

1 agreements as needed; authorizing liquidation of
2 account in cases of material misrepresentation;
3 prohibiting assignment or encumbrance of account;
4 declaring state's status as a permissible creditor
5 upon death of beneficiary; limiting uses for program
6 assets; making participant designated beneficiary of
7 account; providing exceptions; limiting account
8 ownership to single person; allowing Board
9 verification of specified participant information;
10 permitting participant cancellation of agreement at
11 any time; requiring disclosure of cancellation option
12 and conditions; directing Board compliance with
13 Internal Revenue Code reporting requirements;
14 prescribing annual financial report; prescribing
15 posting annual report on Board's website; providing
16 for disclosure of program information; exempting
17 specified information from disclosure; construing
18 provisions of the act; requiring disclosures in
19 informational materials; directing State Comptroller
20 to give notice if the program is not financially
21 feasible; authorizing termination of the program by
22 legislative action; allowing Board to adjust
23 participation agreement terms; directing payment to
24 participants if program is terminated; establishing
advisory committee for program; listing powers and
duties of committee; describing appointment procedure
for committee; providing for frequency of meetings;
prohibiting compensation or travel reimbursement for
members; abolishing committee after certain date;
permitting delay if waiver or authorization from
federal agency is necessary; authorizing enrollment
as soon as reasonably practical; providing for
codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 901 of Title 56, unless there is
created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Disability
2 Savings Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 902 of Title 56, unless there is
5 created a duplication in numbering, reads as follows:

6 A. There is hereby established the Oklahoma Achieving a Better
7 Life Experience (ABLE) Program.

8 B. The purposes of the Oklahoma ABLE Program are as follows:

9 1. To encourage and assist individuals and families in saving
10 funds for the purpose of supporting individuals with disabilities to
11 maintain health, independence and quality of life; and

12 2. To provide secure funding for qualified disability expenses
13 on behalf of designated beneficiaries with disabilities that will
14 supplement, but not supplant, benefits provided through private
15 insurance, the Medicaid program under Title XIX of the Social
16 Security Act, the supplemental security income program under Title
17 XVI of the Social Security Act, the beneficiary's employment and
18 other sources.

19 SECTION 3. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 903 of Title 56, unless there is
21 created a duplication in numbering, reads as follows:

22 As used in the Disability Savings Act:

23 1. "ABLE account" or "account" has the meaning assigned by
24 Section 529A of the Internal Revenue Code;

1 2. "ABLE program" or "program" means the Oklahoma Achieving a
2 Better Life Experience Program created under this act;

3 3. "Board" means the Board of Trustees of the Oklahoma College
4 Savings Plan program, established under Section 3970.4 of Title 70
5 of the Oklahoma Statutes;

6 4. "Designated beneficiary" means a resident of this state with
7 a disability who is an eligible individual and named as the
8 designated beneficiary of an ABLE account;

9 5. "Eligible individual" means a person who has certified to
10 the Board that the person is eligible to participate in the ABLE
11 program;

12 6. "Financial institution" means a bank, a trust company, an
13 insurance company, a broker-dealer, a registered investment company
14 or investment manager, or another similar financial institution
15 authorized to transact business in this state;

16 7. "Internal Revenue Code" means the Internal Revenue Code of
17 1986, as amended;

18 8. "Oklahoma ABLE savings plan account" means the Oklahoma ABLE
19 savings plan account created under Section 4 of this act;

20 9. "Participant" means a designated beneficiary or the parent
21 or custodian, guardian, or other fiduciary of the beneficiary who
22 has entered into a participation agreement under this act;

23

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1 10. "Participation agreement" means an agreement between a
2 participant and the Board under this act that conforms to the
3 requirements prescribed by this act; and

4 11. "Qualified disability expenses" means any expenses related
5 to the eligible individual's blindness or disability that are
6 incurred for the benefit of an eligible individual who is the
7 designated beneficiary, and includes expenses for education,
8 housing, transportation, employment training and support, assistive
9 technology and personal support services, health, prevention and
10 wellness, financial management and administrative services, legal
11 fees, oversight and monitoring, a funeral and burial, and other
12 expenses approved under federal regulations adopted under Section
13 529A of the Internal Revenue Code.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 904 of Title 56, unless there is
16 created a duplication in numbering, reads as follows:

17 A. The Oklahoma Achieving a Better Life Experience (ABLE)
18 savings plan account is established as a trust fund outside of the
19 State Treasury.

