

1 **ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM**

2 **AND TAX CREDITS**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd Weiler**

6 House Sponsor: Rebecca P. Edwards

8 **LONG TITLE**

9 **General Description:**

10 This bill enacts the Achieving a Better Life Experience Program Act and provides tax
11 credits for contributions to accounts created under the program.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ enacts the Achieving a Better Life Experience Program Act;
- 15 ▶ requires the Department of Workforce Services to conduct a study related to the
16 program;
- 17 ▶ enacts nonrefundable tax credits for contributions to accounts created under the
18 program; and
- 19 ▶ provides a repeal date for the study.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides a special effective date.

24 **Utah Code Sections Affected:**

25 ENACTS:

26 **35A-12-101**, Utah Code Annotated 1953

27 **35A-12-102**, Utah Code Annotated 1953

28 **35A-12-201**, Utah Code Annotated 1953

29 **35A-12-202**, Utah Code Annotated 1953

- 30 **35A-12-301**, Utah Code Annotated 1953
- 31 **35A-12-302**, Utah Code Annotated 1953
- 32 **35A-12-303**, Utah Code Annotated 1953
- 33 **35A-12-304**, Utah Code Annotated 1953
- 34 **35A-12-305**, Utah Code Annotated 1953
- 35 **35A-12-401**, Utah Code Annotated 1953
- 36 **35A-12-402**, Utah Code Annotated 1953
- 37 **59-7-618**, Utah Code Annotated 1953
- 38 **59-10-1033**, Utah Code Annotated 1953
- 39 **63I-2-235**, Utah Code Annotated 1953

41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section **35A-12-101** is enacted to read:

43 **CHAPTER 12. ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM ACT**

44 **Part 1. General Provisions**

45 **35A-12-101. Title.**

46 This chapter is known as the "Achieving a Better Life Experience Program Act."

47 Section 2. Section **35A-12-102** is enacted to read:

48 **35A-12-102. Definitions.**

49 As used in this chapter:

50 (1) "Account" means a state Achieving a Better Life Experience Program account
 51 established under this chapter.

52 (2) "Account administrator" means a person who administers accounts in accordance
 53 with this chapter.

54 (3) "Account agreement" means an agreement between an account administrator and an
 55 account owner to establish an account.

56 (4) "Account owner" means the following who enter into an agreement with an account
 57 administrator to establish an account under this chapter:

- 58 (a) an eligible individual; or
59 (b) if the eligible individual is under 18 years of age or is incapacitated, a parent or
60 legal guardian of the eligible individual.
- 61 (5) "Beneficiary" means an individual who is:
62 (a) an eligible individual;
63 (b) a resident of:
64 (i) this state; or
65 (ii) a contracting state; and
66 (c) designated as the beneficiary of an account under an account agreement.
- 67 (6) "Contracting state" means a state that:
68 (a) does not have an Achieving a Better Life Experience program that meets the
69 requirements to be a qualified Achieving a Better Life Experience program under the federal
70 Achieving a Better Life Experience Act; and
71 (b) has entered into a contract with this state to provide residents of the other state
72 access to the state Achieving a Better Life Experience Program.
- 73 (7) "Eligible individual" means an individual who, before the individual turns 26 years
74 of age:
75 (a) as determined by the department, has a medically determinable physical or mental
76 impairment that:
77 (i) results in marked and severe functional limitations that can be expected to result in
78 death; or
79 (ii) has lasted or can be expected to last for a continuous period of 12 months or more;
80 or
81 (b) is eligible for benefits under title II or title XVI of the Social Security Act on the
82 basis of blindness.
- 83 (8) "Federal Achieving a Better Life Experience Act" means the Stephen Beck, Jr.,
84 Achieving a Better Life Experience Act of 2014, Pub. L. No. 113-295, 128 Stat. 4010.
- 85 (9) "Qualified disability expenses" means the same as that term is defined in the federal

86 Achieving a Better Life Experience Act.

87 (10) "State Achieving a Better Life Experience Program" means the program created
88 by this chapter.

