

ACT No. 93

Regular Session, 2014

HOUSE BILL NO. 833

BY REPRESENTATIVES FOIL, ANDERS, BARROW, BERTHELOT, STUART BISHOP, WESLEY 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 AND SENATORS ADLEY, ALARIO, ALLAIN, BROOME, BROWN, BUFFINGTON, CHABERT, CLAITOR, CROWE, DORSEY-COLOMB, ERDEY, GUILLORY, JOHNS, KOSTELKA, LAFLEUR, LONG, MARTINY, MILLS, MORRELL, MURRAY, NEVERS, PEACOCK, RISER, GARY SMITH, JOHN SMITH, THOMPSON, WALSWORTH, WARD, AND WHITE

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 Y. The ABLE Account Authority (R.S. 46:1725) is hereby placed within the
 2 Department of Health and Hospitals and shall exercise and perform its powers,
 3 duties, functions, and responsibilities in the manner provided in R.S. 36:802.24.

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5 §802.24. Transfer; ABLE Account Authority

6 The ABLE Account Authority, transferred by the provisions of R.S.
 7 36:259(Y), is transferred to and placed within the Department of Health and
 8 Hospitals and shall continue to be composed and selected as provided by law, and
 9 shall continue to exercise all of the powers, duties, functions, and responsibilities as
 10 provided in Chapter 19 of Title 46 of the Louisiana Revised Statutes of 1950.

11 Section 2. Chapter 19 of Title 46 of the Louisiana Revised Statutes of 1950,
 12 comprised of R.S. 46:1721 through 1740, is hereby enacted to read as follows:

13 CHAPTER 19. ABLE ACCOUNT PROGRAM FOR
 14 DISABILITY-RELATED EXPENSES

15 §1721. 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 §1722. 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
 22 certain qualified expenses of persons with disabilities as specifically provided in this
 23 Chapter.

24 (2) "ABLE Account Program" and "program" mean the special savings
 25 account program provided for in this Chapter.

26 (3) "Authority" means the ABLE Account Authority created by this Chapter
 27 to administer the ABLE Account Program.

28 (4) "Beneficiary" means the ABLE Account owner or the person entitled to
 29 apply the savings accrued in an ABLE Account, if not the account owner.

30 (5) "Department" means the Department of Health and Hospitals.

1 (6) "Person with a disability" means a person who meets either of the
2 following criteria:

3 (a) Has a medically determinable physical or mental impairment which
4 results in marked and severe functional limitations, and which can be expected to
5 result in death or which has lasted or can be expected to last for a continuous period
6 of not less than twelve months.

7 (b) Is blind.

8 (7) "Qualified disability expense" means any expense made for the benefit
9 of a person with a disability who is a designated beneficiary as defined and
10 specifically provided for in rules and regulations of the authority. Qualified
11 disability expenses may include, without limitation, the following:

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

14 (b) Education expenses, including tuition for preschool through
15 postsecondary education, which shall include higher education expenses and
16 expenses for books, supplies, and educational materials related to preschool and
17 secondary education, tutors, and special education services.

18 (c) Employment support expenses related to obtaining and maintaining
19 employment, including job-related training, assistive technology, and personal
20 assistance supports.

21 (d) Health, prevention, and wellness expenses including but not limited to
22 the following, provided that the equipment and services listed in this Subparagraph
23 conform with any applicable rules and regulations of the Department of Health and
24 Hospitals and the Louisiana Rehabilitation Services program of the Louisiana
25 Workforce Commission:

26 (i) Premiums for health insurance.

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

28 (iii) Habilitation and rehabilitation services.

29 (iv) Durable medical equipment.

30 (v) Therapy.

1 (vi) Respite care.

2 (vii) Long-term services and supports.

3 (viii) Nutritional management.

4 (ix) Communication services and devices, adaptive equipment, and assistive
5 technology.

6 (x) Personal assistance.

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

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

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

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

19 §1723. ABLE Account Program; creation; purpose; legislative intent

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

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

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

29 (2) To provide secure funding for disability-related expenses on behalf of
30 designated beneficiaries with disabilities that will supplement, but not supplant,

1 benefits provided through private insurance, the Medicaid program under Title XIX
 2 of the Social Security Act, the supplemental security income program under Title
 3 XVI of such Act, the beneficiary's employment, and other sources.

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

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

16 §1724. General program rules

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

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

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

27 §1725. ABLE Account Authority; creation; powers

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

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

5 (2) The membership of the authority shall consist of the following seven
6 persons:

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

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

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

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

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

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

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

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

24 (4) A majority of the authority shall constitute a quorum of the authority, and
25 the affirmative vote of a majority of the members present shall be necessary for any
26 action taken by the authority. A majority of the executive committee shall constitute
27 a quorum of the executive committee, and the affirmative vote of a majority of the
28 executive committee members present shall be necessary for any action taken by the
29 executive committee. No vacancy in the membership of the authority or the

1 executive committee shall impair the rights of a quorum to exercise all rights and
2 perform all duties of the authority or the executive committee respectively.

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

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

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

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

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

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

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

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

23 (b) The establishment and imposition of reasonable limits on the number of
24 ABLE Account participants.

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

27 (d) The establishment and imposition of restrictions on the substitution of
28 one beneficiary for another.

29 (e) The establishment and imposition of restrictions on the transfer of
30 ownership of ABLE Accounts.

1 (f) 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 (g) The disposition of abandoned accounts in compliance with state law.

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

7 (2) The authority may, through the exclusive means of adoption of rules
8 pursuant to the Administrative Procedure Act, provide for the implementation and
9 administration of this Chapter.

10 §§1726 through 1740. [Reserved.]

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____