

1 ENGROSSED SENATE  
2 BILL NO. 1890

By: Montgomery, Leewright and  
Coleman of the Senate

3 and

4 McEntire and Mize of the  
5 House

6  
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; authorizing  
12 Treasurer to collect administrative fees and enter  
13 into certain contracts; authorizing Treasurer to hire  
14 third-party service providers for certain purpose;  
15 authorizing Treasurer to determine terms of program;  
16 authorizing Treasurer to provide certain information  
17 to employees; authorizing Treasurer to promulgate  
18 rules; authorizing Treasurer to contract with other  
19 states for certain purpose; establishing certain  
20 persons as fiduciary for accounts established under  
21 program; specifying fiduciary duty to program;  
22 requiring employers to provide certain information to  
23 employees; establishing terms of program;  
24 establishing opt-out requirement for program;  
establishing the minimum contribution rate of covered  
employees to program; establishing terms of employers  
depositing contributions into funds under the  
program; providing that certain program accounts  
shall receive favorable federal income tax treatment;  
requiring program information be available on  
website; requiring audited financial reports be  
submitted to Governor and Legislature; specifying  
program information required to be sent to covered  
employees; requiring program information be sent in  
certain manner; specifying program is not a certain  
employee benefit plan; creating the Oklahoma  
Prosperity Act Administrative Fund; specifying terms  
of the fund; creating the Oklahoma Prosperity Act  
Trust; authorizing Treasurer to appoint certain  
persons as trustee or custodian; requiring assets of  
certain IRAs be allocated to trust and managed for

1 certain purpose; requiring establishment of at least  
2 one investment fund within the trust; establishing  
3 terms of investment funds; authorizing Treasurer to  
4 hire investment advisers for certain purpose;  
5 specifying terms of trust maintenance and  
6 investments; requiring trust assets be held separate  
7 from state assets; prohibiting liability of state for  
8 trust; exempting trust monies from state income tax;  
9 authorizing trust to be established by adoption of  
10 fund of other state in certain circumstances;  
11 requiring program be established in certain time  
12 frame; authorizing Treasurer to extend time frame;  
13 authorizing Treasurer to establish pilot program or  
14 rollouts for implementing act; providing for  
15 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 to be codified  
in the Oklahoma Statutes as Section 3600 of Title 62, unless there  
is created a duplication in numbering, reads as follows:

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

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

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

B. As used in this act:

1. "Administrative fund" shall mean the Oklahoma Prosperity Act  
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 IRA established for the covered employee under the Program;

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

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

11       a. satisfies the following requirements:

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

15           (2) has been in business for at least two (2) years,  
16                and

17           (3) has not been a participating or contributing  
18                employer in a retirement plan under Section  
19                401(a), 401(k), 403(a), 403(b), 408(k), or 408(p)  
20                of Title 26 of Internal Revenue Code at any time  
21                during the preceding two (2) calendar years, or

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

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

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

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

11       8. "Investment adviser" means either:

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

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

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

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

21       11. "Program" means the Oklahoma Prosperity Act Program  
22 established under this act;

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

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

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

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

6        16. "Wages" means compensation within the meaning of Section  
7 219(f)(1) of Title 26 the Internal Revenue Code that is received by  
8 a covered employee from a covered employer.

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

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

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

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

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

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

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

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

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

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

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

16 9. To adopt rules and procedures for the establishment and  
17 operation of the Program and to take such other actions as necessary  
18 to operate the Program in accordance with the provisions of this  
19 act. Any guidelines or procedures affecting the Program may be  
20 implemented after reasonable notice to the public and a public  
21 comment period, in a manner similar to the requirements of the  
22 Administrative Procedures Act. However, the Administrative  
23 Procedures Act shall not apply for purposes of this section; and  
24

1        10. To establish and maintain the Program by contracting with  
2 another state, partnering with one or more states to create a joint  
3 auto-IRA Program, allowing states to participate in the Program or  
4 forming a consortium with one or more other states in which certain  
5 aspects of the Program of each state are combined for administrative  
6 convenience and efficiency.

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

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

13        B. Each covered employer shall be required to provide covered  
14 employees with such information as required by the Program. No  
15 employer acting as such shall be considered a fiduciary with respect  
16 to the trust or an IRA or have fiduciary responsibilities under the  
17 act.

