

05/17/2016 09:21:14 AM

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2821

By: Denney of the House and Crain of the Senate

Title: Public health and safety; ABLE accounts; procedures; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

HB2821 CCR (A)
HOUSE CONFEREES

Bennett, John

Billy, Lisa



Brown, Mike

Casey, Dennis



Coody, Ann



Cox, Doug



Denny, Lee



Hickman, Jeffrey



Hoskin, Chuck

Inman, Scott

Johnson, Dennis



Martin, Scott



McCall, Charles

McCullough, Mark

McDaniel, Jeannie

McDaniel, Randy

McPeak, Jerry

Morrisette, Richard

Nelson, Jason

Ortega, Charles



Osborn, Leslie



Ownbey, Pat



Peterson, Pam



Rousselot, Wade

Russ, Todd

Sanders, Mike

Sears, Earl




Sherrer, Ben

Wesselhoft, Paul



Wright, Harold



SENATE CONFEREES

Allen _____
 Anderson *Paul A.*
 Barrington *Barry*
 Bass _____
 Bice *Bice*
 Boggs *Boggs*
 Brecheen _____
 Brooks _____
 Brown _____
 Crain *Crain*
 Dahm _____
 David *David*
 Dossett *Dossett*
 Fields _____
 Floyd _____
 Ford *Ford*
 Fry *Fry*
 Garrison _____
 Griffin *Griffin*
 Halligan *Halligan*
 Holt *Holt*
 Jech *Jech*
 Jolley _____
 Justice *Justice*

Loveless *Loveless*
 Marlatt *Marlatt*
 Matthews _____
 Mazzei _____
 Newberry *Newberry*
 Paddock *Paddock*
 Pittman _____
 Quinn *Quinn*
 Sharp *Sharp*
 Shaw *Shaw*
 Shortey _____
 Silk *Silk*
 Simpson _____
 Smalley *Smalley*
 Sparks _____
 Standridge _____
 Stanislawski *Stanislawski*
 Sykes *Sykes*
 Thompson *Thompson*
 Treat *Treat*
 Wyrick _____
 Yen _____

House Action _____ Date _____ Senate Action _____ Date _____

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2821

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

and

Crain, Halligan, Mazzei and
Stanislowski of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to financing disability expenses;
creating Fred's Law; creating the Oklahoma Achieving
a Better Life Experience (ABLE) Savings Plan Act;
defining terms; specifying duties of State Treasurer;
requiring Treasurer to implement program subject to
certain provisions; authorizing Treasurer to
implement program through use of financial
institutions; authorizing Treasurer to solicit
certain proposals; prescribing criteria by which the
Treasurer may select financial institutions;
authorizing the Treasurer to enter into certain
contract and setting certain terms and procedures
therefor; allowing the Treasurer to select more than
one financial institution under certain conditions;
requiring the program manager to perform certain
duties for program; establishing procedures related
to nonrenewal of contracts; allowing Treasurer to
terminate contract for good cause; prescribing means
by which a person can open an account; allowing any
person to contribute to an account; requiring
contributions to accounts be in cash; allowing
withdrawal of certain funds in accordance with
certain provisions; providing for changing of
beneficiaries; providing for certain penalty for
nonqualified withdrawals; allowing Treasurer to

1 adjust certain penalty; providing for the collection
2 of certain penalties; authorizing account owner to
3 direct certain investment; providing for the transfer
4 of certain accounts when the Treasurer terminates
5 authority of a financial institution to hold certain
6 accounts; requiring the Treasurer to adopt certain
7 rules; requiring financial institutions to comply
8 with certain reporting requirements; requiring
9 program managers to provide statements to account
10 owners; exempting certain resources from garnishment,
11 attachment and other processes; prohibiting
12 consideration of certain assets for certain purposes;
13 providing for noncodification; providing for
14 codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

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

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 4001.1 of Title 56, unless there
is created a duplication in numbering, reads as follows:

As used in this act:

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

2. "ABLE account" means an individual trust account or savings
account owned by the designated beneficiary of the account and
established to pay qualified disability expenses as prescribed in
this act. Money and assets in the accounts established under the
Oklahoma ABLE Program or an ABLE Program in any other state shall
not be considered for the purpose of determining eligibility to

1 receive, or the amount of, any assistance or benefits from local or
2 state means-tested programs;

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

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

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

11 6. "Designated beneficiary" means:

- 12 a. with respect to an account, the individual who is the
13 owner of the ABLE account and who either established
14 the account at a time when he or she was eligible or
15 who has succeeded the former designated beneficiary in
16 that capacity,
- 17 b. if the designated beneficiary is not able to exercise
18 signature authority over his or her ABLE account or
19 chooses to establish an ABLE account but not exercise
20 signature authority, references to the designated
21 beneficiary with respect to his or her actions include
22 actions by the designated beneficiary's designated
23 representative under a power of attorney or, if none,
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1 a parent or legal guardian of the designated
2 beneficiary, and

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

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

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

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

22 b. a copy of the individual's diagnosis relating to the
23 individual's relevant impairment or impairments,
24 signed by a physician meeting the criteria of Section

1 1861(r) (1) of the Social Security Act, can be
2 provided;