20 B. The Board of Trustees of the Oklahoma College Savings Plan
21 program shall administer the ABLE program and shall:

- 22 1. Develop and implement the program;
- 23 2. Adopt rules and establish policies and procedures to
24 implement the Disability Savings Act to:

1 a. permit the program to qualify as a qualified ABLE
2 program under Section 529A of the Internal Revenue
3 Code,

4 b. make changes to the program as necessary for the
5 participants in the program to obtain or maintain
6 federal income tax benefits or treatment provided by
7 Section 529A of the Internal Revenue Code, and
8 exemptions under federal securities laws, and

9 c. make changes to the program as necessary to ensure the
10 program's compliance with all other applicable laws
11 and regulations;

12 3. Either directly or through a contractual arrangement for
13 investment or plan manager services with a financial institution or
14 plan manager of another qualified entity, develop and provide
15 information for participants and their families necessary to
16 establish and maintain an ABLE account;

17 4. Enter into agreements with any financial institution or any
18 state or federal agency or contractor or other entity as required to
19 administer the program under this act;

20 5. Enter into participation agreements with participants;

21 6. Solicit and accept any gifts, grants, legislative
22 appropriations and other funds from the state, any unit of federal,
23 state or local government, or any other person, firm, partnership or
24 corporation;

1 7. Invest participant funds in appropriate investment
2 instruments; and

3 8. Make provision for the payment of costs of administering the
4 program.

5 C. The Board has all powers necessary or proper to carry out
6 its duties under this act and to effectuate the purposes of this
7 act, including the power to:

8 1. Sue and be sued;

9 2. Enter into contracts and other necessary instruments;

10 3. Enter into agreements or other transactions with the United
11 States, state agencies and other entities as necessary;

12 4. Appear on its own behalf before governmental agencies;

13 5. Contract for necessary goods and services, including
14 specifying in the contract duties to be performed by the provider of
15 goods or services that are a part of or are in addition to the
16 person's primary duties under the contract;

17 6. Contract with another state that administers a qualified
18 ABLE program as authorized by Section 529A of the Internal Revenue
19 Code, to provide residents of this state with access to a qualified
20 ABLE program;

21 7. Engage the services of private consultants, trustees,
22 records administrators, managers, legal counsel, auditors and other
23 appropriate parties or organizations for administrative or technical
24 assistance;

- 1 8. Participate in any government program;
- 2 9. Impose fees and charges;
- 3 10. Develop marketing plans or promotional materials or
4 contract with a consultant to market the program;
- 5 11. Make reports;
- 6 12. Purchase liability insurance covering the Board and
7 employees and agents of the Board;
- 8 13. Make changes to the program as necessary for the
9 participants in the program to obtain or maintain federal income tax
10 benefits or treatment provided by Section 529A of the Internal
11 Revenue Code, and exemptions under federal securities laws; and
- 12 14. Establish other policies, procedures and eligibility
13 criteria to implement this act.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 905 of Title 56, unless there is
16 created a duplication in numbering, reads as follows:

17 The Board of Trustees of the Oklahoma College Savings Plan shall
18 collect administrative fees and service charges in connection with
19 any agreement, contract or transaction relating to the Oklahoma
20 Achieving a Better Life Experience Program in amounts not exceeding
21 the amount necessary to recover the cost of establishing and
22 maintaining the program.

23
24

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 906 of Title 56, unless there is
3 created a duplication in numbering, reads as follows:

4 A. All money paid by a participant in connection with a
5 participation agreement shall be:

6 1. Deposited into an individual ABLE account held on behalf of
7 that participant in the Oklahoma ABLE savings plan account; and

8 2. Promptly invested by the Board of Trustees of the Oklahoma
9 College Savings Plan.

10 B. At least annually the Board shall establish and review the
11 asset allocation and selection of the underlying investments of the
12 ABLE program.

13 C. The Board may delegate to duly appointed financial
14 institutions authority to act on behalf of the Board in the
15 investment and reinvestment of all or part of the funds and may also
16 delegate to those financial institutions the authority to act on
17 behalf of the Board in the holding, purchasing, selling, assigning,
18 transferring or disposing of any or all of the securities and
19 investments in which the funds in the Oklahoma ABLE savings plan
20 account have been invested, as well as the proceeds from the
21 investment of those funds.