89 Section 3. Section **35A-12-201** is enacted to read:

90 **Part 2. State Achieving a Better Life Experience Program**

91 **35A-12-201. Creation of program.**

92 (1) There is created the state Achieving a Better Life Experience Program.

93 (2) The department shall administer the program in compliance with:

94 (a) this chapter;

95 (b) the federal Achieving a Better Life Experience Act; and

96 (c) regulations, if any, issued by the United States Department of the Treasury.

97 (3) The program shall authorize the creation of an account for the purpose of allowing
98 contributions on behalf of a beneficiary for the payment of qualified disability expenses.

99 (4) Subject to Subsection [35A-12-301\(3\)](#), the department shall ensure that
100 contributions to an account:

101 (a) are held in trust for a beneficiary; and

102 (b) may not be used for a purpose other than the payment of qualified disability
103 expenses.

104 Section 4. Section **35A-12-202** is enacted to read:

105 **35A-12-202. Application.**

106 (1) (a) If an individual seeks to become an account owner, the individual shall file an
107 application with the department on a form provided by the department.

108 (b) The form:

109 (i) shall include documentation that the individual who will be designated as the
110 beneficiary of the account is:

111 (A) an eligible individual; and

112 (B) a resident of this state or a contracting state; and

113 (ii) may include other information required by the department.

114 (2) (a) If the individual who will be designated as the beneficiary of the account has a
115 medically determinable physical or mental impairment described in Subsection
116 35A-12-102(7)(a), the individual shall submit documentation required by the department on the
117 individual's diagnosis prepared by a physician.

118 (b) For purposes of Subsection (2)(a), the individual who will be designated as the
119 beneficiary of the account shall pay any costs of obtaining the documentation required by
120 Subsection (2)(a).

121 (3) If the individual who will be designated as the beneficiary of the account is eligible
122 for benefits under title II or title XVI of the Social Security Act on the basis of blindness, the
123 individual shall submit documentation that the individual is eligible for the benefits.

124 (4) (a) Within a 60-day period after the date an individual who seeks to become an
125 account owner files an application under Subsection (1), the department shall make a
126 determination as to whether the individual who will be designated as the beneficiary of the
127 account is:

- 128 (i) an eligible individual; and
- 129 (ii) a resident of this state or a contracting state.

130 (b) If the department determines that the individual who will be designated as the
131 beneficiary of the account meets the requirements of Subsection (4)(a), the department shall
132 issue the individual who seeks to become an account owner a certificate to authorize the
133 individual to enter into an account agreement.

134 (c) If the department determines that the individual who would be designated as the
135 beneficiary of the account does not meet the requirements of Subsection (4)(a), the department
136 shall inform the individual who seeks to become an account owner in writing that:

- 137 (i) the individual who would be designated as the beneficiary of the account does not
138 meet the requirements of Subsection (4)(a); and
- 139 (ii) provide the individual who seeks to become an account owner with an opportunity
140 to provide new or additional documentation to the department to establish that the individual
141 who would be designated as the beneficiary of the account meets the requirements of

142 Subsection (4)(a).

143 (5) (a) The department may charge a fee of \$35 for processing an application under this
144 section.

145 (b) The department shall retain the fees the department charges in accordance with
146 Subsection (5)(a) as dedicated credits to be expended to cover the costs of processing
147 applications under this section.

148 Section 5. Section **35A-12-301** is enacted to read:

149 **Part 3. Administration of Accounts**

150 **35A-12-301. Account administrator -- Fees or service charges.**

151 (1) The department shall:

152 (a) serve as the account administrator; or

153 (b) designate another person to serve as the account administrator in accordance with
154 Title 63G, Chapter 6a, Utah Procurement Code.

155 (2) Subject to Section [35A-12-302](#), the account administrator shall:

156 (a) receive contributions to an account; and

157 (b) make distributions for the payment of qualified disability expenses on behalf of a
158 beneficiary.

159 (3) The department may authorize the account administrator to collect a reasonable fee
160 or reasonable service charge to offset the costs of administering an account.

