

1 ENGROSSED SENATE
2 BILL NO. 527

By: Montgomery and Thompson of
the Senate

3 and

4 McEntire and Pae of the
5 House

6
7 [public finance - Oklahoma Prosperity Act -
8 codification - effective date]
9

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

11 SECTION 1. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3600 of Title 62, unless there
13 is created a duplication in numbering, reads as follows:

14 This act shall be known and may be cited as the "Oklahoma
15 Prosperity Act".

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3601 of Title 62, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Implementation of this act shall be subject to the receipt
20 of appropriations sufficient to establish the Oklahoma Prosperity
21 Act Program, as defined in this section.

22 B. As used in this act:

23 1. "Administrative fund" shall mean the Oklahoma Prosperity Act
24 administrative fund established under this act;

1 2. "Contribution rate" means the percentage of the wages of a
2 covered employee that is withheld from his or her wages and paid to
3 the individual retirement account or individual retirement annuity
4 established for the covered employee under the Program;

5 3. "Covered employee" means any individual who is eighteen (18)
6 years of age or older, who is employed by a participating employer
7 and who has wages that are allocable to the state. For purposes of
8 the investment, withdrawal, transfer, rollover, or other
9 distribution of an individual retirement account or individual
10 retirement annuity, the term covered employee also includes the
11 beneficiary of a deceased covered employee;

12 4. "Participating employer" means an employer electing to
13 participate in the Oklahoma Prosperity Act Program that has not been
14 a participating or contributing employer in a retirement plan, an
15 automatic enrollment payroll deduction IRA, or a qualified
16 retirement plan in compliance with federal law for its employees
17 including plans qualified under Section 401(a), 401(k), 403(a),
18 403(b), 408(k), 408(p), 457(b), or 457(f) of Title 26 of the
19 Internal Revenue Code or any deferred compensation plan offered by
20 any employer at any time during the preceding two (2) calendar
21 years;

22 5. "Employer" means a person or entity engaged in a business,
23 profession, trade, or other enterprise in the state, whether for
24 profit or not-for-profit, that employs one or more individuals in

1 the state; provided, that a federal or state entity, agency, or
2 instrumentality or any political subdivision thereof, shall not be
3 an employer;

4 6. "Enrollee" means any covered employee enrolled in the
5 Oklahoma Prosperity Act Program;

6 7. "Internal Revenue Code" means the federal Internal Revenue
7 Code of 1986, as amended;

8 8. "Investment adviser" means either:

9 a. an investment adviser registered as such under the
10 U.S. Investment Advisers Act of 1940, or

11 b. a bank or other institution exempt from registration
12 under the U.S. Investment Advisers Act of 1940;

13 9. "Investment fund" means each investment portfolio
14 established within the trust for investment purposes;

15 10. "IRA" means either an individual retirement account or
16 individual retirement annuity established under Section 408 or 408A
17 of Title 26 of the Internal Revenue Code;

18 11. "Program" means the Oklahoma Prosperity Act Program
19 established under this act;

20 12. "State" means the State of Oklahoma;

21 13. "State Treasurer" means the Oklahoma State Treasurer;

22 14. "Trust" means the IRA retirement trust or annuity contract
23 established under Section 7 of this act;

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1 15. "Trustee" means the trustee of the trust including an
2 insurance company issuing an annuity contract, selected under
3 Section 4 of this act; and

4 16. "Wages" means compensation within the meaning of Section
5 219(f) (1) of Title 26 of the Internal Revenue Code that is received
6 by a covered employee from a participating employer.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 3602 of Title 62, unless there
9 is created a duplication in numbering, reads as follows:

10 The State Treasurer shall have the following powers and duties
11 in implementing the provisions of this act:

12 1. To design, establish, and operate the Oklahoma Prosperity
13 Act Program in accordance with the requirements established in this
14 act;

15 2. To collect fees to defray the costs of administering the
16 Program;

17 3. To enter into contracts necessary or desirable for the
18 establishment and administration of the Program;

19 4. To hire, retain, and terminate third-party service providers
20 for the Program including, but not limited to, consultants,
21 investment managers or advisors, trustees, custodians, insurance
22 companies, record keepers, administrators, actuaries, counsel,
23 auditors, and other professionals; provided, that each service
24 provider shall be authorized to do business in this state. For

1 purposes of selecting a third-party service provider, the Office of
2 the State Treasurer shall be exempt from the Oklahoma Central
3 Purchasing Act; provided, that a competitive process shall be
4 developed and utilized to select service providers;

