

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: H2/10/15 H2/13/15 H2/25/15 H3/25/15*

2 90th General Assembly

# A Bill

3 Regular Session, 2015

HOUSE BILL 1239

4

5 By: Representatives J. Mayberry, Broadaway, Brown, Cozart, Della Rosa, K. Hendren, House, Johnson,

6 Ladyman, Leding, Lundstrum, McElroy, McNair, Miller, Rushing, Sabin, Shepherd, Tucker, Vaught,

7 Baltz, Gates, Jett, Lemons, Neal

8 By: Senators J. Hutchinson, *Irvin*

9

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## For An Act To Be Entitled

11

AN ACT TO CREATE THE ACHIEVING A BETTER LIFE

12

EXPERIENCE PROGRAM; TO PROVIDE NEW AVENUES FOR

13

FINANCIAL SELF-SUFFICIENCY FOR ARKANSANS WITH

14

DISABILITIES; AND FOR OTHER PURPOSES.

15

16

17

## Subtitle

18

TO CREATE THE ACHIEVING A BETTER LIFE

19

EXPERIENCE PROGRAM AND TO PROVIDE NEW

20

AVENUES FOR FINANCIAL SELF-SUFFICIENCY

21

FOR ARKANSANS WITH DISABILITIES.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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SECTION 1. Arkansas Code Title 20 is amended to add an additional

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chapter to read as follows:

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Chapter 3 – Achieving a Better Life Experience Program Act

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20-3-101. Title.

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This chapter shall be known and may be cited as the “Achieving a Better Life Experience Program Act”.

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20-3-102. Purpose.

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It is the intent and purpose of this chapter to create and establish

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the Achieving a Better Life Experience Program as provided under the Tax



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

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3 20-3-103. Definitions.

4 As used in this chapter:

5 (1) "ABLE account" means an account:

6 (A) Established by an eligible individual;

7 (B) Owned by the eligible individual; and

8 (C) Maintained under this subchapter;

9 (2) "Contracting state" means a state without a qualified ABLE  
10 program that has entered into a contract with Arkansas to provide residents  
11 of the contracting state access to a qualified ABLE program;

12 (3) "Designated beneficiary" means the eligible individual who  
13 established an ABLE account and is the owner of the ABLE account;

14 (4) "Disability certification" means, with respect to an  
15 individual, a certification to the satisfaction of the United States  
16 Secretary of the Treasury by the individual or the parent or guardian of the  
17 individual that:

18 (A) Certifies that:

19 (i)(a)(1) The individual has a medically  
20 determinable physical or mental impairment that:

21 (A) Results in marked and severe  
22 functional limitations; and

23 (B) Can be expected to result in  
24 death; or

25 (2) Has lasted or can be expected to  
26 last for a continuous period of not less than twelve (12) months; or

27 (b) The individual is blind within the meaning  
28 of § 1614(a)(2) of the Social Security Act; and

29 (ii) The blindness or disability occurred before the  
30 individual attained twenty-six (26) years of age; and

31 (B) Includes a copy of the individual's diagnosis relating  
32 to the individual's relevant impairment or impairments, signed by a physician  
33 meeting the criteria of § 1861(r)(1) of the Social Security Act;

34 (5) "Eligible individual" means an individual who for a taxable  
35 year:

36 (A) Is entitled to benefits based on blindness or

1 disability under Title II or XVI of the Social Security Act, 42 U.S.C. § 301  
2 et seq., and the blindness or disability is a preexisting condition that  
3 occurred before the date on which the individual attained twenty-six (26)  
4 years of age; or

5 (B) Has a disability certification filed with the  
6 Secretary of the Treasury of the United States for the taxable year;

7 (6) "Member of the family" means a brother, sister, stepbrother,  
8 or stepsister;

9 (7) "Nonqualified distribution" means a distribution from an  
10 ABLE account that is not used to pay a qualified disability expense; and

11 (8) "Qualified disability expense" means an expense related to  
12 an eligible individual's blindness or disability that is made for the benefit  
13 of the eligible individual who is the designated beneficiary, including  
14 without limitation the following expenses:

15 (A) Assistive technology and personal support services;

16 (B) Education;

17 (C) Employment training and support;

18 (D) Expenses for oversight and monitoring;

19 (E) Financial management and administrative services;

20 (F) Funeral and burial expenses;

21 (G) Health, prevention, and wellness expenses;

22 (H) Housing;

23 (I) Legal fees;

24 (J) Transportation; and

25 (K) Other expenses that are adopted by rule and consistent  
26 with the purposes of this chapter.

