

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 527

By: Montgomery

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6 AS INTRODUCED

7 An Act relating to public finance; creating the
8 Oklahoma Prosperity Act; subjecting implementation of
9 act to certain appropriation; defining terms;
10 requiring State Treasurer to develop and operate the
11 Oklahoma Prosperity Act Program in accordance with
12 stated requirements; establishing certain persons as
13 fiduciary for accounts established under program;
14 exempting certain persons from fiduciary duty;
15 providing standard of fiduciary duty; establishing
16 mandates for designing and operating program;
17 authorizing adoption of certain rules; creating the
18 Oklahoma Prosperity Act Administrative Fund;
19 specifying terms of the fund; creating the Oklahoma
20 Prosperity Act Trust; authorizing Treasurer to
21 appoint certain persons as trustee or custodian;
22 requiring assets of certain IRAs be allocated to
23 trust and managed for certain purpose; requiring
24 establishment of at least one investment fund within
the trust; establishing terms of investment funds;
authorizing Treasurer to hire investment advisers for
certain purpose; specifying terms of trust
maintenance and investments; requiring trust assets
be held separate from state assets; prohibiting
liability of state for trust; exempting trust monies
from state income tax; authorizing trust to be
established by adoption of fund of other state in
certain circumstances; requiring program be
established in certain time frame; authorizing
Treasurer to extend time frame; authorizing Treasurer
to establish pilot program or rollouts for
implementing act; amending 75 O.S. 2011, Section
250.4, as last amended by Section 214, Chapter 408,
O.S.L. 2019 (75 O.S. Supp. 2020, Section 250.4),
which relates to the Administrative Procedures Act;

1 providing exemption for certain activities; providing
2 for codification; and providing an effective date.

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

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

8 This act shall be known and may be cited as the "Oklahoma
9 Prosperity Act".

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

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

16 B. As used in this act:

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

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

23 3. "Covered employee" means any individual who is eighteen (18)
24 years of age or older, who is employed by a covered employer and who

1 has wages that are allocable to the state. For purposes of the
2 investment, withdrawal, transfer, rollover or other distribution of
3 an individual retirement account or individual retirement annuity,
4 the term covered employee also includes the beneficiary of a
5 deceased covered employee;

6 4. "Covered employer" means an employer that either:

7 a. satisfies the following requirements:

8 (1) has at no time during the previous calendar year
9 employed fewer than ten (10) employees in this
10 state,

11 (2) has been in business for at least two (2) years,
12 and

13 (3) has not been a participating or contributing
14 employer in a retirement plan under Section
15 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p)
16 of Title 26 of Internal Revenue Code at any time
17 during the preceding two (2) calendar years, or

18 b. elects to be a covered employer if and as permitted in
19 accordance with rules and procedures established by
20 the Oklahoma Prosperity Act Program;

21 5. "Employer" means a person or entity engaged in a business,
22 profession, trade or other enterprise in the state, whether for
23 profit or not-for-profit, that employs one or more individuals in
24 the state; provided, that a federal or state entity, agency or
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1 instrumentality or any political subdivision thereof, shall not be
2 an employer;

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

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

7 8. "Investment adviser" means either:

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

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

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

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

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

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

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

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

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 the Internal Revenue Code that is received by
6 a covered employee from a covered 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 Act
13 Program in accordance with the requirements established in this act;

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

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

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

1 the State Treasurer shall be exempt from the Oklahoma Central
2 Purchasing Act; provided, that a competitive process shall be
3 developed and utilized to select service providers;

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

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

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

11 8. Determine the number of days by which an eligible employer
12 must make the Program available to a covered employee upon first
13 becoming an eligible employer or covered employee;

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

22 10. If applicable, to establish and maintain the Program by
23 contracting with another state, partnering with one or more states
24 to create a joint auto-IRA Program, allowing states to participate

1 in the Program or forming a consortium with one or more other states
2 in which certain aspects of the Program of each state are combined
3 for administrative convenience and efficiency.

