

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 2821

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

5 and

6 Halligan of the Senate

7
8
9 An Act relating to public health and safety****
10 restrictions; prohibiting certain direction regarding
11 investments; prescribing procedures with respect to
12 account activity; requiring records and accounting;
13 providing for designation of beneficiaries;
14 authorizing transfers; **** tax treatment of
15 earnings; prohibiting certain obligations with
16 respect to accounts; providing immunity for certain
17 losses; **** providing for liberal construction;
18 providing for codification; and providing an
19 effective date.

20
21 AUTHOR: Add the following House Coauthor: Echols

22 AUTHOR: Remove Halligan as principal Senate Author, replace with
23 Crain as principal Senate Author and retain Halligan as
24 Senate Coauthor and add Senate Coauthors: Mazzei and
Stanislowski

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
entire bill and insert

"An Act relating to financing disability expenses;
providing short title; creating Fred's Law; amending
56 O.S. 2011, Section 230.52, as amended by Section
1, Chapter 263, O.S.L. 2012 (56 O.S. Supp. 2015,

1 Section 230.52), which relates to Temporary
2 Assistance for Needy Families; exempting certain
3 resources from benefit determination criteria;
4 creating the Oklahoma Achieving a Better Life
5 Experience (ABLE) Savings Plan Act; providing short
6 title; defining terms; specifying duties of State
7 Treasurer; requiring Treasurer to implement program
8 subject to certain provisions; authorizing Treasurer
9 to implement program through use of financial
10 institutions; authorizing Treasurer to solicit
11 certain proposals; prescribing criteria by which the
12 Treasurer may select financial institutions;
13 authorizing the Treasurer to enter into certain
14 contract and setting certain terms and procedures
15 therefor; allowing the Treasurer to select more than
16 one financial institution under certain conditions;
17 requiring the program manager to perform certain
18 duties for program; establishing procedures related
19 to nonrenewal of contracts; allowing Treasurer to
20 terminate contract for good cause; prescribing means
21 by which a person can open an account; allowing any
22 person to contribute to an account; requiring
23 contributions to accounts be in cash; allowing
24 withdrawal of certain funds in accordance with
certain provisions; providing for changing of
beneficiaries; providing for certain penalty for
nonqualified withdrawals; allowing Treasurer to
adjust certain penalty; providing for the collection
of certain penalties; authorizing account owner to
direct certain investment; providing for the transfer
of certain accounts when the Treasurer terminates
authority of a financial institution to hold certain
accounts; requiring the Treasurer to adopt certain
rules; requiring financial institutions to comply
with certain reporting requirements; requiring
program managers to provide statements to account
owners; exempting certain resources from garnishment,
attachment and other processes; prohibiting
consideration of certain assets for certain purposes;
providing for noncodification; 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 not to be
2 codified in the Oklahoma Statutes reads as follows:

3 This act shall be known and may be cited as "Fred's Law".

4 SECTION 2. AMENDATORY 56 O.S. 2011, Section 230.52, as
5 amended by Section 1, Chapter 263, O.S.L. 2012 (56 O.S. Supp. 2015,
6 Section 230.52), is amended to read as follows:

7 Section 230.52 A. Except for specific exceptions, conditions
8 or restrictions authorized by the Statewide Temporary Assistance
9 Responsibility System (STARS) and rules promulgated by the
10 Commission for Human Services pursuant thereto, the following are
11 the minimum mandatory requirements for the Temporary Assistance for
12 Needy Families (TANF) program:

13 1. A recipient shall be eligible to receive assistance pursuant
14 to the TANF program only for a lifetime total of five (5) years,
15 subject to the exemptions allowed by federal law. Child-only cases
16 are not subject to the five-year limitation;

17 2. Single parents receiving temporary assistance pursuant to
18 the TANF program shall participate in work activities for a minimum
19 of twenty (20) hours per week during the month. Two-parent families
20 receiving temporary assistance pursuant to the TANF program shall
21 participate in work activities for a minimum of thirty-five (35)
22 hours per week during the month;

23 3. A recipient must be engaged in one or more of the work
24 activities set out in paragraph 4 of this subsection as soon as

1 required by the Department of Human Services pursuant to the TANF
2 program, but not later than twenty-four (24) months after
3 certification of the application for assistance, unless the person
4 is exempt from work requirements under rules promulgated by the
5 Commission pursuant to the STARS;

6 4. The Department shall develop and describe categories of
7 approved work activities for the TANF program recipients in
8 accordance with this paragraph. Work activities that qualify in
9 meeting the requirements include, but are not limited to:

- 10 a. (1) unsubsidized employment which is full-time
11 employment or part-time employment that is not
12 directly supplemented by federal or state funds,
- 13 (2) subsidized private sector employment which is
14 employment in a private for-profit enterprise or
15 a private not-for-profit enterprise that is
16 directly supplemented by federal or state funds.
17 Prior to receiving any subsidy or incentive, the
18 employer shall enter into a written contract with
19 the Department, and
- 20 (3) subsidized public sector employment which is
21 employment by an agency of a federal, state, or
22 local governmental entity which is directly
23 supplemented by federal or state funds. Prior to
24 receiving any subsidy or incentive, the employer

1 shall enter into a written contract with the
2 Department.