5 5. To determine the type or types of IRAs to be offered;

6 6. To employ a program administrator and any other individuals
7 necessary to administer the Program and the administrative fund;

8 7. To develop and implement an outreach plan and disseminate
9 information regarding the Program and retirement and financial
10 education in general, to employees, employers, and other
11 constituents in the state;

12 8. To adopt rules and procedures for the establishment and
13 operation of the Program and to take such other actions as necessary
14 to operate the Program in accordance with the provisions of this
15 act. Any guidelines or procedures affecting the Program may be
16 implemented after reasonable notice to the public and a public
17 comment period, in a manner similar to the requirements of the
18 Administrative Procedures Act. However, the Administrative
19 Procedures Act shall not apply for purposes of this section; and

20 9. If applicable, to establish and maintain the Program by
21 contracting with another state, partnering with one or more states
22 to create a joint auto-IRA Program, allowing states to participate
23 in the Program, or forming a consortium with one or more other
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1 states in which certain aspects of the Program of each state are
2 combined for administrative convenience and efficiency.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3603 of Title 62, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The trustee and each investment adviser shall be a fiduciary
7 with respect to the trust and IRAs established and maintained under
8 the Oklahoma Prosperity Act Program.

9 B. Each participating employer shall be required to provide
10 covered employees with the information as required by the Program.
11 No employer acting pursuant to this act shall be considered a
12 fiduciary with respect to the trust or an IRA or have fiduciary
13 responsibilities under the act.

14 C. Each fiduciary shall discharge its duties with respect to
15 the Program solely in the best interests of covered employees and
16 with the care, skill, prudence, and diligence under the prevailing
17 circumstances that a prudent person acting in a similar capacity and
18 familiar with those matters would use in the conduct of an
19 enterprise of like character and aims.

20 SECTION 5. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3604 of Title 62, unless there
22 is created a duplication in numbering, reads as follows:

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1 The Oklahoma Prosperity Act Program shall be designed,
2 established, and operated in accordance with the following
3 provisions:

4 1. Each participating employer may offer to each covered
5 employee an opportunity to contribute to an IRA established under
6 the Program for the benefit of the covered employee through
7 withholding from his or her wages. No employer shall be permitted
8 to contribute to the Program;

9 2. Unless the covered employee elects not to participate in the
10 Program, he or she may be automatically enrolled in the Program and
11 contributions shall be withheld from the wages of the covered
12 employee;

13 3. The minimum contribution rate of each enrollee shall be
14 three percent (3%); the minimum contribution rate shall be the
15 default contribution rate;

16 4. The IRAs shall qualify for favorable federal income tax
17 treatment under Sections 408 and 408A of Title 26, as appropriate,
18 of the Internal Revenue Code;

19 5. Each participating employer shall deposit withheld
20 contributions of the enrollee under the Program with the trustee in
21 such manner as is determined by the State Treasurer; provided, that
22 the employer shall deliver the amounts withheld to the trustee
23 within thirty (30) business days after the date the amounts
24 otherwise would have been paid to the enrollee;

1 6. Additional rules and procedures may be adopted in
2 conjunction with established IRS regulations for withdrawals,
3 distributions, transfers, and rollovers of IRAs and for the
4 designation of IRA beneficiaries;

5 7. Information regarding the Program shall be made available to
6 the public on a website maintained for the Program;

7 8. Audited financial reports shall be submitted to the Governor
8 and Legislature within two (2) years after the Program is
9 established and annually thereafter at the end of each fiscal year;

10 9. Each participating employer shall be provided information
11 regarding the Program and disclosures including:

12 a. a description of the benefits and risks associated
13 with investments offered in the Program,

14 b. instructions about how to obtain additional
15 information about the Program,

16 c. a description of the federal and state income tax
17 consequences of an IRA, which may consist of or
18 include the disclosure statement required to be
19 distributed under the Internal Revenue Code and the
20 Treasury Regulations thereunder,

21 d. a statement that covered employees seeking financial
22 advice should contact their own financial advisors,
23 that participating employers shall not provide
24 financial advice, and that participating employers are

1 not liable for decisions covered employees make under
2 the act,

3 e. a statement that the Program is not an employer-
4 sponsored retirement plan,

5 f. a statement that neither the Program nor the IRA of
6 the enrollee established under the Program is
7 guaranteed by the state,

