

- SUBJECT:** Establishing the Texas ABLE program for disabled individuals
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 6 ayes — Raymond, Rose, Keough, Naishtat, Price, Spitzer
- 0 nays
- 3 absent — S. King, Klick, Peña
- SENATE VOTE:** On final passage, April 15 — 31-0
- WITNESSES:** For — Erin Lawler, Texas Council of Community Centers; Chris Masey; (*Registered, but did not testify*: Laura Rosen, Center for Public Policy Priorities; Dennis Borel, Coalition of Texans with Disabilities; Kathryn Lewis, Disability Rights Texas; Jolene Sanders, Easter Seals Central Texas; Stephen Scurlock, Independent Bankers Association of Texas; Cate Graziani, Mental Health America of Texas; Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; Carole Smith, Private Providers Association of Texas; Lauren Dimitry, Texans Care for Children; Diana Martinez, Texas Assisted Living Association; Lori Henning, Texas Association of Goodwills; Jamie Dudensing, Texas Association of Health Plans; Lee Johnson, Texas Council of Community Centers; Gerard Jimenez, Texas Down Syndrome Advocacy Coalition; Haley Greer, the Arc of Texas; Melody Chatelle, United Ways of Texas; Michael Hart)
- Against — None
- On — (*Registered, but did not testify*: Gina Perez, Health and Human Services Commission; Linda Fernandez and Cynthia Stapper, Texas Comptroller of Public Accounts)
- BACKGROUND:** The federal Achieving a Better Life Experience (ABLE) Act of 2014 was enacted to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to

maintain health, independence, and quality of life. The act allows a state to establish a savings program under which contributions can be made to an ABLE account created to meet qualified disability expenses of account beneficiaries who are disabled and residents of the state.

States may pass enabling legislation to allow their residents to begin creating ABLE accounts.

DIGEST: CSSB 1664 would establish the Texas Achieving a Better Life Experience (ABLE) Program. The ABLE program would be administered by the Prepaid Higher Education Tuition Board.

The purpose of the Texas ABLE Program, like its federal model, would be to encourage and assist disabled individuals and their families in saving funds to support individuals with disabilities. These savings would be placed in ABLE accounts, which could not be counted toward a designated beneficiary's eligibility for state assistance or benefits programs.

Designated beneficiaries. Designated beneficiaries would be Texas residents with disabilities who had certified to the board that they were eligible for the program and who were named as the designated beneficiary of an ABLE account. The bill would specify requirements for participants in the program.

ABLE account. The bill would establish the Texas ABLE savings plan account, which would be a trust fund held outside of the state treasury and administered by the board. The board could solicit and accept gifts, grants, legislative appropriations, and other funding for the program. The board also could invest ABLE participant funds in appropriate investment instruments jointly, as long as different participants' assets were tracked and reported separately. Designated beneficiaries could have only one ABLE account, and each account could have only one owner.

The board would be required to provide information to participants and families necessary to create and maintain an ABLE account. The board

would enter into any agreements with financial institutions, federal agencies, or other entities as necessary to administer the program accounts. All money paid by participants into the fund would be deposited into an individual ABLE account held on behalf of that participant in the ABLE program and promptly invested by the board.

The board could delegate certain investment decision-making and authority to financial institutions to act on their behalf. In delegating investment powers and authority, the board would be required to exercise ordinary business care and prudence.

ABLE accounts could not be considered securities and would not be subject to the restrictions and regulations of the Securities Act. Under the ABLE program, assets could be used for limited purposes, including making distributions to designated beneficiaries, paying the costs of program administration, making refunds for cancellations or excess contributions, or rolling funds over to another ABLE account.

ABLE accounts could not be used as collateral or otherwise made subject to sale, transfer, or assignment. Upon the death of a designated beneficiary, however, the state could become a permissible creditor.

Qualified disability expenses. ABLE account funds disbursed to a designated beneficiary could be used only to pay for certain disability-related expenses, including expenses for education, housing, transportation, employment training, assistive technology, legal fees, and others.

Duties and powers of board. Under CSSB 1664, the tuition board would be required to develop and implement the ABLE program, including adopting rules and establishing policies and procedures for the program that would enable it to qualify as an ABLE program under federal law.

The bill would give the board the necessary powers to carry out duties of the program, including the power to sue and be sued, enter into contracts, contract for necessary goods and services, engage the services of certain

professionals, and make reports. The board also would collect administrative fees and service charges in connection to the program, though these fees could not exceed the amount necessary to cover costs of establishing and maintaining the program.

The board would be required to comply with certain reporting requirements under sec. 529A of the Internal Revenue Code, as well as making certain reports in accordance with requirements of the comptroller's office, the board's annual report, and any other reports required by state or federal law. The board also would be required to comply with its code of ethics under Education Code, sec. 54.6085.

ABLE program advisory committee. Under CSSB 1664, an advisory committee would be established to review rules and procedures related to the ABLE program and provide guidance and assistance as needed to both the board and the comptroller in creating and administering the program. The bill would specify the composition of the board, along with meetings and other requirements.

Confidentiality of ABLE records. All information related to the ABLE program would be public and subject to disclosure; however, information relating to a prospective or current participant or beneficiary, including personally identifiable information, would be confidential. Exceptions would apply in limited situations, such as providing information on an individual's account to the individual or sharing information necessary to administer the program. The tuition board, comptroller, or managers or other contractors under the program would not be required to comply with certain HIPPA requirements of covered entities under Health and Safety Code, ch. 181.

Termination or modification of ABLE program. The bill would allow the ABLE program to be altered or terminated if the comptroller found that the terms of the ABLE program were not financially feasible. In the event that the ABLE program was terminated, the bill would require the balance of each ABLE account to be paid to the participant to the extent possible.

The bill would direct any state agency to apply for a waiver or authorization from a federal agency as needed to implement the provisions of the bill and could delay implementing those provisions until the waiver or authorization was granted.

The Prepaid Higher Education Tuition Board could begin enrolling individuals in the ABLÉ program as soon as practical while allowing enough time for successful development and implementation of the program.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.