22 D. In delegating investment authority to financial
23 institutions, the Board may authorize the pooling of funds from the
24 ABLE accounts with other funds administered by the Board to maximize

1 returns for participants. If funds from the ABLE accounts are
2 pooled with other funds administered by the Board, the Board shall
3 track, monitor, report and record separately all investment activity
4 related to the ABLE accounts, including any earnings and fees
5 associated with each individual ABLE account.

6 E. The Board may select one or more financial institutions to
7 serve as custodian of all or part of the program's assets.

8 F. In the Board's discretion, the Board may contract with one
9 or more financial institutions to serve as plan manager and to
10 invest the money in ABLE accounts.

11 G. A contract between the Board and a financial institution to
12 act as plan manager under the Oklahoma ABLE Program may be for a
13 term of up to five (5) years and may be renewable.

14 H. In exercising or delegating investment powers and authority,
15 members of the Board shall exercise ordinary business care and
16 prudence under the facts and circumstances prevailing at the time of
17 the action or decision. A member of the Board is not liable for any
18 action taken or omitted with respect to the exercise of, or
19 delegation of, those powers and authority if the member discharged
20 the duties of the member's position in good faith and with the
21 degree of diligence, care and skill that a prudent person acting in
22 a like capacity and familiar with those matters would use in the
23 conduct of an enterprise of a like character and with like aims.

24

1 I. In administering this program, the Board is subject to the
2 Board's ethics policy.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 907 of Title 56, unless there is
5 created a duplication in numbering, reads as follows:

6 A. The assets of the Oklahoma Achieving a Better Life
7 Experience (ABLE) Program shall at all times be preserved, invested
8 and spent only for the purposes provided by the Disability Savings
9 Act and in accordance with the participation agreements entered into
10 under this act.

11 B. Except as provided by Section 529A of the Internal Revenue
12 Code, the state does not have a property right in the assets of the
13 ABLE program.

14 SECTION 8. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 908 of Title 56, unless there is
16 created a duplication in numbering, reads as follows:

17 Notwithstanding any other provision of state law that requires
18 consideration of the financial circumstances of an applicant for
19 assistance or a benefit provided under that law, the agency making
20 the determination of eligibility for the assistance or benefit may
21 not consider the amount in the applicant's ABLE account, including
22 earnings on that amount, and any distribution for qualified
23 disability expenses in determining the applicant's eligibility to
24

1 receive and the amount of the assistance or benefit with respect to
2 the period during which the individual maintains the ABLE account.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 909 of Title 56, unless there is
5 created a duplication in numbering, reads as follows:

6 An ABLE account is not a security within the meaning of the term
7 as defined in Section 1-102 of Title 71 of the Oklahoma Statutes,
8 and is exempt from the provisions of the Oklahoma Uniform Securities
9 Act of 2004, Sections 1-101 through 1-701 of Title 71 of the
10 Oklahoma Statutes.

11 SECTION 10. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 910 of Title 56, unless there is
13 created a duplication in numbering, reads as follows:

14 A. Under the Oklahoma Achieving a Better Life Experience (ABLE)
15 Program, the Board of Trustees of the Oklahoma College Savings Plan
16 may enter into participation agreements with participants on behalf
17 of designated beneficiaries.

18 B. A participation agreement may include the following terms:

19 1. The requirements and applicable restrictions for:

20 a. opening an ABLE account,

21 b. making contributions to an ABLE account, and

22 c. directly or indirectly, instructing the investment of
23 the contributions or balance of the ABLE account;

24

1 2. The eligibility requirements for a participant to enter into
2 a participation agreement and the rights of that participant;

3 3. The administrative fee and other fees and charges applicable
4 to an ABLE account;

5 4. The terms and conditions under which an ABLE account or
6 participation agreement may be modified, transferred or terminated;

7 5. The method of disposition of abandoned ABLE accounts; and

8 6. Any other terms and conditions the Board considers necessary
9 or appropriate, including those necessary to conform the ABLE
10 account to the requirements of Section 529A of the Internal Revenue
11 Code, or other applicable federal law.

12 C. The participation agreement may be amended throughout the
13 term of the agreement, including to allow a participant to increase
14 or decrease the level of participation and to change the designated
15 beneficiary or other matters authorized by this section and Section
16 529A of the Internal Revenue Code.