8 g. a statement that neither a participating employer nor
9 the state will monitor or has an obligation to monitor
10 the eligibility of the covered employee under the
11 Internal Revenue Code to make contributions to an IRA
12 or to monitor whether the contribution of the enrollee
13 to the IRA established for the enrollee under the
14 Program exceeds the maximum permissible IRA
15 contribution; it shall be the responsibility of the
16 covered employee, and

17 h. a statement that neither the state nor the
18 participating employer will have any liability with
19 respect to any failure of the covered employee to be
20 eligible to make IRA contributions or any contribution
21 in excess of the maximum IRA contribution;

22 10. Any information, forms, or instructions to be furnished to
23 covered employees that provide the covered employee with the
24 procedures for:

1 a. making contributions to the IRA of the covered
2 employee established under the Program including a
3 description of the minimum contribution rate and the
4 right to elect to make no contribution or to change
5 the contribution rate under the Program,

6 b. making an investment election with respect to the IRA
7 of the covered employee established under the Program
8 including a description of the default investment
9 fund, and

10 c. making transfers, rollovers, withdrawals, and other
11 distributions from the IRA of the covered employee;

12 11. Each participating employer shall deliver or facilitate the
13 delivery of the information about the Program to each covered
14 employee at the time and in the manner as established by Program
15 guidelines; and

16 12. The Program shall be designed and operated in a manner that
17 will cause it not to be an employee benefit plan within the meaning
18 of Section 3(3) of the Employee Retirement Income Security Act of
19 1974.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3605 of Title 62, unless there
22 is created a duplication in numbering, reads as follows:

23 There is hereby created in the Office of the State Treasurer a
24 fund to be designated as the "Oklahoma Prosperity Act Administrative

1 Fund". The fund shall be a continuing fund, not subject to fiscal
2 year limitations, and shall consist of monies appropriated for the
3 administration of the Oklahoma Prosperity Act Program, all
4 administrative fees collected, and any other monies designated to
5 the fund by law. All monies accruing to the credit of the fund are
6 hereby appropriated and may be budgeted and expended by the State
7 Treasurer for expenses related to the administration and support of
8 the Program. Expenditures from the fund shall be made upon warrants
9 issued by the State Treasurer against claims filed as prescribed by
10 law with the Director of the Office of Management and Enterprise
11 Services for approval and payment.

12 SECTION 7. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 3606 of Title 62, unless there
14 is created a duplication in numbering, reads as follows:

15 A. There is hereby created as an instrumentality of the state a
16 trust to be known as the "Oklahoma Prosperity Act Trust".

17 B. The State Treasurer may appoint qualified financial
18 institutions to act as trustee or custodian of the IRA accounts.

19 C. The assets of IRAs established for covered employees shall
20 be allocated to the trust and combined for investment purposes.
21 Trust assets shall be managed and administered for the purposes of
22 providing services to enrollees and defraying reasonable
23 administrative expenses of the Oklahoma Prosperity Act Program.

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1 D. There shall be established within the trust one or more
2 investment funds. The first One Thousand Dollars (\$1,000.00) in
3 contributions made by, or on behalf of, an enrollee may be deposited
4 into a default capital preservation investment fund and the enrollee
5 may be provided an account revocation period during which, if the
6 enrollee chooses to end participation in the Program, the enrollee
7 may withdraw the deposited amounts from the default investment
8 without penalty.

9 E. Enrollees may allocate assets of their IRAs among investment
10 funds and a default investment fund may be designated for the IRAs
11 of enrollees who do not select an investment fund.

12 F. The State Treasurer may retain investment advisers to select
13 and manage the investments of investment funds on a discretionary
14 basis, subject to ongoing review and oversight.

15 G. The assets of the trust shall be maintained, invested, and
16 expended solely for the purposes of the trust and no property rights
17 therein shall exist in favor of the state or any participating
18 employer. Trust assets shall not be transferred or used by the
19 state for any purposes other than the purposes of the trust or
20 funding the expenses of operating the Program.

21 H. The assets of the trust shall be held separate and apart
22 from the assets of the state.

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1 I. There shall be no liability for the state, the Program, the
2 State Treasurer, or any employer for investment losses incurred by
3 any covered employee as a result of participating in the Program.

