An Act

ENROLLED HOUSE
BILL NO. 2821

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

and

Crain, Halligan, Mazzei and Stanislawski of the Senate

An Act relating to financing disability expenses; creating Fred's Law; creating the Oklahoma Achieving a Better Life Experience (ABLE) Savings Plan Program; 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 adjust certain penalty; providing for the collection of certain penalties; authorizing account owner to direct certain investment; providing for the transfer

of certain accounts when the Treasurer terminates authority of a financial institution to hold certain accounts; requiring the Treasurer to adopt certain rules; requiring financial institutions to comply with certain reporting requirements; requiring program managers to provide statements to account owners; exempting certain resources from garnishment, attachment and other processes; prohibiting consideration of certain assets for certain purposes; providing for codification; providing for noncodification; and providing an effective date.

SUBJECT: Oklahoma Achieving a Better Life Experience (ABLE) Savings Plan Program

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

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

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

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

6. "Designated beneficiary" means:

a. with respect to an account, the individual who is the owner of the ABLE account and who either established the account at a time when he or she was eligible or who has succeeded the former designated beneficiary in that capacity,

b. if the designated beneficiary is not able to exercise signature authority over his or her ABLE account or chooses to establish an ABLE account but not exercise signature authority, references to the designated beneficiary with respect to his or her actions include actions by the designated beneficiary's designated representative under a power of attorney or, if none, a parent or legal guardian of the designated beneficiary, and

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

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

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

a. the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not

less than twelve (12) months, or is blind within the meaning of Section 1614(a)(2) of the Social Security Act, and

b. 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, can be provided;

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

a. is entitled during that taxable year to benefits based on blindness or disability under the Social Security Act, or

b. is the subject of a disability certification filed for such taxable year;

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

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

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

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

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

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

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

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

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

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

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

7. Select the financial institution or institutions to act as the depositories and managers of the program accounts in accordance with this act. For purposes of selecting such institutions and managers, the Office of the State Treasurer shall be exempt from The Oklahoma Central Purchasing Act. The Treasurer shall develop a competitive process by which the institutions and managers will be selected; and

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

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

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

2. Develop procedures to assist in the promotion of a partner ABLE program which the Treasurer has selected pursuant to subsection A of this section, whether such program is established by another state or a 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, regulations of the Internal Revenue Service, other pertinent federal and state laws and regulations, and rules and requirements of the Regents;

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

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

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

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

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

9. Any other benefits to this state or its residents included in the proposal, including an account opening fee payable to the Treasurer by the account owner and an additional fee from the financial institution for statewide program marketing by the Treasurer.

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

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

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

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

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

G. A program manager shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. An account owner may make the changes, transfers and withdrawals described in Section 529A of the Internal Revenue Code to an account that is owned by the account owner. If a change of beneficiary or transfer causes the total account balance for all accounts under the program for the new beneficiary to exceed the maximum account balance limit, the excess amount shall be rejected and returned to the account owner as provided in Section 529A of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

Passed the House of Representatives the 18th day of May, 2016.

Presiding Officer of the House of Representatives

Passed the Senate the 23rd day of May, 2016.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 24th day of May, 2016, at 12:02 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 6th day of June, 2016, at 3:29 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 6th day of June, 2016, at 4:53 o'clock P. M.

By: Chris Benge