

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 55th Legislature (2016)

4 HOUSE BILL 2821

By: Denney and Nelson of the
House

5
6 and

Halligan of the Senate

7
8 AS INTRODUCED

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

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

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

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

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

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

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

16 As used in this act:

17 1. "ABLE account" means an explanation:

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

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

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

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

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

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

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

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

3 5. "Eligible individual" means an individual who for a taxable
4 year:

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

11 b. has a disability certification filed with the
12 Secretary of the Treasury of the United States for the
13 taxable year;

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

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

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

23 a. assistive technology and personal support services,

- 1 b. education,
- 2 c. employment training and support,
- 3 d. expenses for oversight and monitoring,
- 4 e. financial management and administrative services,
- 5 f. funeral and burial expenses,
- 6 g. health, prevention and wellness expenses,
- 7 h. housing,
- 8 i. legal fees,
- 9 j. transportation, and
- 10 k. other expenses that are adopted by rule and consistent
- 11 with the purposes of this act.

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

15 A. The Achieving a Better Life Experience Program Trust is
16 created.

17 B. The cotrustees of the trust shall be the Director of the
18 Department of Human Services, the Director of the Oklahoma
19 Department of Rehabilitation Services and the State Treasurer.

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

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

3 1. The Director of the Department of Human Services, or his or
4 her designee;

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

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

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

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

14 D. The Committee shall:

15 1. Establish, develop, implement and maintain the Achieving a
16 Better Life Experience Program in a manner consistent with this act
17 and the Achieving a Better Life Experience Program as provided under
18 the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, and
19 obtain the benefits provided by the Achieving a Better Life
20 Experience Program as provided under the Tax Increase Prevention Act
21 of 2014, Pub. L. No. 113-295, for the program, account owners and
22 designated beneficiaries;

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

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

5 4. a. Make and enter into contracts, agreements or
6 arrangements and retain, employ and contract for the
7 services of financial institutions, depositories,
8 consultants, broker-dealers, investment advisors or
9 managers, third-party plan administrators, and
10 research, technical and other services necessary or
11 desirable for carrying out the purposes of this act.

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

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

17 Rules adopted under this act shall ensure that:

18 1. a. A rollover from an ABLE account does not apply to an
19 amount paid or distributed from the ABLE account to
20 the extent that, not later than the sixtieth day after
21 the date of the payment or distribution, the amount
22 received is paid into another ABLE account for the
23 benefit of the same designated beneficiary or an

1 eligible individual who is a member of the family of
2 the designated beneficiary, and

3 b. The limitation under subparagraph a of this paragraph
4 does not apply to a transfer if the transfer occurs
5 within twelve (12) months after the date of a previous
6 transfer under this act for the benefit of the
7 designated beneficiary;

8 2. A person may make contributions for a taxable year for the
9 benefit of an individual who is an eligible individual for the
10 taxable year to an ABLE account that is established to meet the
11 qualified disability expenses of the designated beneficiary of the
12 account;

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

14 4. An ABLE account may be established only for a designated
15 beneficiary who is a resident of Oklahoma or a resident of a
16 contracting state; and

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

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

21 Except as permitted under the Achieving a Better Life Experience
22 Program as provided under the Tax Increase Prevention Act of 2014,
23 Pub. L. No. 113-295, a person shall not direct the investment of any

1 contributions to or earnings from the Achieving a Better Life
2 Experience Program more than two times each year.

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

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

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

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

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

16 C. 1. Total contributions to all accounts shall not exceed
17 those reasonably necessary to provide for the qualified disability
18 expenses of the beneficiary.

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

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

3 2. Reports shall be made no less frequently than annually to
4 the account owner.

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

7 2. The application, account or administrative fees shall be
8 approved by the Committee.

9 SECTION 9. 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.

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1 SECTION 10. 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 11. 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 12. 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 Neither the Achieving a Better Life Experience Program, the
19 Achieving a Better Life Experience Program Committee and each of its
20 members, nor the state shall:

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

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

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

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

8 This act shall be liberally construed to comply with the
9 requirements of the Achieving a Better Life Experience Program as
10 provided under the Tax Increase Prevention Act of 2014, Pub. L. No.
11 113-295.

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

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14 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
15 02/25/2016 - DO PASS, As Coauthored.

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