3 Subsidized hourly employment or unsubsidized hourly
4 employment pursuant to this subparagraph shall only be
5 approved by the Department as work activity if such
6 employment is subject to:

7 (a) the federal minimum wage requirements
8 pursuant to the Fair Labor Standards Act of
9 1938, as amended,

10 (b) the federal Social Security tax and Medicare
11 tax, and

12 (c) regulations promulgated pursuant to the
13 federal Occupational Safety and Health Act
14 of 1970 and rules promulgated by the State
15 Department of Labor pursuant thereto,

16 b. a program of work experience,

17 c. on-the-job training,

18 d. assisted job search which may include supervised or
19 unsupervised job-seeking activities,

20 e. job readiness assistance which may include, but is not
21 limited to:

22 (1) orientation in the work environment and basic
23 job-seeking and job retention skills,

24

1 (2) instruction in completing an application for
2 employment and writing a resume, and

3 (3) instruction in conducting oneself during a job
4 interview, including appropriate dress,

5 f. job skills training which is directly related to
6 employment in a specific occupation for which there is
7 a written commitment by an employer to offer
8 employment to a recipient who successfully completes
9 the training. Job skills training includes, but is
10 not limited to, customized training designed to meet
11 the needs of a specific employer or a specific
12 industry,

13 g. community service programs which are job-training
14 activities provided in areas where sufficient public
15 or private sector employment is not available. Such
16 activities are linked to both education or training
17 and activities that substantially enhance a
18 recipient's employability,

19 h. literacy and adult basic education programs,

20 i. vocational-educational programs, not to exceed twelve
21 (12) months for any individual, which are directed
22 toward vocational-educational training and education
23 directly related to employment,
24

1 j. education programs which are directly related to
2 specific employment opportunities, if a recipient has
3 not received a high school diploma or General
4 Equivalency Degree, and

5 k. child care for other STARS recipients. The recipient
6 must meet training and licensing requirements for
7 child care providers as required by the Oklahoma Child
8 Care Facilities Licensing Act;

9 5. Single, custodial parents with a child up to one (1) year of
10 age may be exempt from work activities for a lifetime total
11 exemption of twelve (12) months;

12 6. In order to receive assistance, unmarried teen parents of a
13 minor child at least twelve (12) weeks of age must participate in
14 educational activities or work activities approved by the state;

15 7. For single-parent families, except for teen parents,
16 educational activities, other than vocational-technical training, do
17 not count toward meeting the required twenty (20) hours of work
18 activity. For two-parent families, educational activities, except
19 vocational-technical training, do not count toward meeting the
20 required thirty-five (35) hours of work activity;

21 8. A teen parent must live at home or in an approved, adult-
22 supervised setting as specified in Section 230.55 of this title to
23 receive TANF assistance;

1 9. A recipient must comply with immunization requirements
2 established pursuant to the TANF program;

3 10. A recipient shall be subject to the increment in benefits
4 for additional children established by Section 230.58 of this title;

5 11. The following recipient resources are exempt from resource
6 determination criteria:

7 a. an automobile with an equity allowance of not more
8 than Five Thousand Dollars (\$5,000.00) pursuant to
9 Section 230.53 of this title,

10 b. individual development accounts established pursuant
11 to the Family Savings Initiative Act, or individual
12 development accounts established prior to November 1,
13 1998, pursuant to the provisions of Section 230.54 of
14 this title in an amount not to exceed Two Thousand
15 Dollars (\$2,000.00),

16 c. the equity value of funeral arrangements owned by a
17 recipient that does not exceed the limitation
18 specified by Section 165 of this title, ~~and~~

19 d. earned income disregards not to exceed One Hundred
20 Twenty Dollars (\$120.00) and one-half (1/2) of the
21 remainder of the earned income, and

22 e. account balances and distributions from savings
23 accounts established pursuant to this act;

