

ACT No. 604

2016 Regular Session

HOUSE BILL NO. 991

BY REPRESENTATIVE FOIL

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-

14 RELATED 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 meanings ascribed in
20 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 for in this
23 Chapter that conforms with all applicable standards and requirements set forth for
24 ABLE accounts in the ABLE Act.

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

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

7 (4) "Advisory Council" means the ABLE Account Advisory Council.

8 (5) "Authority" means the Louisiana Tuition Trust Authority.

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

10 (7) "Eligible individual" means a person with a disability who meets the
11 criteria necessary to qualify as an eligible individual as provided in 26 U.S.C.
12 529A(e).

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

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

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

24 (c) Employment support expenses related to obtaining and maintaining
25 employment, including job-related training, assistive technology, and personal
26 assistance supports.

27 (d) Health, prevention, and wellness expenses including but not limited to
28 the following, provided that the equipment and services listed in this Subparagraph
29 conform with any applicable rule or regulation of the Department of Health and

1 Hospitals and the Louisiana Rehabilitation Services program of the Louisiana
 2 Workforce Commission:

3 (i) Premiums for health insurance.

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

5 (iii) Habilitation and rehabilitation services.

6 (iv) Durable medical equipment.

7 (v) Therapy.

8 (vi) Respite care.

9 (vii) Long-term services and supports.

10 (viii) Nutritional management.

11 (ix) Communication services and devices, adaptive equipment, and assistive
 12 technology.

13 (x) Personal assistance.

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

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

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

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

26 §3083. ABLE account program; creation; purpose; legislative intent

27 A. The ABLE account program is hereby created and shall be administered
 28 by the authority to encourage and assist individuals and families in saving private
 29 funds for the purpose of supporting persons with disabilities in endeavors to maintain

1 health, independence, and quality of life. The authority shall administer the program
 2 in consultation with the advisory council.

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

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

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

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

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

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

26 §3084. Louisiana Tuition Trust Authority; rules; compliance with federal
 27 requirements

28 A. The authority shall, by adoption of rules pursuant to the Administrative
 29 Procedure Act and in consultation with the advisory council, provide for the
 30 following functions, policies, and requirements of the program and shall ensure

1 through such rules that all of the following aspects of the program comply with all
2 applicable provisions of Section 529A of the Internal Revenue Code and with any
3 regulations pertaining to qualified ABLE programs issued pursuant thereto:

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

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

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

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

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

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

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

18 (8) Separate accounting for each designated beneficiary.

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

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

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

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

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

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

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

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

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

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

11 B. In addition to ensuring that specified program aspects are in compliance
12 with federal provisions and regulations as provided in Subsection A of this Section,
13 the authority shall monitor such provisions and regulations for any revisions that
14 would have an impact on the program and revise program rules as necessary to
15 ensure conformance with federal laws and regulations.

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

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

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

23 (2) Indemnify or purchase policies on behalf of members, officers, and
24 employees of the authority from insurers licensed to do business in this state
25 providing for coverage for any liability incurred in connection with any civil action,
26 demand, or claim against a director, officer, or employee by reason of an act or
27 omission by the director, officer, or employee that was not manifestly outside the
28 scope of his employment or official duties or with malicious purpose, in bad faith,
29 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
 29 table income for purposes of Louisiana income tax if authorized by the provisions
 30 of R.S. 47:293(9)(a).

1 §3089. ABLÉ Account Advisory Council; creation; powers

2 A. There is hereby created the ABLÉ Account Advisory Council, which
3 shall advise and consult with the authority relative to the authority's administration
4 of and adoption of rules pertaining to the program.

5 B. The membership of the advisory council shall consist of the following
6 persons:

7 (1) The chairperson of the Louisiana Developmental Disabilities Council or
8 his designee.

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

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

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

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

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

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

20 (8) 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 (9) One member of the House of Representatives appointed by the speaker.

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

24 (11) The state treasurer.

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

29 D. A majority of the advisory council shall constitute a quorum of the
30 advisory council, and the affirmative vote of a majority of the members present shall

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

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

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

12 * * *

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

16 * * *

17 (5) The ABLE Account Advisory Council (R.S. 17:3089).

18 * * *

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____