27  
28 20-3-104. Creation of the Achieving a Better Life Experience Program  
29 Trust.

30 (a) The Achieving a Better Life Experience Program Trust is created.

31 (b) The cotrustees of the trust shall be the Director of the  
32 Department of Human Services, the Director of Arkansas Rehabilitation  
33 Services, and the Treasurer of State.

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35 20-3-105. Administration – Authority – Powers.

36 (a) This chapter shall be administered by the Achieving a Better Life

1 Experience Program Committee, which shall be composed of:

2 (1) The Director of the Department of Human Services, or his or  
3 her designee;

4 (2) The Director of Arkansas Rehabilitation Services of the  
5 Department of Career Education, or his or her designee; and

6 (3) The Treasurer of State, or his or her designee.

7 (b) The Treasurer of State shall provide office space, staff, and  
8 materials for the committee.

9 (c) The committee shall adopt rules necessary to administer this  
10 chapter and to ensure compliance with the Achieving a Better Life Experience  
11 Program as provided under the Tax Increase Prevention Act of 2014, Pub. L.  
12 No. 113-295 and federal regulations under the act.

13 (d) The committee shall:

14 (1) Establish, develop, implement, and maintain the Achieving a  
15 Better Life Experience Program in a manner consistent with this chapter and  
16 the Achieving a Better Life Experience Program as provided under the Tax  
17 Increase Prevention Act of 2014, Pub. L. No. 113-295, and obtain the benefits  
18 provided by the Achieving a Better Life Experience Program as provided under  
19 the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, for the  
20 program, account owners, and designated beneficiaries;

21 (2) Adopt rules for the general administration of the program;

22 (3) Maintain, invest, and reinvest the funds contributed into  
23 the program consistent with the investment restrictions established by the  
24 committee and the standard of care described in the prudent investor rule  
25 under § 24-2-611; and

26 (4)(A) Make and enter into contracts, agreements, or  
27 arrangements and retain, employ, and contract for the services of financial  
28 institutions, depositories, consultants, broker-dealers, investment advisors  
29 or managers, third-party plan administrators, and research, technical, and  
30 other services necessary or desirable for carrying out the purposes of this  
31 chapter.

32 (B) Contracts entered into by the committee may be for a  
33 term of one (1) to ten (10) years.

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35 20-3-106. Rules.

36 Rules adopted under this subchapter shall ensure that:

1           (1)(A) A rollover from an ABLE account does not apply to an  
2 amount paid or distributed from the ABLE account to the extent that, not  
3 later than the sixtieth day after the date of the payment or distribution,  
4 the amount received is paid into another ABLE account for the benefit of the  
5 same designated beneficiary or an eligible individual who is a member of the  
6 family of the designated beneficiary; and

7           (B) The limitation under subdivision (1)(A) of this  
8 section does not apply to a transfer if the transfer occurs within twelve  
9 (12) months after the date of a previous transfer under this subchapter for  
10 the benefit of the designated beneficiary;

11           (2) A person may make contributions for a taxable year for the  
12 benefit of an individual who is an eligible individual for the taxable year  
13 to an ABLE account that is established to meet the qualified disability  
14 expenses of the designated beneficiary of the account;

15           (3) A designated beneficiary is limited to one (1) ABLE account;

16           (4) An ABLE account may be established only for a designated  
17 beneficiary who is a resident of Arkansas or a resident of a contracting  
18 state; and

19           (5) Other requirements of this subchapter shall be met.  
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21           20-3-107. Investment direction.

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

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28           20-3-108. Accounts.

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

34           (2) If the contributor is not the account owner, the account  
35 owner shall also sign the application form.

36           (3) Any person may make contributions to an account after the

1 account is opened.

2 (b) Contributions to an account shall be made only in cash.

3 (c)(1) Total contributions to all accounts shall not exceed those  
4 reasonably necessary to provide for the qualified disability expenses of the  
5 beneficiary.

