

1 ENGROSSED HOUSE
2 BILL NO. 2821

By: Denney, Nelson, McDaniel
(Randy), Bennett, Sherrer,
Dunnington and Brumbaugh of
the House

4 and

5 Halligan of the Senate

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8
9 An Act relating to public health and safety; enacting
10 the Achieving a Better Life Experience Program Act;
stating legislative intent; defining terms; creating
11 Achieving a Better Life Experience Program Trust;
providing for cotrustees; creating the Achieving a
12 Better Life Experience Program Committee; providing
for membership; providing for adoption of rules;
13 imposing duties; authorizing contracts; imposing
requirements with respect to rules; providing for
14 contributions to ABLE accounts; imposing
restrictions; prohibiting certain direction regarding
15 investments; prescribing procedures with respect to
account activity; requiring records and accounting;
16 providing for designation of beneficiaries;
authorizing transfers; imposing limitation based upon
17 reasonable expenses; restricting certain uses of
account; providing accounts not subject to certain
18 proceedings related to creditors; providing for
exemption from Oklahoma income tax; providing for
19 applicability of income tax to nonqualified
distributions; providing for income tax treatment of
20 earnings; prohibiting certain obligations with
respect to accounts; providing immunity for certain
21 losses; excluding guaranty with regard to accounts;
providing for liberal construction; providing for
22 codification; and providing an effective date.

23
24 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-3001 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

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

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-3002 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

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

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-3003 of Title 63, unless there
14 is created a duplication in numbering, reads as follows:

15 As used in this act:

16 1. "ABLE account" means an account:

- 17 a. established by an eligible individual,
- 18 b. owned by the eligible individual, and
- 19 c. maintained under this act;

20 2. "Contracting state" means a state without a qualified ABLE
21 program that has entered into a contract with Oklahoma to provide
22 residents of the contracting state access to a qualified ABLE
23 program;

24

1 3. "Designated beneficiary" means the eligible individual who
2 established an ABLE account and is the owner of the ABLE account;

3 4. "Disability certification" means, with respect to an
4 individual, a certification to the satisfaction of the United States
5 Secretary of the Treasury by the individual or the parent or
6 guardian of the individual which:

7 a. certifies that the individual has a medically
8 determinable physical or mental impairment that
9 results in marked and severe functional limitations
10 and can be expected to result in death, or

11 b. has lasted or can be expected to last for a continuous
12 period of not less than twelve (12) months, or

13 c. certifies that the individual is blind within the
14 meaning of Section 1614(a)(2) of the Social Security
15 Act and the blindness or disability occurred before
16 the individual attained twenty-six (26) years of age,
17 and

18 d. includes a copy of the individual's diagnosis relating
19 to the individual's relevant impairment or
20 impairments, signed by a physician meeting the
21 criteria of Section 1861(r)(1) of the Social Security
22 Act;

23 5. "Eligible individual" means an individual who for a taxable
24 year:

- 1 a. is entitled to benefits based on blindness or
2 disability under Title II or XVI of the Social
3 Security Act, 42 U.S.C., Section 301 et seq., and the
4 blindness or disability is a preexisting condition
5 that occurred before the date on which the individual
6 attained twenty-six (26) years of age, or
7 b. has a disability certification filed with the
8 Secretary of the Treasury of the United States for the
9 taxable year;

10 6. "Member of the family" means a brother, sister, stepbrother
11 or stepsister;

12 7. "Nonqualified distribution" means a distribution from an
13 ABLE account that is not used to pay a qualified disability expense;
14 and

15 8. "Qualified disability expense" means an expense related to
16 an eligible individual's blindness or disability that is made for
17 the benefit of the eligible individual who is the designated
18 beneficiary, including without limitation the following expenses:

- 19 a. assistive technology and personal support services,
20 b. education,
21 c. employment training and support,
22 d. expenses for oversight and monitoring,
23 e. financial management and administrative services,
24 f. funeral and burial expenses,

- 1 g. health, prevention and wellness expenses,
- 2 h. housing,
- 3 i. legal fees,
- 4 j. transportation, and
- 5 k. other expenses that are adopted by rule and consistent
- 6 with the purposes of this act.

7 SECTION 4. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1-3004 of Title 63, unless there
9 is created a duplication in numbering, reads as follows:

10 A. The Achieving a Better Life Experience Program Trust is
11 created.

12 B. The cotrustees of the trust shall be the Director of the
13 Department of Human Services, the Director of the Oklahoma
14 Department of Rehabilitation Services and the State Treasurer.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-3005 of Title 63, unless there
17 is created a duplication in numbering, reads as follows:

18 A. This act shall be administered by the Achieving a Better
19 Life Experience Program Committee, which shall be composed of:

20 1. The Director of the Department of Human Services, or his or
21 her designee;

22 2. The Director of the Oklahoma Department of Rehabilitation
23 Services, or his or her designee; and

24 3. The State Treasurer, or his or her designee.

1 B. The State Treasurer shall provide office space, staff and
2 materials for the Committee.

3 C. The Committee shall adopt rules necessary to administer this
4 act and to ensure compliance with the Achieving a Better Life
5 Experience Program as provided under the Tax Increase Prevention Act
6 of 2014, Pub. L. No. 113-295, and federal regulations under the act.

