State of Arkansas *As Engrossed: H2/10/15*
90th General Assembly

A Bill

Regular Session, 2015 HOUSE BILL 1239

By: Representatives J. Mayberry, Broadaway, Brown, Cozart, Della Rosa, K. Hendren, House, Johnson, Ladyman, Leding, Lundstrum, McElroy, McNair, Miller, Rushing, Sabin, Shepherd, Tucker, Vaught
By: Senator J. Hutchinson

For An Act To Be Entitled

AN ACT TO CREATE THE ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM; TO PROVIDE NEW AVENUES FOR FINANCIAL SELF-SUFFICIENCY FOR ARKANSANS WITH DISABILITIES; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM AND TO PROVIDE NEW AVENUES FOR FINANCIAL SELF-SUFFICIENCY FOR ARKANSANS WITH DISABILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20 is amended to add an additional chapter to read as follows:

Chapter 3 — Achieving a Better Life Experience Program Act

20-3-101. Title.

This chapter shall be known and may be cited as the "Achieving a Better Life Experience Program Act".

20-3-102. Purpose.

It is the intent and purpose of this chapter to create and establish the Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295.

20-3-103. Definitions.

As used in this chapter:

(1) "ABLE account" means an account:

(A) Established by an eligible individual;

(B) Owned by the eligible individual; and

(C) Maintained under this subchapter;

(2) "Contracting state" means a state without a qualified ABLE program that has entered into a contract with Arkansas to provide residents of the contracting state access to a qualified ABLE program;

(3) "Designated beneficiary" means the eligible individual who established an ABLE account and is the owner of the ABLE account;

(4) "Disability certification" means, with respect to an individual, a certification to the satisfaction of the State Department for Social Security Administration Disability Determination by the individual or the parent or guardian of the individual that:

(A) Certifies that:

(i)(a)(1) The individual has a medically determinable physical or mental impairment that:

(A) Results in marked and severe functional limitations; and

(B) Can be expected to result in death; or

(2) Has lasted or can be expected to last for a continuous period of not less than twelve (12) months; or

(b) The individual is blind within the meaning of § 1614(a)(2) of the Social Security Act; and

(ii) The blindness or disability occurred before the individual attained twenty-six (26) years of age; and

(B) Includes a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of § 1861(r)(1) of the Social Security Act;

(5) "Eligible individual" means an individual who for a taxable year:

(A) Is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act, 42 U.S.C. § 301 et seq., and the blindness or disability is a preexisting condition that occurred before the date on which the individual attained twenty-six (26) years of age; or

(B) Has a disability certification filed with the Secretary of the Treasury of the United States for the taxable year;

(6) "Member of the family" means a brother, sister, stepbrother, or stepsister; and

(7) "Qualified disability expense" means an expense related to an eligible individual's blindness or disability that is made for the benefit of the eligible individual who is the designated beneficiary, including without limitation the following expenses:

(A) Assistive technology and personal support services;

(B) Education;

(C) Employment training and support;

(D) Expenses for oversight and monitoring;

(E) Financial management and administrative services;

(F) Funeral and burial expenses;

(G) Health, prevention, and wellness expenses;

(H) Housing;

(I) Legal fees;

(J) Transportation; and

(K) Other expenses that are adopted by rule and consistent with the purposes of this chapter.

20-3-104. Creation of the Achieving a Better Life Experience Program Trust.

(a) The Achieving a Better Life Experience Program Trust is created.

(b) The cotrustees of the trust shall be the Director of the Department of Human Services, the Director of Arkansas Rehabilitation Services, and the Treasurer of State.

20-3-105. Administration — Authority — Powers.

(a) This chapter shall be administered by the Achieving a Better Life Experience Program Committee, which shall be composed of:

(1) The Director of the Department of Human Services, or his or her designee;

(2) The Director of Arkansas Rehabilitation Services of the Department of Career Education, or his or her designee; and

(3) The Treasurer of State, or his or her designee.

(b) The Treasurer of State shall provide office space, staff, and materials for the committee.

(c) The committee shall adopt rules necessary to administer this chapter and to ensure compliance with the Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295 and federal regulations under the act.

(d) The committee shall:

(1) Establish, develop, implement, and maintain the Achieving a Better Life Experience Program in a manner consistent with this chapter and the Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, and obtain the benefits provided by the Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, for the program, account owners, and designated beneficiaries;

(2) Adopt rules for the general administration of the program;

(3) Maintain, invest, and reinvest the funds contributed into the program consistent with the investment restrictions established by the committee and the standard of care described in the prudent investor rule under § 24-2-611; and

(4)(A) Make and enter into contracts, agreements, or arrangements and retain, employ, and contract for the services of financial institutions, depositories, consultants, broker-dealers, investment advisors or managers, third-party plan administrators, and research, technical, and other services necessary or desirable for carrying out the purposes of this chapter.

(B) Contracts entered into by the committee may be for a term of one (1) to ten (10) years.

20-3-106. Rules.