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

- 5 a. is entitled during that taxable year to benefits based
6 on blindness or disability under the Social Security
7 Act, or
- 8 b. is the subject of a disability certification filed for
9 such taxable year;

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

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

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

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

oversight and monitoring, funeral and burial expenses and other expenses approved under Section 529A of the Internal Revenue Code;

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

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4001.2 of Title 56, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

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

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

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

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

22 7. Select the financial institution or institutions to act as
23 the depositories and managers of the program accounts in accordance
24 with this act. For purposes of selecting such institutions and

1 managers, the Office of the State Treasurer shall be exempt from the
2 Oklahoma Central Purchasing Act. The Treasurer shall develop a
3 competitive process by which the institutions and managers will be
4 selected; and

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

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

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

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

SECTION 4. NEW LAW

A new section of law to be codified in the Oklahoma Statutes as Section 4001.3 of Title 56, unless there is created a duplication in numbering, reads as follows:

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

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

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

1. Financial stability and integrity;
2. The safety of the investment instruments being offered by the financial institution, taking into account any insurance provided with respect to these instruments;
3. The ability of the financial institution to ensure that the plan it offers tracks requirements of the Internal Revenue Code,

1 regulations of the Internal Revenue Service, other pertinent federal
2 and state laws and regulations, and rules and requirements of the
3 Regents;

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

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

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

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

18 8. The minimum initial deposit and minimum contributions that
19 the financial institution will require and the willingness of the
20 financial institution to accept contributions through payroll
21 deduction plans and other deposit plans; and

22 9. Any other benefits to this state or its residents included
23 in the proposal, including an account opening fee payable to the
24 Treasurer by the account owner and an additional fee from the

1 financial institution for statewide program marketing by the
2 Treasurer.

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

6 E. The Treasurer may determine a minimum term for contracts
7 executed between the Treasurer and a financial institution pursuant
8 to this section and shall establish procedures by which a contract
9 may be renewed.

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

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

17 2. The Treasurer concludes that the choice of instrument
18 vehicles is in the best interest of program participants and will
19 not interfere with the promotion of the program.

20 G. A program manager shall:

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

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

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

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

14 5. Provide the Treasurer and other contractors or other state
15 agencies, if necessary, access to the books and records of the
16 program manager to the extent needed to determine compliance with
17 the contract; and

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

20 H. If a contract executed between the Treasurer and a financial
21 institution pursuant to this section is not renewed, all of the
22 following conditions apply at the end of the term of the nonrenewed
23 contract:

1 1. Accounts previously established and held in investment
2 instruments at the financial institution shall not be terminated;

3 2. Additional contributions may be made to the accounts; and

4 3. No new accounts may be placed with that financial
5 institution.

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

13 SECTION 5. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 4001.4 of Title 56, unless there
15 is created a duplication in numbering, reads as follows:

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

19 1. Completing an application in the form prescribed by the
20 Treasurer;

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

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

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

3 B. Any person may make contributions to an account after the
4 account is opened.

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

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

13 1. Account owners seeking to make a qualified withdrawal or
14 other withdrawal that is not a nonqualified withdrawal shall provide
15 certifications, copies of bills for qualified disability expenses or
16 other supporting material; and

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

19 E. An account owner may change the designated beneficiary of an
20 account to an individual as provided under Section 529A of the
21 Internal Revenue Code.

22 F. An account owner may make the changes, transfers and
23 withdrawals described in Section 529A of the Internal Revenue Code
24 to an account that is owned by the account owner. If a change of

1 beneficiary or transfer causes the total account balance for all
2 accounts under the program for the new beneficiary to exceed the
3 maximum account balance limit, the excess amount shall be rejected
4 and returned to the account owner as provided in Section 529A of the
5 Internal Revenue Code.

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

8 H. Separate records and accounting shall be maintained for each
9 account for each designated beneficiary.

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

13 J. If the Treasurer terminates the authority of a financial
14 institution to hold accounts and accounts must be moved from that
15 financial institution to another financial institution, the
16 Treasurer shall select the financial institution and type of
17 investment to which the balance of the account is moved unless the
18 Internal Revenue Service provides guidance stating that allowing the
19 account owner to select among several financial institutions that
20 are then contractors would not cause a plan to cease to be a
21 qualified state tuition plan.

22 K. No account owner may use an interest in an account as
23 security for a loan. Any pledge of an interest in an account is of
24 no force and effect.

1 L. The Treasurer shall adopt guidelines and procedures to
2 prevent contributions on behalf of a designated beneficiary in
3 excess of those allowed pursuant to Section 529A of the Internal
4 Revenue Code to pay the qualified disability expenses of the
5 designated beneficiaries.

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

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

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

22 A. Account balances and distributions from savings accounts
23 established pursuant to this act shall be exempt from levy and sale,
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1 garnishment, attachment or any other process whatsoever and shall be
2 unassignable.

3 B. Money and assets residing in an account established pursuant
4 to this act or residing in an ABLE account established in another
5 state shall not be considered for purposes of determining
6 eligibility for assistance or benefits or for determining the amount
7 of assistance or benefits to be received from the Temporary
8 Assistance for Needy Families program or from any other local or
9 state means-tested public assistance programs.

10 SECTION 7. This act shall become effective January 1, 2017.

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