

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 Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 17:3081 through 3089, and R.S. 36:651(G)(5) and to repeal R.S. 17:3093.1,  
4 R.S. 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 Louisiana Revised Statutes of 1950,  
12 comprised of R.S. 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                    A. 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 ABLÉ 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 ABLÉ account.

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

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

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

21                    (7) The establishment and imposition of limits on the amount that may  
22                    accrue in an ABLÉ 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 ABLÉ account.

26                    (10) A prohibition on pledging of any interest in an ABLÉ 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          B. In addition to ensuring that specified program aspects are in compliance  
16          with federal provisions and regulations as provided in Subsection A of this Section,  
17          the authority shall monitor such provisions and regulations for any revisions that  
18          would have an impact on the program and revise program rules as necessary to  
19          ensure conformance with federal laws and regulations.

20          §3085. Louisiana Tuition Trust Authority; powers relative to the administration of  
21          the program

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

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

27               (2) Indemnify or purchase policies on behalf of members, officers, and  
28               employees of the authority from insurers licensed to do business in this state  
29               providing for coverage for any liability incurred in connection with any civil action,

1        demand, or claim against a director, officer, or employee by reason of an act or  
2        omission by the director, officer, or employee that was not manifestly outside the  
3        scope of his employment or official duties or with malicious purpose, in bad faith,  
4        or in a wanton or reckless manner.

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

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

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

9        §3086. ABLE account funds; investment

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

16        §3087. ABLE account funds; treatment under certain federal assistance programs

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

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

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

27                (3) Any distribution from the ABLE account for a qualified disability  
28        expense.

1       §3088. Amounts deposited in ABLE accounts; Louisiana income tax; tax table  
2               income

3               For tax years beginning on and after January 1, 2016, amounts deposited in  
4       an ABLE account on behalf of any designated beneficiary may be excluded from tax  
5       table income for purposes of Louisiana income tax if authorized by the provisions  
6       of R.S. 47:293(9)(a).

7       §3089. ABLE account advisory council; creation; powers

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

11               B. The membership of the advisory council shall consist of the following  
12       persons:

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

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

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

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

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

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

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

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

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

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





## 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 Engrossed

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, provide for specified aspects of the program by administrative rule, and ensure that these aspects comply with federal laws and regulations. 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. Proposed law requires LATTA, in addition to ensuring that specified program aspects are in compliance with federal provisions and regulations, to monitor such provisions and regulations for any revisions that would have an impact on the program and revise program rules as necessary to ensure conformance with federal laws and regulations.

Present law provides for ABL Account Authority membership. Proposed law retains this entity's membership and changes its name from the "ABL Account Authority" to the "ABL 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 La. 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)

#### Summary of Amendments Adopted by House

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

1. Add requirement that LATTA monitor federal laws and regulations and revise its program rules as necessary.