4 J. The trust and each investment fund shall not be subject to
5 income tax of this state.

6 K. If the Program is established by using the IRA Program of
7 another state, a joint Program, or a consortium with one or more
8 other states, then the trust may be established by adopting the
9 trust established under the Program of the other state or states or
10 as a master trust or similar arrangement with the other state or
11 states; provided, that the trust, master trust, or similar
12 arrangement satisfies the requirements of this section.

13 SECTION 8. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3607 of Title 62, unless there
15 is created a duplication in numbering, reads as follows:

16 The Oklahoma Prosperity Act Program shall be established so that
17 enrollees may begin making contributions within twenty-four (24)
18 months of the effective date of this act; provided, that the State
19 Treasurer may extend the period within which the Program is
20 implemented by twelve (12) months. The State Treasurer may
21 establish a pilot program for certain participating employers, may
22 provide for a staggered rollout of the Program so that participating
23 employers may offer the Program to covered employees in stages based
24 on employee headcount or other criteria, or both.

1 SECTION 9. AMENDATORY 75 O.S. 2021, Section 250.4, is
2 amended to read as follows:

3 Section 250.4. A. 1. Except as is otherwise specifically
4 provided in this subsection, each agency is required to comply with
5 Article I of the Administrative Procedures Act.

6 2. The Corporation Commission shall be required to comply with
7 the provisions of Article I of the Administrative Procedures Act
8 except for subsections A, B, C, and E of Section 303 of this title
9 and Section 306 of this title. To the extent of any conflict or
10 inconsistency with Article I of the Administrative Procedures Act,
11 pursuant to Section 35 of Article IX of the Oklahoma Constitution,
12 it is expressly declared that Article I of the Administrative
13 Procedures Act is an amendment to and alteration of Sections 18
14 through 34 of Article IX of the Oklahoma Constitution.

15 3. The ~~Oklahoma~~ Military Department of the State of Oklahoma
16 shall be exempt from the provisions of Article I of the
17 Administrative Procedures Act to the extent it exercises its
18 responsibility for military affairs. Military publications, as
19 defined in Section 801 of Title 44 of the Oklahoma Statutes, shall
20 be exempt from the provisions of Article I and Article II of the
21 Administrative Procedures Act, except as provided in Section 251 of
22 this title.

23 4. The Oklahoma Ordnance Works Authority, the Northeast
24 Oklahoma Public Facilities Authority, the Oklahoma Office of

1 Homeland Security, and the Board of Trustees of the Oklahoma College
2 Savings Plan shall be exempt from Article I of the Administrative
3 Procedures Act.

4 5. The Transportation Commission and the Department of
5 Transportation shall be exempt from Article I of the Administrative
6 Procedures Act to the extent they exercise their authority in
7 adopting standard specifications, special provisions, plans, design
8 standards, testing procedures, federally imposed requirements and
9 generally recognized standards, project planning and programming,
10 and the operation and control of the State Highway System.

11 6. The Oklahoma State Regents for Higher Education shall be
12 exempt from Article I of the Administrative Procedures Act with
13 respect to:

- 14 a. prescribing standards of higher education,
- 15 b. prescribing functions and courses of study in each
16 institution to conform to the standards,
- 17 c. granting of degrees and other forms of academic
18 recognition for completion of the prescribed courses,
- 19 d. allocation of state-appropriated funds, and
- 20 e. fees within the limits prescribed by the Legislature.

21 7. Institutional governing boards within The Oklahoma State
22 System of Higher Education shall be exempt from Article I of the
23 Administrative Procedures Act.

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- 1 8. a. The Commissioner of Public Safety shall be exempt from
2 Sections 303.1, 304, 307.1, 308, and 308.1 of this
3 title insofar as it is necessary to promulgate rules
4 pursuant to the Oklahoma Motor Carrier Safety and
5 Hazardous Materials Transportation Act, to maintain a
6 current incorporation of federal motor carrier safety
7 and hazardous material regulations, or pursuant to
8 Chapter 6 of Title 47 of the Oklahoma Statutes, to
9 maintain a current incorporation of federal commercial
10 driver license regulations, for which the Commissioner
11 has no discretion when the state is mandated to
12 promulgate rules identical to federal rules and
13 regulations.
- 14 b. Such rules may be adopted by the Commissioner and
15 shall be deemed promulgated twenty (20) days after
16 notice of adoption is published in "The Oklahoma
17 Register". Such publication need not set forth the
18 full text of the rule but may incorporate the federal
19 rules and regulations by reference.
- 20 c. Such copies of promulgated rules shall be filed with
21 the Secretary as required by Section 251 of this
22 title.
- 23 d. For any rules for which the Commissioner has
24 discretion to allow variances, tolerances, or

1 modifications from the federal rules and regulations,
2 the Commissioner shall fully comply with Article I of
3 the Administrative Procedures Act.