24

1 12. An applicant who applies and is otherwise eligible to
2 receive TANF benefits but who has resided in this state less than
3 twelve (12) months shall be subject to Section 230.57 of this title;

4 13. The recipient shall enter into a personal responsibility
5 agreement with the Department for receipt of assistance pursuant to
6 Section 230.65 of this title;

7 14. The Department shall, beginning November 1, 2012, screen
8 all adult applicants for TANF to determine if they are engaged in
9 the illegal use of a controlled substance or substances. If the
10 Department has made a determination that the applicant is engaged in
11 the illegal use of a controlled substance or substances, the
12 applicant's request for TANF cash benefits shall be denied. The
13 Commission for Human Services shall adopt rules to implement the
14 requirements of this paragraph consistent with the following:

- 15 a. the Department shall create a controlled substance
16 screening process to be administered at the time of
17 application. The process shall, at a minimum, include
18 a Substance Abuse Subtle Screening Inventory (SASSI)
19 or other similar screening methods. If necessary to
20 establish a reasonable expectation of certainty, the
21 Department is authorized to use further screening
22 methods, which may include, but are not limited to, a
23 clinical interview, consideration of the Department's
24 history with the applicant, and an Addictions Severity

1 Index (ASI). If the Department has reasonable cause
2 to believe that the applicant is engaged in the
3 illegal use of a controlled substance or substances,
4 the Department is authorized, though not required, to
5 request administration of a chemical drug test, such
6 as urinalysis. The cost of all such initial
7 screenings shall not be borne by the applicant,

8 b. if at any time during the controlled substance
9 screening process, the applicant refuses to
10 participate, that refusal shall lead to a denial of
11 TANF benefits,

12 c. if the Department, as the result of a controlled
13 substance screening process, has determined that the
14 applicant is engaged in the illegal use of a
15 controlled substance or substances, the applicant's
16 request for TANF cash benefits shall be denied,
17 subject to the following:

18 (1) if there has not already been a chemical drug
19 test administered as part of the controlled
20 substance screening process, the applicant may
21 submit proof of a negative chemical drug test
22 from a state-certified laboratory to challenge
23 the Department's finding that the applicant is
24 engaged in the illegal use of a controlled

1 substance or substances. Proof of the chemical
2 drug test must be submitted to the Department no
3 later than the tenth calendar day following
4 denial. If denial is communicated by mail, the
5 ~~ten (10) day~~ ten-day window begins on the day
6 after the date of mailing of the denial notice to
7 the applicant's last-known address. The denial
8 notice is considered to be mailed on the date
9 that appears on the notice, unless otherwise
10 indicated by the facts,

11 (2) if denied due to the provisions of this
12 subparagraph, an applicant shall not be approved
13 until one (1) year has passed since the date of
14 denial,

15 (a) if the applicant is denied due to the
16 provisions of this paragraph, the Department
17 shall provide a list of substance abuse
18 treatment programs to the denied applicant,

19 (b) if an applicant has successfully complied
20 with a recommended substance abuse treatment
21 program after the date of denial, the
22 applicant may be approved for cash benefits
23 after six (6) months have passed since the
24

1 date of denial, rather than the required one
2 (1) year, and

3 (3) if an applicant has been denied TANF cash
4 benefits two times due to the provisions of this
5 subparagraph, the applicant shall be ineligible
6 for TANF benefits for a period of three (3) years
7 from the date of the second denial,

8 d. child-only cases and minor parents under eighteen (18)
9 years of age are not subject to the provisions of this
10 paragraph, and

11 e. in cases where the application for TANF benefits is
12 not for child-only benefits, but there is not a parent
13 who has been deemed eligible for cash benefits under
14 the provisions of this paragraph, any cash benefits
15 for which the dependent children of the family are
16 still eligible shall not be affected and may be
17 received and administered by an appropriate third
18 party approved by the Department for the benefit of
19 the members of the household;

20 15. a. As a condition of participating in the STARS, all
21 recipients are deemed to have given authorization for
22 the release of any and all information necessary to
23 allow all state and federal agencies to meet the
24 program needs of the recipient.

1 b. The recipient shall be provided a release form to sign
2 in order to obtain the required information. Failure
3 to sign the release form may result in case closure;
4 and

5 16. The recipient shall comply with all other conditions and
6 requirements of the STARS, and rules of the Commission promulgated
7 pursuant thereto.

8 B. 1. Agencies of this state involved in providing services to
9 recipients pursuant to the STARS shall exchange information as
10 necessary for each agency to accomplish objectives and fulfill
11 obligations created or imposed by the STARS and rules promulgated
12 pursuant thereto.