7 D. The Committee shall:

8 1. Establish, develop, implement and maintain the Achieving a
9 Better Life Experience Program in a manner consistent with this act
10 and the Achieving a Better Life Experience Program as provided under
11 the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, and
12 obtain the benefits provided by the Achieving a Better Life
13 Experience Program as provided under the Tax Increase Prevention Act
14 of 2014, Pub. L. No. 113-295, for the program, account owners and
15 designated beneficiaries;

16 2. Adopt rules for the general administration of the Program;

17 3. Maintain, invest and reinvest the funds contributed into the
18 Program consistent with the investment restrictions established by
19 the Committee and the standard of care described in the prudent
20 investor rule; and

21 4. a. Make and enter into contracts, agreements or
22 arrangements and retain, employ and contract for the
23 services of financial institutions, depositories,
24 consultants, broker-dealers, investment advisors or

1 managers, third-party plan administrators, and
2 research, technical and other services necessary or
3 desirable for carrying out the purposes of this act.

- 4 b. Contracts entered into by the Committee may be for a
5 term of one (1) to ten (10) years.

6 SECTION 6. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-3006 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

9 Rules adopted under this act shall ensure that:

- 10 1. a. A rollover from an ABLE account does not apply to an
11 amount paid or distributed from the ABLE account to
12 the extent that, not later than the sixtieth day after
13 the date of the payment or distribution, the amount
14 received is paid into another ABLE account for the
15 benefit of the same designated beneficiary or an
16 eligible individual who is a member of the family of
17 the designated beneficiary, and

- 18 b. The limitation under subparagraph a of this paragraph
19 does not apply to a transfer if the transfer occurs
20 within twelve (12) months after the date of a previous
21 transfer under this act for the benefit of the
22 designated beneficiary;

- 23 2. A person may make contributions for a taxable year for the
24 benefit of an individual who is an eligible individual for the

1 taxable year to an ABLE account that is established to meet the
2 qualified disability expenses of the designated beneficiary of the
3 account;

4 3. A designated beneficiary is limited to one ABLE account;

5 4. An ABLE account may be established only for a designated
6 beneficiary who is a resident of Oklahoma or a resident of a
7 contracting state; and

8 5. Other requirements of this act shall be met.

9 SECTION 7. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-3007 of Title 63, unless there
11 is created a duplication in numbering, reads as follows:

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

17 SECTION 8. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-3008 of Title 63, unless there
19 is created a duplication in numbering, reads as follows:

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

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

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

5 B. Contributions to an account shall be made only in cash.

6 C. 1. Total contributions to all accounts shall not exceed
7 those reasonably necessary to provide for the qualified disability
8 expenses of the beneficiary.

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

13 D. 1. Separate records and accounting shall be required by the
14 Program for each account.

15 2. Reports shall be made no less frequently than annually to
16 the account owner.

17 E. 1. The Program may collect application, account or
18 administrative fees to defray the costs of the Program.

19 2. The application, account or administrative fees shall be
20 approved by the Committee.

21 SECTION 9. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-3009 of Title 63, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. An account owner shall have the right to name the designated
2 beneficiary of an account and at any time to change the designated
3 beneficiary of an account to an eligible individual who is a member
4 of the family of the former designated beneficiary.

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

12 SECTION 10. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-3010 of Title 63, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Total contributions to the account established on behalf of
16 a particular designated beneficiary in excess of those reasonably
17 necessary to meet the designated beneficiary's qualified disability
18 expenses are prohibited.

19 B. 1. An account or a legal or beneficial interest in an
20 account shall not be assignable, pledged or otherwise used to secure
21 or obtain a loan or other advancement.

22 2. An account or a legal or beneficial interest in an account
23 is not subject to attachment, levy or execution by a creditor of an
24 account owner or designated beneficiary.

1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-3011 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Except as otherwise indicated in this act, interest,
5 dividends and capital gains from funds invested in the Achieving a
6 Better Life Experience Program are exempt from Oklahoma income
7 taxes.

8 B. 1. A qualified distribution from a disability savings
9 account established under the Program is exempt from Oklahoma income
10 tax with respect to the designated beneficiary's income.

11 2. a. Nonqualified distributions from a disability savings
12 account established under the Program are subject to
13 Oklahoma income tax.

14 b. The nonqualified distribution is taxable to the party,
15 account owner or designated beneficiary who actually
16 makes the withdrawal.

17 C. Earnings on a contribution that are included in a refund are
18 subject to Oklahoma income tax if an account owner receives a refund
19 of contributions to a disability savings account established under
20 the Program because of either:

21 1. The death or disability of the designated beneficiary; or

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

1 SECTION 12. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-3012 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

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

7 1. Insure any account or guarantee any rate of return or any
8 interest rate on any contribution;

9 2. Be liable for any loss incurred by any person as a result of
10 participating in the Program under this act; or

11 3. Be deemed to be a guarantor of a positive return on a
12 contribution under this act.

13 SECTION 13. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-3013 of Title 63, unless there
15 is created a duplication in numbering, reads as follows:

16 This act shall be liberally construed to comply with the
17 requirements of the Achieving a Better Life Experience Program as
18 provided under the Tax Increase Prevention Act of 2014, Pub. L. No.
19 113-295.

20 SECTION 14. This act shall become effective November 1, 2016.

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1 Passed the House of Representatives the 9th day of March, 2016.

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3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2016.

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8 _____
9 Presiding Officer of the Senate