Rules adopted under this subchapter shall ensure that:

(1)(A) A rollover from an ABLE account does not apply to an amount paid or distributed from the ABLE account to the extent that, not later than the sixtieth day after the date of the payment or distribution, the amount received is paid into another ABLE account for the benefit of the *same designated beneficiary or an eligible individual who is a member of the family* of the designated beneficiary; and

(B) The limitation under subdivision (1)(A) of this section does not apply to a transfer if the transfer occurs within twelve (12) months after the date of a previous transfer under this subchapter for the benefit of the designated beneficiary;

(2) A person may make contributions for a taxable year for the benefit of an individual who is an eligible individual for the taxable year to an ABLE account that is established to meet the qualified disability expenses of the designated beneficiary of the account;

(3) A designated beneficiary is limited to one (1) ABLE account;

(4) An ABLE account may be established only for a designated *beneficiary who is a resident of Arkansas or a resident of a contracting state; and*

(5) Other requirements of this subchapter shall be met.

20-3-107. Investment direction.

Except as permitted under the Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, a person shall not direct the investment of any contributions to or earnings from the Achieving a Better Life Experience Program more than two (2) times each year.

20-3-108. Accounts.

(a)(1) An account owner or contributor may establish an account by making an initial contribution to the Achieving a Better Life Experience Program, signing an application form approved by the Achieving a Better Life Experience Program Committee, and naming the account owner and the designated beneficiary.

(2) If the contributor is not the account owner, the account owner shall also sign the application form.

(3) Any person may make contributions to an account after the account is opened.

(b) Contributions to an account shall be made only in cash.

(c)(1) Total contributions to all accounts shall not exceed those reasonably necessary to provide for the qualified disability expenses of the beneficiary.

(2) The committee shall establish maximum contribution limits applicable to program accounts in accordance with the Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295.

(d)(1) Separate records and accounting shall be required by the program for each account.

(2) Reports shall be made no less frequently than annually to the account owner.

(e)(1) The program may collect application, account, or administrative fees to defray the costs of the program.

(2) The application, account, or administrative fees shall be approved by the committee.

20-3-109. Naming of designated beneficiary and transfers of accounts.

(a) An account owner shall have the right to name the designated beneficiary of an account and at any time to change the designated *beneficiary of an account to an eligible individual who is a member of the family* of the former designated beneficiary.

(b) At the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account if the transferee account was created by this chapter or in accordance with the Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295.

20-3-110. Prohibitions.

(a) Total contributions to the account established on behalf of a particular designated beneficiary in excess of those reasonably necessary to meet the designated beneficiary's qualified disability expenses are prohibited.

(b)(1) An account or a legal or beneficial interest in an account shall not be assignable, pledged, or otherwise used to secure or obtain a loan or other advancement.

(2) An account or a legal or beneficial interest in an account

is not subject to attachment, levy, or execution by a creditor of an account owner or designated beneficiary.

20-3-111. Funds exempt from tax.

(a) Except as otherwise indicated in this chapter, interest, dividends, and capital gains from funds invested in the Achieving a Better Life Experience Program are exempt from Arkansas income taxes.

(b)(1) For tax years beginning on or after January 1, 2014, contributions to a disability savings account established under the program may be deducted from the taxpayer's adjusted gross income for the purpose of calculating Arkansas income tax under § 26-51-403(b).

(2) The deductible contributions shall not exceed five thousand dollars ($5,000) per taxpayer in any tax year.

(3) Contributions to the program that have been deducted from the taxpayer's adjusted gross income for prior tax years are subject to recapture if the taxpayer:

(A) Takes a subsequent nonqualified distribution from the account; or

(B) Rolls the account over to a tax-deferred savings program established by another state or institution under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295.

(4) The contribution shall be recaptured by adding the amount previously deducted, not to exceed the amount of the nonqualified distribution, to the taxpayer's adjusted gross income for the tax year in which the nonqualified distribution occurred.

(c)(1) A qualified distribution from a disability savings account established under the program is exempt from Arkansas income tax with respect to the designated beneficiary's income.

(2)(A) Nonqualified distributions from a disability savings account established under the program are subject to Arkansas income tax.

(B) The nonqualified distribution is taxable to the party, account owner, or designated beneficiary who actually makes the withdrawal.

(d) Earnings on a contribution that are included in a refund are subject to Arkansas income tax if an account owner receives a refund of contributions to a disability savings account established under the program because of either:

(1) The death or disability of the designated beneficiary; or

(2) A scholarship, allowance, or payment described in 26 U.S.C. § 135(d)(1)(B) or (d)(1)(C) as in effect on January 1, 2014, received by the designated beneficiary.

20-3-112. Limitation on liability.

Neither the Achieving a Better Life Experience Program, the Achieving a Better Life Experience Program Committee and each of its members, nor the state shall:

(1) Insure any account or guarantee any rate of return or any interest rate on any contribution;

(2) Be liable for any loss incurred by any person as a result of *participating in the program under this subchapter; or*

(3) Be deemed to be a guarantor of a positive return on a contribution under this subchapter.

20-3-113. Liberal construction.

This chapter shall be liberally construed to comply with the requirements of the Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295.

SECTION 2. DO NOT CODIFY. The Achieving a Better Life Experience Program becomes effective when the Treasurer of State determines that federal regulations regarding the Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, have been finalized and provide the guidance necessary to implement the Achieving a Better Life Experience Program.

/s/J. Mayberry