13 2. Information received pursuant to the STARS shall be
14 maintained by the applicable agency and, except as otherwise
15 provided by this subsection, shall be disclosed only in accordance
16 with any confidentiality provisions applicable to the agency
17 originating the information.

18 3. The various agencies of the state shall execute operating
19 agreements to facilitate information exchanges pursuant to the
20 STARS.

21 C. In implementing the TANF program, the Department shall:

22 1. Provide assistance to aliens pursuant to Section 230.73 of
23 this title;

1 2. Provide for the closure of the TANF case when the adult
2 recipient refuses to cooperate with agreed upon work activities or
3 other case requirements pursuant to the TANF program;

4 3. Provide for the sanctioning of parents who do not require
5 their minor children to attend school; and

6 4. Deny temporary assistance to fugitive felons.

7 D. In order to ensure that the needy citizens of this state are
8 receiving necessary benefits, the Department shall maintain a
9 listing of all recipients receiving public assistance. The listing
10 shall reflect each recipient's income, ~~social security~~ Social
11 Security number, and the programs in which the recipient is
12 participating including, but not limited to, TANF, food stamps,
13 child care, and medical assistance.

14 E. The Department is hereby authorized to establish a grant
15 diversion program and emergency assistance services.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 4001.1 of Title 56, unless there
18 is created a duplication in numbering, reads as follows:

19 As used in this act:

20 1. "ABLE" means achieving a better life experience;

21 2. "ABLE account" means an individual trust account or savings
22 account owned by the designated beneficiary of the account and
23 established to pay qualified disability expenses as prescribed in
24 this act. Money and assets in the accounts established under the

1 Oklahoma ABLE Program or an ABLE Program in any other state shall
2 not be considered for the purpose of determining eligibility to
3 receive, or the amount of, any assistance or benefits from local or
4 state means-tested programs;

5 3. "Account owner" means a resident of this state, designated
6 as eligible to be a beneficiary pursuant to Section 529A of the
7 Internal Revenue Code;

8 4. "Contracting state" means a state without a qualified ABLE
9 program of its own, which contracts with another state having such a
10 program;

11 5. "Contribution" means any payment directly allocated to an
12 ABLE account for the benefit of a designated beneficiary;

13 6. "Designated beneficiary" means:

14 a. with respect to an account, the individual who is the
15 owner of the ABLE account and who either established
16 the account at a time when he or she was eligible or
17 who has succeeded the former designated beneficiary in
18 that capacity,

19 b. if the designated beneficiary is not able to exercise
20 signature authority over his or her ABLE account or
21 chooses to establish an ABLE account but not exercise
22 signature authority, references to the designated
23 beneficiary with respect to his or her actions include
24 actions by the designated beneficiary's designated

1 representative under a power of attorney or, if none,
2 a parent or legal guardian of the designated
3 beneficiary, and

4 c. in the case of a change in beneficiaries described in
5 subsection E of Section 6 of this act, the individual
6 who is the new beneficiary;

7 7. "Designated representative" means an individual who is
8 authorized to act on behalf of the designated beneficiary if the
9 designated beneficiary is a minor or has a guardian, conservator or
10 other fiduciary who has been appointed for purposes of managing that
11 beneficiary's financial affairs;

12 8. "Disability certification" means, with respect to an
13 individual, a certification by the individual or the parent or
14 guardian of the individual that:

- 15 a. the individual has a medically determinable physical
16 or mental impairment, which results in marked and
17 severe functional limitations, and which can be
18 expected to result in death or which has lasted or can
19 be expected to last for a continuous period of not
20 less than twelve (12) months, or is blind within the
21 meaning of Section 1614(a)(2) of the Social Security
22 Act, and
- 23 b. a copy of the individual's diagnosis relating to the
24 individual's relevant impairment or impairments,

1 signed by a physician meeting the criteria of Section
2 1861(r)(1) of the Social Security Act, can be
3 provided;

4 9. "Eligible individual" means, for a taxable year, an
5 individual who either:

6 a. is entitled during that taxable year to benefits based
7 on blindness or disability under the Social Security
8 Act, or

9 b. is the subject of a disability certification filed for
10 such taxable year;

11 10. "Financial institution" means any bank, commercial bank,
12 national bank, savings bank, savings and loan association, credit
13 union, insurance company, brokerage firm or other similar entity
14 that is authorized to do business in this state;

15 11. "Internal Revenue Code" means the Internal Revenue Code of
16 1986, as amended;

17 12. "Program" means the Oklahoma ABLE Savings Plan established
18 under this act and implemented by the State Treasurer;