17 D. If the Board finds a participant has made a material
18 misrepresentation in the application for a participation agreement
19 or in any communication regarding the ABLE program, the Board may
20 liquidate the participant's ABLE account. If the Board liquidates
21 an ABLE account under this subsection, the participant is entitled
22 to a refund, subject to any charges or fees provided by the
23 participation agreement and the Internal Revenue Code.

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1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 911 of Title 56, unless there is
3 created a duplication in numbering, reads as follows:

4 A. An ABLE account shall not be assigned for the benefit of
5 creditors, used as security or collateral for any loan or otherwise
6 subject to alienation, sale, transfer, assignment, pledge,
7 encumbrance or charge.

8 B. Notwithstanding subsection A of this section, the state is a
9 permissible creditor upon the death of a designated beneficiary for
10 the purposes set forth in Section 529A of the Internal Revenue Code.

11 SECTION 12. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 912 of Title 56, unless there is
13 created a duplication in numbering, reads as follows:

14 The assets of the Oklahoma Achieving a Better Life Experience
15 (ABLE) Program may only be used to:

- 16 1. Make distributions to designated beneficiaries;
- 17 2. Pay the costs of program administration and operations;
- 18 3. Make refunds for cancellations, excess contributions,
19 liquidation under Section 10 of this act, and death, in accordance
20 with a computation method determined by the Board of Trustees of the
21 Oklahoma College Savings Plan;
- 22 4. Roll over funds to another ABLE account to the extent
23 authorized by Section 529A of the Internal Revenue Code; and
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1 5. Make distributions to the state as authorized by Section
2 529A of the Internal Revenue Code.

3 SECTION 13. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 913 of Title 56, unless there is
5 created a duplication in numbering, reads as follows:

6 A. The participant is the designated beneficiary and the owner
7 of the ABLE account except as described by subsection B of this
8 section and as otherwise permitted by Section 529A of the Internal
9 Revenue Code.

10 B. If the designated beneficiary of the ABLE account is a minor
11 or has a custodian, guardian or other fiduciary appointed for the
12 purpose of managing the minor's financial affairs, the parent or
13 custodian, or guardian or other fiduciary of the beneficiary may
14 serve as the participant if that form of ownership is permitted or
15 not prohibited by Section 529A of the Internal Revenue Code.

16 C. A designated beneficiary may own only one ABLE account, and
17 each ABLE account may have only one owner, except as otherwise
18 permitted by Section 529A of the Internal Revenue Code.

19 SECTION 14. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 914 of Title 56, unless there is
21 created a duplication in numbering, reads as follows:

22 The Board of Trustees of the Oklahoma College Savings Plan may
23 require a participant to verify under oath:

24 1. The participant's certification as an eligible individual;

1 2. The participant's selection to change a designated
2 beneficiary;

3 3. The participant's selection to cancel a participation
4 agreement; and

5 4. Any other information the Board may require.

6 SECTION 15. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 915 of Title 56, unless there is
8 created a duplication in numbering, reads as follows:

9 A. A participant may cancel a participation agreement at will.

10 B. Each participation agreement shall provide that the
11 agreement may be canceled on the terms and conditions and on payment
12 of applicable fees and costs as provided by rule.

13 SECTION 16. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 916 of Title 56, unless there is
15 created a duplication in numbering, reads as follows:

16 A. The Board of Trustees of the Oklahoma College Savings Plan
17 shall comply with the reporting requirements in Section 529A of the
18 Internal Revenue Code.

19 B. The Board shall report financial information related to the
20 Oklahoma Achieving a Better Life Experience (ABLE) Program in an
21 annual financial report in accordance with the State Comptroller's
22 requirements and guidelines for state agencies.

23 C. The Board shall include financial information for the ABLE
24 program in the Board's annual report posted on the Board's website.

1 D. The Board shall prepare any other reports required by state
2 or federal rules and regulations.

3 SECTION 17. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 917 of Title 56, unless there is
5 created a duplication in numbering, reads as follows:

6 A. Except as provided in subsection B of this section, all
7 information relating to the Oklahoma Achieving a Better Life
8 Experience (ABLE) Program is public and subject to disclosure if
9 required by law.

