

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE FOR  
4 ENGROSSED  
5 HOUSE BILL 2821

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

6 and

7 Halligan of the Senate  
8

9  
10 COMMITTEE SUBSTITUTE

11 An Act relating to public health and safety; enacting  
12 the Achieving a Better Life Experience Program Act;  
13 defining terms; providing options for Treasurer to  
14 facilitate access to certain program; providing for  
15 contributions to ABLE accounts; imposing  
16 restrictions; prohibiting certain direction regarding  
17 investments; prescribing procedures with respect to  
18 account activity; requiring records and accounting;  
19 providing for designation of beneficiaries;  
20 authorizing transfers; imposing limitation based upon  
21 reasonable expenses; restricting certain uses of  
22 account; providing accounts not subject to certain  
23 proceedings related to creditors; providing for  
24 exemption from Oklahoma income tax; providing for  
applicability of income tax to nonqualified  
distributions; providing for income tax treatment of  
earnings; prohibiting certain obligations with  
respect to accounts; providing immunity for certain  
losses; excluding guaranty with regard to accounts;  
providing for codification; and providing an  
effective date.

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 1-3003 of Title 63, unless there  
8 is created a duplication in numbering, reads as follows:

9 As used in this act:

10 1. "ABLE account" means an account:

- 11 a. established by an eligible individual,
- 12 b. owned by the eligible individual, and
- 13 c. maintained under this act;

14 2. "Contracting state" means a state with a qualified ABLE  
15 program that has entered into a contract with Oklahoma to provide  
16 services that, the State Treasurer has determined, will facilitate  
17 access to a qualified ABLE program;

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

20 4. "Disability certification" means, with respect to an  
21 individual, a certification to the satisfaction of the United States  
22 Secretary of the Treasury by the individual or the parent or  
23 guardian of the individual which:  
24

- 1 a. certifies that the individual has a medically  
2 determinable physical or mental impairment that  
3 results in marked and severe functional limitations  
4 and can be expected to result in death, or  
5 b. has lasted or can be expected to last for a continuous  
6 period of not less than twelve (12) months, or  
7 c. certifies that the individual is blind within the  
8 meaning of Section 1614(a)(2) of the Social Security  
9 Act and the blindness or disability occurred before  
10 the individual attained twenty-six (26) years of age,  
11 and  
12 d. includes a copy of the individual's diagnosis relating  
13 to the individual's relevant impairment or  
14 impairments, signed by a physician meeting the  
15 criteria of Section 1861(r)(1) of the Social Security  
16 Act;

17 5. "Eligible individual" means an individual who for a taxable  
18 year:

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

1           b.    has a disability certification filed with the  
2                    Secretary of the Treasury of the United States for the  
3                    taxable year;

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

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

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

12           a.    assistive technology and personal support services,

13           b.    education,

14           c.    employment training and support,

15           d.    expenses for oversight and monitoring,

16           e.    financial management and administrative services,

17           f.    funeral and burial expenses,

18           g.    health, prevention and wellness expenses,

19           h.    housing,

20           i.    legal fees,

21           j.    transportation, and

22           k.    other expenses that are adopted by rule and consistent  
23 with the purposes of this act.

1 9. "Qualified ABLE program" means an ABLE program that is  
2 established pursuant to and in compliance with Section 529A of the  
3 Internal Revenue Code; and

4 10. "Partner ABLE program" means a qualified ABLE program  
5 established by another state or consortium of states which the State  
6 Treasurer has contracted or entered into an agreement with to  
7 facilitate access to a qualified ABLE program.

8 SECTION 3. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section 1-3005 of Title 63, unless there  
10 is created a duplication in numbering, reads as follows:

11 A. The State Treasurer shall facilitate access to a qualified  
12 ABLE program through the selection of one or more of the following  
13 options:

14 1. Establishing an Achieving a Better Life Experience Program  
15 as provided under the Tax Increase Prevention Act of 2014, Pub. L.  
16 No. 113-295;

17 2. Contracting with a state with a qualified ABLE program;

18 3. Joining a consortium of states in administering a qualified  
19 ABLE program; or

20 4. Operating a website to assist eligible individuals with the  
21 selection of a qualified program.

22 B. In the event the State Treasurer elects to establish an ABLE  
23 program pursuant to paragraph 1 of subsection A of this section, he  
24 or she shall:

1           1. Develop and implement the program in a manner consistent  
2 with this act through the adoption of guidelines and procedures;

3           2. Retain professional services, if necessary, including  
4 accountants, auditors, consultants and other experts;

5           3. Seek rulings and other guidance, if necessary, from the  
6 United States Department of the Treasury, the Internal Revenue  
7 Service and the Oklahoma Attorney General relating to the program;

8           4. Make changes to the program required for the participants in  
9 the program to obtain the federal income tax benefits or treatment  
10 provided by Section 529A of the Internal Revenue Code;

11           5. Interpret, in policies, guidelines and procedures, the  
12 provisions of the ABLE program Act broadly in light of its purpose  
13 and objectives;