19 13. "Qualified disability expenses" means any expenses related
20 to the eligible individual's blindness or disability which are made
21 for the benefit of an eligible individual who is the designated
22 beneficiary, including education, housing, transportation,
23 employment training and support, assistive technology and personal
24 support services, health, prevention and wellness, financial

1 management and administrative expenses, legal fees, expenses for
2 oversight and monitoring, funeral and burial expenses and other
3 expenses approved under Section 529A of the Internal Revenue Code;

4 14. "Qualified withdrawal" means a withdrawal from an account
5 to pay the qualified disability expenses of the designated
6 beneficiary of the account, but only if the withdrawal is made in
7 accordance with this act; and

8 15. "Partner ABLE program" means a qualified ABLE program
9 established by another state or consortium of states which the State
10 Treasurer has contracted or entered into an agreement with to
11 facilitate access to a qualified ABLE program.

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 4001.3 of Title 56, unless there
14 is created a duplication in numbering, reads as follows:

15 A. The State Treasurer shall facilitate access to a qualified
16 ABLE program through the selection of one or more of the following
17 options:

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

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

22 3. Joining a consortium of states in administering a qualified
23 ABLE program; or
24

1 4. Operating a website to assist eligible individuals with the
2 selection of a qualified program.

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

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

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

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

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

16 5. Interpret, in policies, guidelines and procedures, the
17 provisions of the ABLE program Act broadly in light of its purpose
18 and objectives;

19 6. Develop a schedule of application fees and other necessary
20 fees and charges in connection with any agreement, contract or
21 transaction relating to the program that are sufficient to offset
22 the administrative and staffing costs associated with the
23 implementation and administration of this program;

1 7. Select the financial institution or institutions to act as
2 the depositories and managers of the program accounts in accordance
3 with this act. For purposes of selecting such institutions and
4 managers, the Office of the State Treasurer shall be exempt from the
5 Oklahoma Central Purchasing Act. The Treasurer shall develop a
6 competitive process by which the institutions and managers will be
7 selected; and

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

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

18 1. Select the state or consortium which the Treasurer has
19 determined will provide the greatest benefit to eligible
20 individuals. For purposes of selecting such state or consortium,
21 the Office of the State Treasurer shall be exempt from the Oklahoma
22 Central Purchasing Act. The Treasurer shall develop a competitive
23 process by which the state or consortium will be selected; and
24

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

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 4001.5 of Title 56, unless there
7 is created a duplication in numbering, reads as follows:

8 A. The State Treasurer may implement this act through the use
9 of one or more financial institutions to act as the depositories and
10 managers. Under the program, persons may establish accounts through
11 the program at a depository that has been selected by the Treasurer.

12 B. The Treasurer may solicit proposals from financial
13 institutions to act as the depositories and managers of the program.
14 Financial institutions that submit proposals shall provide all
15 information required by the Treasurer which is sufficient to enable
16 the evaluation of the investment strategies and asset allocations
17 consistent with the program objectives set by the Treasurer.

18 C. The Treasurer may select as program depositories and
19 managers, the financial institution or institutions from among
20 bidding financial institutions that demonstrate the most
21 advantageous combination, both to potential program participants and
22 this state, of the following factors:

23 1. Financial stability and integrity;

24

1 2. The safety of the investment instruments being offered by
2 the financial institution, taking into account any insurance
3 provided with respect to these instruments;

4 3. The ability of the financial institution to ensure that the
5 plan it offers tracks requirements of the Internal Revenue Code,
6 regulations of the Internal Revenue Service, other pertinent federal
7 and state laws and regulations, and rules and requirements of the
8 Regents;

9 4. The ability of the financial institution to track estimated
10 costs of the expenses for care of individuals with disabilities as
11 provided by the Department of Human Services and provided by the
12 financial institution to the account holder;

13 5. The ability of the financial institutions, directly or
14 through a subcontract, to satisfy recordkeeping and reporting
15 requirements, including those created by Section 529A of the
16 Internal Revenue Code and Internal Revenue Service regulations;

17 6. The financial institution's plan for promoting the program
18 and the investment it is willing to make to promote the program,
19 including any use of institutions with offices in Oklahoma as plan
20 marketers and enrollment agents;

21 7. The fees, if any, proposed to be charged to persons for
22 maintaining accounts;

23 8. The minimum initial deposit and minimum contributions that
24 the financial institution will require and the willingness of the

1 financial institution to accept contributions through payroll
2 deduction plans and other deposit plans; and

3 9. Any other benefits to this state or its residents included
4 in the proposal, including an account opening fee payable to the
5 Treasurer by the account owner and an additional fee from the
6 financial institution for statewide program marketing by the
7 Treasurer.