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

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

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

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

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

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

4 1. Each covered employer shall be required to offer to each
5 covered employee an opportunity to contribute to an IRA established
6 under 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 shall be automatically enrolled in the Program
11 and contributions shall be withheld from the wages of the covered
12 employee;

13 3. The minimum contribution rate of each covered employee shall
14 be 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 covered employer shall deposit withheld contributions
20 of the covered employee under the Program with the trustee in such
21 manner as is determined by the State Treasurer, provided that the
22 employer shall deliver the amounts withheld to the trustee within
23 ten (10) business days after the date the amounts otherwise would
24 have been paid to the covered employee;

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 covered 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 covered employers shall not provide financial
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- 1 advice and that covered employers are not liable for
2 decisions covered employees make under 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 covered employee established under the Program is
7 guaranteed by the state,
8 g. a statement that neither a covered employer nor the
9 state will monitor or has an obligation to monitor the
10 eligibility of the covered employee under the Internal
11 Revenue Code to make contributions to an IRA or to
12 monitor whether the contributions of the covered
13 employee to the IRA established for the covered
14 employee under the Program exceeds the maximum
15 permissible IRA contribution; it shall be the
16 responsibility of the covered employee, and
17 h. a statement that neither the state nor the covered
18 employer will have any liability with respect to any
19 failure of the covered employee to be eligible to make
20 IRA contributions or any contribution in excess of the
21 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 covered 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
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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 the
5 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 of 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 covered employees 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. Covered employees may allocate assets of their IRAs among
10 investment funds and a default investment fund may be designated for
11 the IRAs of covered employees 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 covered employer.
18 Trust assets shall not be transferred or used by the state for any
19 purposes other than the purposes of the trust or funding the
20 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 auto-IRA Program
7 of 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 covered employees may begin making contributions within twenty-four
18 (24) months of the effective date of this act; provided, that the
19 State Treasurer may extend the time period within which the Program
20 is implemented by twelve (12) months. The State Treasurer may
21 establish a pilot program for certain covered employers, may provide
22 for a staggered rollout of the Program so that covered employers are
23 initially required to offer the Program to covered employees in
24 stages based on employee headcount or other criteria, or both.

1 SECTION 9. AMENDATORY 75 O.S. 2011, Section 250.4, as
2 last amended by Section 214, Chapter 408, O.S.L. 2019 (75 O.S. Supp.
3 2020, Section 250.4), is amended to read as follows:

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

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

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

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

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
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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 city
18 jails and for the management, supervision and control
19 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;
- 9 2. The Commission for Human Services;
- 10 3. The Oklahoma Ordnance Works Authority;
- 11 4. The Corporation Commission;
- 12 5. The Pardon and Parole Board;
- 13 6. The Midwestern Oklahoma Development Authority;
- 14 7. The Grand River Dam Authority;
- 15 8. The Northeast Oklahoma Public Facilities Authority;
- 16 9. The Council on Judicial Complaints;
- 17 10. The Board of Trustees of the Oklahoma College Savings Plan;
- 18 11. The supervisory or administrative agency of any penal,
19 mental, medical or eleemosynary institution, only with respect to
20 the institutional supervision, custody, control, care or treatment
21 of inmates, prisoners or patients therein; provided, that the
22 provisions of Article II shall apply to and govern all
23 administrative actions of the Oklahoma Alcohol Prevention, Training,
24 Treatment and Rehabilitation Authority;

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

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

- 7 a. any rule regarding the running of a race,
- 8 b. any violation of medication laws and rules,
- 9 c. any suspension or revocation of an occupation license
10 by any racing jurisdiction recognized by the
11 Commission,
- 12 d. any assault or other destructive acts within
13 Commission-licensed premises,
- 14 e. any violation of prohibited devices, laws and rules,
15 or
- 16 f. any filing of false information;

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

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

23 16. Hearings conducted by a public agency pursuant to Section
24 962 of Title 47 of the Oklahoma Statutes;

1 17. The Oklahoma Military Department;

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

5 19. The Oklahoma Health Care Authority Board and the
6 Administrator of the Oklahoma Health Care Authority; ~~and~~

7 20. The Oklahoma Office of Homeland Security; and

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

11 SECTION 10. This act shall become effective November 1, 2021.

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