14           6. Develop a schedule of application fees and other necessary  
15 fees and charges in connection with any agreement, contract or  
16 transaction relating to the program that are sufficient to offset  
17 the administrative and staffing costs associated with the  
18 implementation and administration of this program;

19           7. Select the financial institution or institutions to act as  
20 the depositories and managers of the program accounts in accordance  
21 with this act. For purposes of selecting such institutions and  
22 managers, the Office of the State Treasurer shall be exempt from the  
23 Oklahoma Central Purchasing Act. The Treasurer shall develop a  
24

1 competitive process by which the institutions and managers will be  
2 selected; and

3 8. Be exempt from the rulemaking provisions of the  
4 Administrative Procedures Act when adopting guidelines for the ABLE  
5 program; provided, any such guidelines affecting existing or  
6 potential participants in the ABLE program may only be implemented  
7 after reasonable notice to the public and a public hearing in a  
8 manner similar to the requirements of the Administrative Procedures  
9 Act.

10 C. In the event the State Treasurer elects to contract with  
11 another state or join a consortium pursuant to the provisions of  
12 Subsection A of this section, he or she shall:

13 1. Select the state or consortium which the Treasurer has  
14 determined will provide the greatest benefit to eligible  
15 individuals. For purposes of selecting such state or consortium,  
16 the Office of the State Treasurer shall be exempt from the Oklahoma  
17 Central Purchasing Act. The Treasurer shall develop a competitive  
18 process by which the state or consortium will be selected; and

19 2. Develop procedures to assist in the promotion of a partner  
20 ABLE program which the Treasurer has selected pursuant to subsection  
21 A, whether such program is established by another state or a  
22 consortium of states.

1           SECTION 4.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-3006 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4           Guidelines and procedures developed pursuant to the provisions  
5 of this act shall ensure that:

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

14           b.    The limitation under subparagraph a of this paragraph  
15                  does not apply to a transfer if the transfer occurs  
16                  within twelve (12) months after the date of a previous  
17                  transfer under this act for the benefit of the  
18                  designated beneficiary;

19           2.    A person may make contributions for a taxable year for the  
20 benefit of an individual who is an eligible individual for the  
21 taxable year to an ABLE account that is established to meet the  
22 qualified disability expenses of the designated beneficiary of the  
23 account; and

24           3.    A designated beneficiary is limited to one ABLE account.



1 SECTION 5. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-3007 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

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

9 SECTION 6. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1-3008 of Title 63, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. 1. An account owner or contributor may establish an account  
13 by making an initial contribution to the Achieving a Better Life  
14 Experience Program, signing an application form approved by the  
15 State Treasurer, and naming the account owner and the designated  
16 beneficiary.

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

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

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

22 C. 1. Total contributions to all accounts shall not exceed  
23 those reasonably necessary to provide for the qualified disability  
24 expenses of the beneficiary.

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

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

7           2. Reports shall be made no less frequently than annually to  
8 the account owner.

9           SECTION 7.       NEW LAW       A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1-3009 of Title 63, unless there  
11 is created a duplication in numbering, reads as follows:

12           A. An account owner shall have the right to name the designated  
13 beneficiary of an account and at any time to change the designated  
14 beneficiary of an account to an eligible individual who is a member  
15 of the family of the former designated beneficiary.

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

1           SECTION 8.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-3010 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. Total contributions to the account established on behalf of  
5 a particular designated beneficiary in excess of those reasonably  
6 necessary to meet the designated beneficiary's qualified disability  
7 expenses are prohibited.

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

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

14           SECTION 9.           NEW LAW           A new section of law to be codified  
15 in the Oklahoma Statutes as Section 1-3011 of Title 63, unless there  
16 is created a duplication in numbering, reads as follows:

17           A. Except as otherwise indicated in this act, interest,  
18 dividends and capital gains from funds invested in the Achieving a  
19 Better Life Experience Program are exempt from Oklahoma income  
20 taxes.

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

1 2. a. Nonqualified distributions from a disability savings  
2 account established under the Program are subject to  
3 Oklahoma income tax.

4 b. The nonqualified distribution is taxable to the party,  
5 account owner or designated beneficiary who actually  
6 makes the withdrawal.

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

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

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

15 SECTION 10. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 1-3012 of Title 63, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. Neither the Achieving a Better Life Experience Program, the  
19 State Treasurer, nor the state shall:

20 1. Insure any account or guarantee any rate of return or any  
21 interest rate on any contribution;

22 2. Be liable for any loss incurred by any person as a result of  
23 participating in the Program under this act; or  
24

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

3           B. Neither the State Treasurer nor the state shall:

4           1. Insure any account or guarantee any rate of return on any  
5 contribution made to a partner ABLE program;

6           2. Be liable for any loss incurred by any person as a result of  
7 participating in a partner ABLE program;

8           3. Be deemed to be a guarantor of a positive return on a  
9 contribution to a partner ABLE program; or

10          4. Be deemed to have any responsibility for or control over the  
11 implementation, management, administration or operation of any  
12 partner ABLE program.

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

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