8 D. The Treasurer may enter into a contract with a financial
9 institution, or institutions provided in subsection E of this
10 section to serve as program managers and depositories.

11 E. The Treasurer may determine a minimum term for contracts
12 executed between the Treasurer and a financial institution pursuant
13 to this section and shall establish procedures by which a contract
14 may be renewed.

15 F. The Treasurer may select more than one financial institution
16 and investment for the program if the following conditions exist:

17 1. The United States Internal Revenue Service has provided
18 guidance that giving a contributor a choice of more than one
19 investment instrument under a state plan will not cause the plan to
20 fail to qualify for favorable tax treatment under Section 529A of
21 the Internal Revenue Code; and

22 2. The Treasurer concludes that the choice of instrument
23 vehicles is in the best interest of program participants and will
24 not interfere with the promotion of the program.

1 G. A program manager shall:

2 1. Take all action required to keep the program in compliance
3 with the requirements of this act and shall not take action contrary
4 to this act or its contract to manage the program so that it is
5 treated as a qualified plan under Section 529A of the Internal
6 Revenue Code;

7 2. Keep adequate records of each account, keep each account
8 segregated from each other account and provide the Treasurer with
9 the information necessary to prepare statements required by federal
10 and state law or regulation or file these statements on behalf of
11 the Treasurer;

12 3. Compile and total information contained in statements
13 required to be prepared under federal and state law and regulation
14 and provide these compilations to the Treasurer;

15 4. If there is more than one program manager, the program
16 managers shall provide the Treasurer with sufficient information to
17 determine compliance with this act;

18 5. Provide the Treasurer and other contractors or other state
19 agencies, if necessary, access to the books and records of the
20 program manager to the extent needed to determine compliance with
21 the contract; and

22 6. Hold all accounts in trust for the benefit of this state and
23 the account owner.

1 H. If a contract executed between the Treasurer and a financial
2 institution pursuant to this section is not renewed, all of the
3 following conditions apply at the end of the term of the nonrenewed
4 contract:

- 5 1. Accounts previously established and held in investment
6 instruments at the financial institution shall not be terminated;
- 7 2. Additional contributions may be made to the accounts; and
- 8 3. No new accounts may be placed with that financial
9 institution.

10 I. The Treasurer may terminate a contract with a financial
11 institution at any time for good cause. If a contract is terminated
12 pursuant to this section, the Treasurer shall take custody of
13 accounts held at that financial institution and shall seek to
14 promptly transfer the accounts to another financial institution that
15 is selected as a program manager and into investment instruments as
16 similar to the original investments as possible.

17 SECTION 6. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 4001.6 of Title 56, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The program shall be operated through the use of accounts.
21 An account may be established to save for the qualified disability
22 expenses of the account owner by:

- 23 1. Completing an application in the form prescribed by the
24 Treasurer;

1 2. Paying the one-time application fee established by the
2 Treasurer;

3 3. Making the minimum contribution required by the Treasurer or
4 by opening an account; and

5 4. Designating a single ABLE account per beneficiary, except in
6 the case of rollovers or program-to-program transfers.

7 B. Any person may make contributions to an account after the
8 account is opened.

9 C. Contributions to accounts may be made only in cash.

10 D. Account owners may withdraw all or part of the balance from
11 an account on sixty (60) days' notice, or a shorter period as may be
12 authorized by the Treasurer, under rules prescribed by the
13 Treasurer. These rules shall include provisions that will generally
14 enable the Treasurer or program manager to determine if a withdrawal
15 is a nonqualified withdrawal or a qualified withdrawal. The rules
16 may, but need not, require one or more of the following:

17 1. Account owners seeking to make a qualified withdrawal or
18 other withdrawal that is not a nonqualified withdrawal shall provide
19 certifications, copies of bills for qualified disability expenses or
20 other supporting material; and

21 2. Withdrawals not meeting certain requirements shall be
22 treated as nonqualified withdrawals by the program manager.

23

24

1 E. An account owner may change the designated beneficiary of an
2 account to an individual as provided under Section 529A of the
3 Internal Revenue Code.

4 F. An account owner may make the changes, transfers and
5 withdrawals described in Section 529A of the Internal Revenue Code
6 to an account that is owned by the account owner. If a change of
7 beneficiary or transfer causes the total account balance for all
8 accounts under the program for the new beneficiary to exceed the
9 maximum account balance limit, the excess amount shall be rejected
10 and returned to the account owner as provided in Section 529A of the
11 Internal Revenue Code.