10 B. Information relating to a prospective or current participant
11 or designated beneficiary or to a participation agreement, including
12 any personally identifiable information, is confidential except that
13 the Board of Trustees of the Oklahoma College Savings Plan may
14 disclose that information to:

- 15 1. A participant regarding the participant's account; or
16 2. A state or federal agency as necessary to administer the
17 program or as required by Section 529A of the Internal Revenue Code,
18 or other federal or state requirements.

19 SECTION 18. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 918 of Title 56, unless there is
21 created a duplication in numbering, reads as follows:

22 A. Nothing in the Disability Savings Act or in any
23 participation agreement entered into under this act shall be
24 construed to:

1 1. Guarantee that amounts saved under the program will be
2 sufficient to cover the qualified disability expenses of a
3 designated beneficiary; or

4 2. Create any obligation of the state, any agency or
5 instrumentality of the state, or a plan manager to guarantee for the
6 benefit of a participant:

7 a. the return of any amount contributed to an ABLE
8 account,

9 b. the rate of interest or other return on an ABLE
10 account, or

11 c. the payment of interest or other return on an ABLE
12 account.

13 B. The Board of Trustees of the Oklahoma College Savings Plan
14 by rule shall require that informational materials used in
15 connection with a contribution to an ABLE account clearly indicate
16 that the account is not insured by this state and that neither the
17 principal deposited nor the investment return is guaranteed by the
18 state.

19 SECTION 19. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 919 of Title 56, unless there is
21 created a duplication in numbering, reads as follows:

22 A. If the State Comptroller determines that the Oklahoma
23 Achieving a Better Life Experience (ABLE) Program is not financially
24 feasible, the State Comptroller shall notify the Governor and the

1 Legislature and recommend that the Board of Trustees of the Oklahoma
2 College Savings Plan not administer the ABLE program or that the
3 program be modified or terminated. The program shall be terminated
4 only through legislative enactment.

5 B. If the State Comptroller determines that the ABLE program is
6 not financially feasible, the Board may adjust the terms of
7 participation agreements as necessary to ensure the financial
8 feasibility of the program.

9 C. If the Legislature terminates the ABLE program, the balance
10 of each ABLE account shall be paid to the participant, to the extent
11 possible.

12 SECTION 20. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 920 of Title 56, unless there is
14 created a duplication in numbering, reads as follows:

15 A. The Oklahoma Achieving a Better Life Experience (ABLE)
16 Program advisory committee is established to review rules and
17 procedures related to the ABLE program, to provide guidance, suggest
18 changes and make recommendations for the administration of the
19 program, and to provide assistance as needed to the Board of
20 Trustees of the Oklahoma College Savings Plan and State Comptroller
21 during the creation of the program.

22 B. Not later than January 1, 2017, the State Comptroller shall
23 appoint at least five and not more than seven members to the
24

1 advisory committee, including at least one member from each of the
2 following groups:

- 3 1. Persons with a disability who qualify for the program;
- 4 2. Family members of a person with a disability who qualifies
5 for the program;
- 6 3. Representatives of disability advocacy organizations; and
- 7 4. Representatives of the financial community.

8 C. The State Comptroller shall designate the presiding officer
9 of the advisory committee.

10 D. The advisory committee shall meet quarterly or more
11 frequently as the presiding officer determines is necessary to carry
12 out the responsibilities of the committee.

13 E. A member of the advisory committee is not entitled to
14 compensation or reimbursement for travel expenses.

15 F. This section expires and the advisory committee is abolished
16 December 1, 2019.

17 SECTION 21. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 921 of Title 56, unless there is
19 created a duplication in numbering, reads as follows:

20 If, before implementing any provision of the Disability Savings
21 Act, a state agency determines that a waiver or authorization from a
22 federal agency is necessary for implementation of that provision,
23 the agency affected by the provision shall request the waiver or
24

1 authorization and may delay implementing that provision until the
2 waiver or authorization is granted.

3 SECTION 22. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 922 of Title 56, unless there is
5 created a duplication in numbering, reads as follows:

6 The Board of Trustees of the Oklahoma College Savings Plan may
7 begin enrollment in the Oklahoma Achieving a Better Life Experience
8 (ABLE) Program as soon as reasonably practical to allow sufficient
9 time for successful development and implementation of the ABLE
10 program.

11 SECTION 23. This act shall become effective November 1, 2016.

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13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
14 02/25/2016 - DO PASS, As Coauthored.

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