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

10 (d)(1) Separate records and accounting shall be required by the  
11 program for each account.

12 (2) Reports shall be made no less frequently than annually to  
13 the account owner.

14 (e)(1) The program may collect application, account, or administrative  
15 fees to defray the costs of the program.

16 (2) The application, account, or administrative fees shall be  
17 approved by the committee.

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19 20-3-109. Naming of designated beneficiary and transfers of accounts.

20 (a) An account owner shall have the right to name the designated  
21 beneficiary of an account and at any time to change the designated  
22 beneficiary of an account to an eligible individual who is a member of the  
23 family of the former designated beneficiary.

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

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31 20-3-110. Prohibitions.

32 (a) Total contributions to the account established on behalf of a  
33 particular designated beneficiary in excess of those reasonably necessary to  
34 meet the designated beneficiary's qualified disability expenses are  
35 prohibited.

36 (b)(1) An account or a legal or beneficial interest in an account

1 shall not be assignable, pledged, or otherwise used to secure or obtain a  
2 loan or other advancement.

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

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7 20-3-111. Funds exempt from tax.

8 (a) Except as otherwise indicated in this chapter, interest,  
9 dividends, and capital gains from funds invested in the Achieving a Better  
10 Life Experience Program are exempt from Arkansas income taxes.

11 (b)(1) For tax years beginning on or after January 1, 2014,  
12 contributions to a disability savings account established under the program  
13 may be deducted from the taxpayer's gross income for the purpose of  
14 calculating the taxpayer's adjusted gross income.

15 (2) The deductible contributions shall not exceed five thousand  
16 dollars (\$5,000) per taxpayer in any tax year.

17 (3) Contributions to the program that have been deducted from  
18 the taxpayer's adjusted gross income for prior tax years are subject to  
19 recapture if:

20 (A) The taxpayer takes a subsequent nonqualified  
21 distribution from the account; or

22 (B) The Achieving a Better Life Experience Program  
23 Committee adopts a rule authorizing recapture if a taxpayer rolls the account  
24 over to a tax-deferred savings program established by another state or  
25 institution.

26 (4) The contribution shall be recaptured by adding the amount  
27 previously deducted, not to exceed the amount of the nonqualified  
28 distribution, to the taxpayer's adjusted gross income for the tax year in  
29 which the nonqualified distribution occurred.

30 (c)(1) A qualified distribution from a disability savings account  
31 established under the program is exempt from Arkansas income tax with respect  
32 to the designated beneficiary's income.

33 (2)(A) Nonqualified distributions from a disability savings  
34 account established under the program are subject to Arkansas income tax.

35 (B) The nonqualified distribution is taxable to the party,  
36 account owner, or designated beneficiary who actually makes the withdrawal.

1 (d) Earnings on a contribution that are included in a refund are  
2 subject to Arkansas income tax if an account owner receives a refund of  
3 contributions to a disability savings account established under the program  
4 because of either:

5 (1) The death or disability of the designated beneficiary; or

6 (2) A scholarship, allowance, or payment described in 26 U.S.C.  
7 § 135(d)(1)(B) or (d)(1)(C) as in effect on January 1, 2014, received by the  
8 designated beneficiary.

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10 20-3-112. Limitation on liability.

11 Neither the Achieving a Better Life Experience Program, the Achieving a  
12 Better Life Experience Program Committee and each of its members, nor the  
13 state shall:

14 (1) Insure any account or guarantee any rate of return or any  
15 interest rate on any contribution;

16 (2) Be liable for any loss incurred by any person as a result of  
17 participating in the program under this subchapter; or

18 (3) Be deemed to be a guarantor of a positive return on a  
19 contribution under this subchapter.

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21 20-3-113. Liberal construction.

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

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26 SECTION 2. DO NOT CODIFY. The Achieving a Better Life Experience  
27 Program becomes effective when the Treasurer of State determines that federal  
28 regulations regarding the Achieving a Better Life Experience Program as  
29 provided under the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295,  
30 have been finalized and provide the guidance necessary to implement the  
31 Achieving a Better Life Experience Program.

32  
33 */s/J. Mayberry*  
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