12 G. Each account for each designated beneficiary shall be
13 maintained separately from each other account under the program.

14 H. Separate records and accounting shall be maintained for each
15 account for each designated beneficiary.

16 I. An account owner may direct the investment of any
17 contributions to an account or the earnings from the account only as
18 permitted by Section 529A of the Internal Revenue Code.

19 J. If the Treasurer terminates the authority of a financial
20 institution to hold accounts and accounts must be moved from that
21 financial institution to another financial institution, the
22 Treasurer shall select the financial institution and type of
23 investment to which the balance of the account is moved unless the
24 Internal Revenue Service provides guidance stating that allowing the

1 account owner to select among several financial institutions that
2 are then contractors would not cause a plan to cease to be a
3 qualified state tuition plan.

4 K. No account owner may use an interest in an account as
5 security for a loan. Any pledge of an interest in an account is of
6 no force and effect.

7 L. The Treasurer shall adopt guidelines and procedures to
8 prevent contributions on behalf of a designated beneficiary in
9 excess of those allowed pursuant to Section 529A of the Internal
10 Revenue Code to pay the qualified disability expenses of the
11 designated beneficiaries.

12 M. The financial institution(s) shall make all reports and
13 informational returns as required by the Internal Revenue Service,
14 the Oklahoma Tax Commission and other pertinent federal and state
15 laws and regulations.

16 N. The program manager shall make such reports with respect to
17 contributions, distributions and other matters that the Treasurer
18 may require pursuant to federal and state law reporting
19 requirements. The statement shall identify the contributions made
20 during a preceding twelve-month period, the total contributions made
21 through the end of the period, the value of the account as of the
22 end of this period, distributions made during this period and any
23 other matters that the Treasurer requires be reported to the account
24 owner.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4001.7 of Title 56, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Account balances and distributions from savings accounts
5 established pursuant to this act shall be exempt from levy and sale,
6 garnishment, attachment or any other process whatsoever, and shall
7 be unassignable.

8 B. Money and assets in an account established pursuant to this
9 act or in an ABLE account established in another state shall not be
10 considered for the purpose of determining eligibility to receive or
11 the amount of any assistance or benefits from local or state means-
12 tested public assistance programs.

13 SECTION 8. This act shall become effective January 1, 2017."

14 Passed the Senate the 19th day of April, 2016.

15

16

Presiding Officer of the Senate

17

18 Passed the House of Representatives the ____ day of _____,

19 2016.

20

21

Presiding Officer of the House
of Representatives

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23

24

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

6
7
8
9 An Act relating to public health and safety; enacting
10 the Achieving a Better Life Experience Program Act;
11 stating legislative intent; defining terms; creating
12 Achieving a Better Life Experience Program Trust;
13 providing for cotrustees; creating the Achieving a
14 Better Life Experience Program Committee; providing
15 for membership; providing for adoption of rules;
16 imposing duties; authorizing contracts; imposing
17 requirements with respect to rules; providing for
18 contributions to ABLE accounts; imposing
19 restrictions; prohibiting certain direction regarding
20 investments; prescribing procedures with respect to
21 account activity; requiring records and accounting;
22 providing for designation of beneficiaries;
23 authorizing transfers; imposing limitation based upon
24 reasonable expenses; restricting certain uses of
account; providing accounts not subject to certain
proceedings related to creditors; providing for
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 liberal construction; providing for
codification; and providing an effective date.

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 in
the Oklahoma Statutes as Section 1-3001 of Title 63, unless there is
2 created a duplication in numbering, reads as follows:
This act shall be known and may be cited as the "Achieving a Better
3 Life Experience Program Act".

SECTION 2. NEW LAW A new section of law to be codified in
4 the Oklahoma Statutes as Section 1-3002 of Title 63, unless there is
created a duplication in numbering, reads as follows:
5 It is the intent and purpose of this act to create and establish the
Achieving a Better Life Experience Program as provided under the Tax
6 Increase Prevention Act of 2014, Pub. L. No. 113-295.

