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## DIGEST

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HB 598 Engrossed

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 ABLÉ 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 executive director of The Arc of La. to take all such actions as are necessary to ensure that the members of the ABLÉ 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 ABLÉ 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 ABLÉ 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 ABLÉ 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.
- (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))

## Summary of Amendments Adopted by House

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

1. Require the executive director of The Arc of La. instead of the chairperson of the La. Developmental Disabilities Council to ensure the seating of the ABLE Account Authority members and the authority's convening.