STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2838 By: Echols

AS INTRODUCED

An Act relating to public health and safety; enacting the Achieving a Better Life Experience Program Act; stating legislative intent; defining terms; creating Achieving a Better Life Experience Program Trust; providing for cotrustees; creating the Achieving a Better Life Experience Program Committee; providing for membership; providing for adoption of rules; imposing duties; authorizing contracts; imposing requirements with respect to rules; providing for contributions to ABLE accounts; imposing restrictions; prohibiting certain direction regarding investments; prescribing procedures with respect to account activity; requiring records and accounting; providing for designation of beneficiaries; authorizing transfers; imposing limitation based upon 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.

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

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 created a duplication in numbering, reads as follows:

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

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

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 Increase Prevention Act of 2014, Pub. L. No. 113-295.

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

As used in this act:

1. "ABLE account" means an explanation:

a. established by an eligible individual,

b. owned by the eligible individual, and

c. maintained under this act;

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

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

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

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

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

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

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.

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

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.

D. The Committee shall:

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;

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

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

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.

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

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:

Rules adopted under this act shall ensure that:

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

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;

2. A person may make contributions for a taxable year for the benefit of an individual who is an eligible individual for the

taxable year to an ABLE account that is established to meet the qualified disability expenses of the designated beneficiary of the account;

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

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

5. Other requirements of this act shall be met.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-3009 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An account owner shall have the right to name the designated beneficiary of an account and at any time to change the designated beneficiary of an account to an eligible individual who is a member of the family of the former designated beneficiary.

B. At the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account if the transferee account was created by this act or in accordance with the Achieving a Better Life Experience Program as provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-3010 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Total contributions to the account established on behalf of a particular designated beneficiary in excess of those reasonably necessary to meet the designated beneficiary's qualified disability expenses are prohibited.

B. 1. An account or a legal or beneficial interest in an account shall not be assignable, pledged or otherwise used to secure or obtain a loan or other advancement.

2. An account or a legal or beneficial interest in an account is not subject to attachment, levy or execution by a creditor of an account owner or designated beneficiary.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-3011 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise indicated in this act, interest, dividends and capital gains from funds invested in the Achieving a Better Life Experience Program are exempt from Oklahoma income taxes.

B. 1. A qualified distribution from a disability savings account established under the Program is exempt from Oklahoma income tax with respect to the designated beneficiary's income.

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

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

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 created a duplication in numbering, reads as follows:

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:

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

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

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

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:

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

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

55-2-8192 MAH 01/19/16