SECTION 3. NEW LAW A new section of law to be codified in
7 the Oklahoma Statutes as Section 1-3003 of Title 63, unless there is
created a duplication in numbering, reads as follows:
8 As used in this act:

- 9 1. "ABLE account" means an account:
 - 10 a. established by an eligible individual,
 - 11 b. owned by the eligible individual, and
 - 12 c. maintained under this act;
- 13 2. "Contracting state" means a state without a qualified ABLE
program that has entered into a contract with Oklahoma to provide
14 residents of the contracting state access to a qualified ABLE
15 program;
- 16 3. "Designated beneficiary" means the eligible individual who
established an ABLE account and is the owner of the ABLE account;
- 17 4. "Disability certification" means, with respect to an individual,
18 a certification to the satisfaction of the United States Secretary
of the Treasury by the individual or the parent or guardian of the
19 individual which:
 - 20 a. certifies that the individual has a medically
determinable physical or mental impairment that
21 results in marked and severe functional limitations
and can be expected to result in death, or
 - 22 b. has lasted or can be expected to last for a continuous
period of not less than twelve (12) months, or
 - 23 c. certifies that the individual is blind within the
meaning of Section 1614(a)(2) of the Social Security
Act and the blindness or disability occurred before
the individual attained twenty-six (26) years of age,
and
 - 24 d. 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 Section 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., Section 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;

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

8. "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 act.

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

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 the Oklahoma Department of Rehabilitation Services and the State Treasurer.

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

A. This act 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 the Oklahoma Department of Rehabilitation Services, or his or her designee; and

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

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

2 C. The Committee shall adopt rules necessary to administer this act 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.

4 D. The Committee shall:

5 1. Establish, develop, implement and maintain the Achieving a Better Life Experience Program in a manner consistent with this act 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;

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

7 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; and

11 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 act.

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

16 SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-3006 of Title 63, unless there 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 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

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

- 1 2. A person may make contributions for a taxable year for the
2 benefit of an individual who is an eligible individual for the
3 taxable year to an ABLE account that is established to meet the
4 qualified disability expenses of the designated beneficiary of the
5 account;
3. A designated beneficiary is limited to one ABLE account;
- 4 4. An ABLE account may be established only for a designated
5 beneficiary who is a resident of Oklahoma or a resident of a
6 contracting state; and
5. Other requirements of this act shall be met.

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

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

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

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

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

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

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

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

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

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

21 2. Reports shall be made no less frequently than annually to the
22 account owner.

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

23 2. The application, account or administrative fees shall be
24 approved by the Committee.

1 SECTION 9. NEW LAW A new section of law to be codified in
2 the Oklahoma Statutes as Section 1-3009 of Title 63, unless there is
3 created a duplication in numbering, reads as follows:
4 A. An account owner shall have the right to name the designated
5 beneficiary of an account and at any time to change the designated
6 beneficiary of an account to an eligible individual who is a member
7 of the family of the former designated beneficiary.
8 B. At the direction of an account owner, all or a portion of an
9 account may be transferred to another account of which the
10 designated beneficiary is a member of the family of the designated
11 beneficiary of the transferee account if the transferee account was
12 created by this act or in accordance with the Achieving a Better
13 Life Experience Program as provided under the Tax Increase
14 Prevention Act of 2014, Pub. L. No. 113-295.

8 SECTION 10. NEW LAW A new section of law to be codified in
9 the Oklahoma Statutes as Section 1-3010 of Title 63, unless there is
10 created a duplication in numbering, reads as follows:
11 A. Total contributions to the account established on behalf of a
12 particular designated beneficiary in excess of those reasonably
13 necessary to meet the designated beneficiary's qualified disability
14 expenses are prohibited.
15 B. 1. An account or a legal or beneficial interest in an account
16 shall not be assignable, pledged or otherwise used to secure or
17 obtain a loan or other advancement.
18 2. An account or a legal or beneficial interest in an account is
19 not subject to attachment, levy or execution by a creditor of an
20 account owner or designated beneficiary.

15 SECTION 11. NEW LAW A new section of law to be codified in
16 the Oklahoma Statutes as Section 1-3011 of Title 63, unless there is
17 created a duplication in numbering, reads as follows:
18 A. Except as otherwise indicated in this act, interest, dividends
19 and capital gains from funds invested in the Achieving a Better Life
20 Experience Program are exempt from Oklahoma income taxes.
21 B. 1. A qualified distribution from a disability savings account
22 established under the Program is exempt from Oklahoma income tax
23 with respect to the designated beneficiary's income.
24 2. a. Nonqualified distributions from a disability savings
account established under the Program are subject to
Oklahoma income tax.
b. The nonqualified distribution is taxable to the party,
account owner or designated beneficiary who actually
makes the withdrawal.
C. Earnings on a contribution that are included in a refund are
subject to Oklahoma 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

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

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

5 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:

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

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

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

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

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

12 SECTION 14. This act shall become effective November 1, 2016.
Passed the House of Representatives the 9th day of March, 2016.

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Presiding Officer of the House
of Representatives

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

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Presiding Officer of the Senate

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