc of Louisiana or his designee.

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

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

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

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

22 (8) An officer of a bank in Louisiana who is a member of the Louisiana
23 Bankers Association and who is nominated by the association.

24 (9) One member of the House of Representatives appointed by the speaker.

25 (10) One member of the Senate appointed by the president.

26 (11) The state treasurer.

27 C. The advisory council shall meet at least annually at the call of the
28 chairman and at such other times as the chairman or the advisory council determines

1 necessary. The advisory council may establish and delegate to an executive
2 committee such duties and responsibilities as the authority determines appropriate.

3 D. A majority of the advisory council shall constitute a quorum of the
4 advisory council, and the affirmative vote of a majority of the members present shall
5 be necessary for any action taken by the advisory council. A majority of the
6 executive committee shall constitute a quorum of the executive committee, and the
7 affirmative vote of a majority of the executive committee members present shall be
8 necessary for any action taken by the executive committee. No vacancy in the
9 membership of the advisory council or the executive committee shall impair the
10 rights of a quorum to exercise all rights and perform all duties of the advisory
11 council or the executive committee respectively.

12 Section 2. R.S. 36:651(G)(5) is hereby enacted to read as follows:

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

16 * * *

17 G. The following agencies, as defined by R.S. 36:3, are transferred to and
18 hereafter shall be within the Department of Education as provided in Part III of
19 Chapter 22 of this Title:

20 * * *

21 (5) The ABLE account advisory council (R.S. 17:3089).

22 * * *

23 Section 3. R.S. 17:3093.1, R.S. 36:651(T)(6) and 802.24, and Chapter 19 of Title 46
24 of the Louisiana Revised Statutes of 1950, comprised of R.S. 46:1721 through 1730, are
25 hereby repealed in their entirety.

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 991 Original

2016 Regular Session

Foil

Abstract: Transfers responsibility of administering the ABLE account program from the ABLE Account Authority to the La. Tuition Trust Authority (LATTA); makes the ABLE Account Authority an advisory council of LATTA.

Present law, known as the "Achieving a Better Life Experience in Louisiana Act" or "Louisiana ABL Act", establishes a governance framework and broad guidelines for a state ABL account savings program (the "program") for persons with disabilities. Provides for these program purposes:

- (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 that will supplement, but not supplant, certain other benefits.

Proposed law retains present law.

Present law requires the ABL Account Authority to administer the program and provide for various aspects of the program by administrative rule. Proposed law transfers these responsibilities from the ABL Account Authority to the LATTA, which also administers the La. Student Tuition Assistance and Revenue Trust (START) Program pursuant to present law.

Present law provides for ABL Account Authority membership. Proposed law retains this entity's membership and changes its name from the "ABLE Account Authority" to the "ABLE account advisory council" and provides that it shall advise LATTA with respect to LATTA's administration of and adoption of rules for the program.

Present law authorizes LATTA to enter into any agreement with the ABL Account Authority as necessary to provide for combining the administration of the program and the START Program. Also provides for legislative oversight of ABL Account Authority rules by the House Appropriations Committee and Senate Finance Committee. Proposed law repeals present law.

Present law provides for legislative oversight of LATTA rules by the House and Senate education committees. Proposed law retains present law.

Proposed law retains all of the following present law but transfers its placement from Title 46 to Title 17 of the Revised Statutes:

- (1) Defines a "qualified disability expense" as an expense made for a purpose authorized in federal law and regulation relative to ABL accounts for the benefit of a person with a disability who is a designated beneficiary participating in the program, which may include the following:
 - (a) Assistive technology and personal support service expenses.
 - (b) Education expenses.

- (c) Employment support expenses.
 - (d) Health, prevention, and wellness expenses.
 - (e) Housing expenses for a primary residence.
 - (f) Miscellaneous expenses, including expenses for financial management and administrative services; legal fees; expenses for oversight; monitoring; home improvements, modifications, maintenance, and repairs at a primary residence; and funeral and burial expenses.
 - (g) Transportation expenses.
 - (h) Any other expenses that are consistent with the purposes of present law, authorized by federal law, approved by the authority, and provided for in duly promulgated administrative rules.
- (2) Requires the state treasurer to invest funds in ABLE accounts in the same manner as monies deposited in START Program accounts.
- (3) Provides that for tax years beginning on and after Jan. 1, 2016, amounts deposited in an ABLE account on behalf of any designated beneficiary may be excluded from tax table income for purposes of La. income tax if authorized by applicable provisions of present law.

(Adds R.S. 17:3081-3089 and R.S. 36:651(G)(5); Repeals R.S. 17:3093.1, R.S. 36:651(T)(6) and 802.24, and R.S. 46:1721-1730)