

Regular Session, 2014

HOUSE BILL NO. 833

BY REPRESENTATIVES FOIL, ANDERS, BARROW, BERTHELOT, STUART BISHOP, BROADWATER, BURFORD, HENRY BURNS, BURRELL, CARMODY, CARTER, CHAMPAGNE, COX, CROMER, GUINN, HARRIS, HARRISON, HAVARD, HAZEL, HENSGENS, HILL, HOFFMANN, HONORE, HOWARD, HUNTER, KATRINA JACKSON, JOHNSON, LEBAS, MILLER, JAY MORRIS, POPE, SCHEXNAYDER, ST. GERMAIN, THIERRY, 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 Tuition Assistance and

9 Revenue Trust Program; to establish program rules; to provide for qualified

10 expenses; to provide for transfer of entities to the Department of Health and

11 Hospitals for the purpose of conferring rulemaking authority; to provide for

12 promulgation of rules; to provide for effectiveness contingent upon certain actions

13 by congress; and to provide for related 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 (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 listed in this Subparagraph
24 conform with any applicable rules and regulations of the Department of Health and
25 Hospitals and the Louisiana Rehabilitation Services program of the Louisiana
26 Workforce Commission:

27 (i) Premiums for health insurance.

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

29 (iii) Habilitation and rehabilitation services.

1 (iv) Durable medical equipment.

2 (v) Therapy.

3 (vi) Respite care.

4 (vii) Long term services and supports.

5 (viii) Nutritional management.

6 (ix) Communication services and devices, adaptive equipment, and assistive
7 technology.

8 (x) Personal assistance.

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

12 (f) Miscellaneous expenses, including expenses for financial management
13 and administrative services; legal fees; expenses for oversight; monitoring; home
14 improvements, modifications, maintenance, and repairs at primary residence; and
15 funeral and burial expenses.

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

18 (h) Any other expenses which are consistent with the purposes of this
19 Chapter, approved by the authority, and provided for in duly promulgated
20 administrative rules.

21 §1723. ABLE Account Program; creation; purpose; legislative intent

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

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

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

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

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

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

20 §1724. General program rules

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

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

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

4 §1725. ABLE Account Authority; creation; powers

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

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

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

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

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

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

20 (d) An officer of a bank in Louisiana who is a member of the Louisiana
21 Bankers Association and who is nominated by the association.

22 (e) One member of the House of Representatives appointed by the speaker.

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

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

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

1 (4) A majority of the authority shall constitute a quorum of the authority, and
2 the affirmative vote of a majority of the members present shall be necessary for any
3 action taken by the authority. A majority of the executive committee shall constitute
4 a quorum of the executive committee, and the affirmative vote of a majority of the
5 executive committee members present shall be necessary for any action taken by the
6 executive committee. No vacancy in the membership of the authority or the
7 executive committee shall impair the rights of a quorum to exercise all rights and
8 perform all duties of the authority or the executive committee respectively.

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

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

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

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

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

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

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

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

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

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

5 **(d) The establishment and imposition of restrictions on the substitution of**
6 **one beneficiary for another.**

7 **(e) The establishment and imposition of restrictions on the transfer of**
8 **ownership of ABLE Accounts.**

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

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

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

15 **(2) The authority may, through the exclusive means of adoption of rules**
16 **pursuant to the Administrative Procedure Act, provide for the implementation and**
17 **administration of this Chapter.**

18 **§§1726 through 1740. [Reserved.]**

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

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)]

Foil

HB No. 833

Abstract: Creates the ABLE Account savings program for persons with 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 seven persons:

- (1) The executive director of the La. Developmental Disabilities Council or his designee.
- (2) The executive director of the governor's office of disability affairs or his designee.
- (3) 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.
- (4) An officer of a bank in La. who is a member of the La. Bankers' Association and who is nominated by the association.
- (5) One member of the House of Representatives appointed by the speaker.
- (6) One member of the Senate appointed by the president.

- (7) 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.

House Floor Amendments to the engrossed bill.

1. Changed composition of the ABLE Account Authority provided for in proposed law in the following manner:
 - (a) Deleted provision specifying that the membership of the authority shall include all members of the La. Developmental Disabilities Council.
 - (b) Added provision specifying that the membership of the authority shall include the executive director of the La. Developmental Disabilities Council or his designee.
 - (c) Added provision specifying that the membership of the authority shall include the executive director of the governor's office of disability affairs or his designee.
2. Made technical changes.