4 9. The Council on Judicial Complaints shall be exempt from
5 Section 306 of Article I of the Administrative Procedures Act, with
6 respect to review of the validity or applicability of a rule by an
7 action for declaratory judgment, or any other relief based upon the
8 validity or applicability of a rule, in the district court or by an
9 appellate court. A party aggrieved by the validity or applicability
10 of a rule made by the Council on Judicial Complaints may petition
11 the Court on the Judiciary to review the rules and issue opinions
12 based upon them.

13 10. The Department of Corrections, State Board of Corrections,
14 county sheriffs, and managers of city jails shall be exempt from
15 Article I of the Administrative Procedures Act with respect to:

- 16 a. prescribing internal management procedures for the
17 management of the state prisons, county jails, and
18 city jails and for the management, supervision, and
19 control of all incarcerated prisoners, and
20 b. prescribing internal management procedures for the
21 management of the probation and parole unit of the
22 Department of Corrections and for the supervision of
23 probationers and parolees.

1 11. The State Board of Education shall be exempt from Article I
2 of the Administrative Procedures Act with respect to prescribing
3 subject matter standards as provided for in Section 11-103.6a of
4 Title 70 of the Oklahoma Statutes.

5 B. As specified, the following agencies or classes of agency
6 activities are not required to comply with the provisions of Article
7 II of the Administrative Procedures Act:

8 1. The Oklahoma Tax Commission, except as provided in
9 subsection G of Section 1140 of Title 47 of the Oklahoma Statutes;

10 2. The Commission for Human Services;

11 3. The Oklahoma Ordnance Works Authority;

12 4. The Corporation Commission;

13 5. The Pardon and Parole Board;

14 6. The Midwestern Oklahoma Development Authority;

15 7. The Grand River Dam Authority;

16 8. The Northeast Oklahoma Public Facilities Authority;

17 9. The Council on Judicial Complaints;

18 10. The Board of Trustees of the Oklahoma College Savings Plan;

19 11. The supervisory or administrative agency of any penal,

20 mental, medical, or eleemosynary institution, only with respect to

21 the institutional supervision, custody, control, care, or treatment

22 of inmates, prisoners, or patients therein; provided, that the

23 provisions of Article II shall apply to and govern all

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1 administrative actions of the Oklahoma Alcohol Prevention, Training,
2 Treatment and Rehabilitation Authority;

3 12. The Board of Regents or employees of any university,
4 college, or other institution of higher learning;

5 13. The Oklahoma Horse Racing Commission, its employees, or
6 agents only with respect to hearing and notice requirements on the
7 following classes of violations which are an imminent peril to the
8 public health, safety, and welfare:

9 a. any rule regarding the running of a race,

10 b. any violation of medication laws and rules,

11 c. any suspension or revocation of an occupation license
12 by any racing jurisdiction recognized by the
13 Commission,

14 d. any assault or other destructive acts within
15 Commission-licensed premises,

16 e. any violation of prohibited devices, laws, and rules,
17 or

18 f. any filing of false information;

19 14. The Commissioner of Public Safety only with respect to
20 driver license hearings and hearings conducted pursuant to the
21 provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

22 15. The Administrator of the Department of Securities only with
23 respect to hearings conducted pursuant to provisions of the Oklahoma
24 Take-over Disclosure Act of 1985;

1 16. Hearings conducted by a public agency pursuant to Section
2 962 of Title 47 of the Oklahoma Statutes;

3 17. The ~~Oklahoma~~ Military Department of the State of Oklahoma;

4 18. The University Hospitals Authority, including all hospitals
5 or other institutions operated by the University Hospitals
6 Authority;

7 19. The Oklahoma Health Care Authority Board and the
8 Administrator of the Oklahoma Health Care Authority; and

9 20. The Oklahoma Office of Homeland Security; and

10 21. The State Treasurer with respect to the adoption of rules
11 and procedures for the implementation and operation of the Oklahoma
12 Prosperity Act pursuant to Section 1 of this act.

13 SECTION 10. This act shall become effective November 1, 2022.

14 Passed the Senate the 24th day of March, 2022.

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Presiding Officer of the Senate

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

19 2022.

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Presiding Officer of the House
of Representatives

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