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

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

4       A. The Oklahoma Prosperity Act Program shall be designed,  
5 established and operated in accordance with the following  
6 provisions:

7       1. Each covered employer shall be required to offer to each  
8 covered employee an opportunity to contribute to an IRA established  
9 under the Program for the benefit of the covered employee through  
10 withholding from his or her wages. No employer shall be permitted  
11 to contribute to the Program;

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

16       3. The minimum contribution rate of each covered employee shall  
17 be three percent (3%); the minimum contribution rate shall be the  
18 default contribution rate;

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

22       5. Each covered employer shall deposit withheld contributions  
23 of the covered employee under the Program with the trustee in such  
24 manner as is determined by the State Treasurer, provided that the

1 employer shall deliver the amounts withheld to the trustee within  
2 ten (10) business days after the date the amounts otherwise would  
3 have been paid to the covered employee;

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

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

10 8. Audited financial reports shall be submitted to the Governor  
11 and Legislature;

12 9. Each covered employer shall be provided information  
13 regarding the Program and disclosures including:

14 a. a description of the benefits and risks associated  
15 with investments offered in the Program,

16 b. instructions about how to obtain additional  
17 information about the Program,

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

23 d. a statement that covered employees seeking financial  
24 advice should contact their own financial advisors,

- 1           that covered employers shall not provide financial  
2           advice and that covered employers are not liable for  
3           decisions covered employees make under the act,  
4       e.    a statement that the Program is not an employer-  
5           sponsored retirement plan,  
6       f.    a statement that neither the Program nor the IRA of  
7           the covered employee established under the Program is  
8           guaranteed by the state,  
9       g.    a statement that neither a covered employer nor the  
10          state will monitor or has an obligation to monitor the  
11          eligibility of the covered employee under the Internal  
12          Revenue Code to make contributions to an IRA or to  
13          monitor whether the contributions of the covered  
14          employee to the IRA established for the covered  
15          employee under the Program exceeds the maximum  
16          permissible IRA contribution; it shall be the  
17          responsibility of the covered employee, and  
18       h.    a statement that neither the State nor the covered  
19          employer will have any liability with respect to any  
20          failure of the covered employee to be eligible to make  
21          IRA contributions or any contribution in excess of the  
22          maximum IRA contribution;

1        10. Any information, forms or instructions to be furnished to  
2 covered employees that provide the covered employee with the  
3 procedures for:

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

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

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

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

19        12. The Program shall be designed and operated in a manner that  
20 will cause it not to be an employee benefit plan within the meaning  
21 of Section 3(3) of the Employee Retirement Income Security Act of  
22 1974.

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

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

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

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

22       B. The State Treasurer may appoint qualified financial  
23 institutions to act as trustee or custodian of the IRA accounts.  
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1 C. The assets of IRAs established for covered employees shall  
2 be allocated to the trust and combined for investment purposes.  
3 Trust assets shall be managed and administered for the purposes of  
4 providing services to covered employees and defraying reasonable  
5 administrative expenses of the Oklahoma Prosperity Act Program.

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

14 E. Covered employees may allocate assets of their IRAs among  
15 investment funds and a default investment fund may be designated for  
16 the IRAs of covered employees who do not select an investment fund.

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

20 G. The assets of the trust shall be maintained, invested and  
21 expended solely for the purposes of the trust and no property rights  
22 therein shall exist in favor of the state or any covered employer.  
23 Trust assets shall not be transferred or used by the state for any  
24

1 purposes other than the purposes of the trust or funding the  
2 expenses of operating the Program.

3 H. The assets of the trust shall be held separate and apart  
4 from the assets of the state.

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

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

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

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

20 The Oklahoma Prosperity Act Program shall be established so that  
21 covered employees may begin making contributions within twenty-four  
22 (24) months of the effective date of this act; provided, that the  
23 State Treasurer may extend the time period within which the Program  
24 is implemented by twelve (12) months. The State Treasurer may

1 establish a pilot program for certain covered employers, may provide  
2 for a staggered rollout of the Program so that covered employers are  
3 initially required to offer the Program to covered employees in  
4 stages based on employee headcount or other criteria, or both.

5 SECTION 9. This act shall become effective November 1, 2020.

6 Passed the Senate the 10th day of March, 2020.

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\_\_\_\_\_  
Presiding Officer of the Senate

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10 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
11 2020.

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Presiding Officer of the House  
of Representatives

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