161 Section 6. Section **35A-12-302** is enacted to read:

162 **35A-12-302. Contributions.**

163 (1) For a calendar year, the total contributions to an account from all persons who
164 contribute to the account may not exceed the federal gift tax exclusion provided in Section
165 2503, Internal Revenue Code, for the calendar year.

166 (2) If a contribution to an account would result in the total contributions to the account
167 for a calendar year exceeding the amount provided in Subsection (1), the account administrator
168 shall return the excess contribution to the person who made the contribution within 30 days
169 after the date of the contribution.

170 Section 7. Section 35A-12-303 is enacted to read:

171 **35A-12-303. Account agreements -- Beneficiaries.**

172 (1) Beginning on or after July 1, 2016, the department may authorize an account owner
173 who holds a certificate issued under Section 35A-12-202 to enter into an account agreement
174 with the account administrator.

175 (2) The account agreement shall designate a beneficiary.

176 (3) An individual may only be designated as a beneficiary of one account under this
177 chapter.

178 (4) An account agreement shall state that:

179 (a) an account is not insured or guaranteed by the state; and

180 (b) the state does not guarantee the rate or payment of interest or other return on an
181 account.

182 Section 8. Section 35A-12-304 is enacted to read:

183 **35A-12-304. Duties of account administrator.**

184 (1) The account administrator shall ensure that an account, a contribution to an
185 account, a distribution from an account, or the return of an excess contribution is administered
186 in compliance with:

187 (a) this chapter;

188 (b) the federal Achieving a Better Life Experience Act, including a requirement for or
189 prohibition on:

190 (i) the manner in which a contribution may be made;

191 (ii) providing a separate accounting for a beneficiary;

192 (iii) directing the investment of a contribution;

193 (iv) pledging an amount as security for a loan; and

194 (v) making excess contributions; and

195 (c) regulations, if any, issued by the United States Department of the Treasury.

196 (2) (a) The account administrator shall provide a statement to an account owner at least
197 monthly.

198 (b) The statement described in Subsection (2)(a) shall itemize:

199 (i) contributions made to an account;

200 (ii) distributions made from an account; and

201 (iii) the return of an excess contribution.

202 (3) (a) The account administrator shall provide a statement to a person who contributes
203 to an account within 30 days after the person makes the contribution.

204 (b) The statement described in Subsection (3)(a) shall itemize:

205 (i) the amount of the contribution made to the account; and

206 (ii) the amount of any excess contribution returned to the person who made the
207 contribution.

208 Section 9. Section **35A-12-305** is enacted to read:

209 **35A-12-305. Reports.**

210 (1) Except as provided in Subsection (2), the department shall issue statements and
211 make reports as required by:

212 (a) this chapter;

213 (b) the federal Achieving a Better Life Experience Act; and

214 (c) regulations, if any, issued by the United States Department of the Treasury.

215 (2) The department may delegate the requirement to issue a statement or make a report
216 under this section to the account administrator if:

217 (a) the department is not the account administrator; and

218 (b) the delegation is authorized or permitted by the federal Achieving a Better Life
219 Experience Act or regulations, if any, issued by the United States Department of the Treasury.

220 (3) The department shall file a copy of a statement issued or report made under this
221 section to the state treasurer.

222 Section 10. Section **35A-12-401** is enacted to read:

223 **Part 4. Miscellaneous Provisions**

224 **35A-12-401. Scope of chapter -- No state guarantee.**

225 (1) This chapter may not be interpreted to:

- 226 (a) authorize or provide a disability-related service to an eligible individual;
- 227 (b) be a factor in establishing residency; or
- 228 (c) provide that contributions made into an account are sufficient to cover the qualified
- 229 disability expenses of an eligible individual.

230 (2) An account is not insured or guaranteed by the state.

231 (3) The state does not guarantee the rate or payment of interest or other return on an

232 account.

233 Section 11. Section **35A-12-402** is enacted to read:

234 **35A-12-402. Department study -- Report to Social Services Appropriations**

235 **Subcommittee.**

236 (1) During the 2015 interim, the department shall study the implementation of the state

237 Achieving a Better Life Experience Program.

238 (2) In conducting the study required by this section, the department shall evaluate:

239 (a) the federal Achieving a Better Life Experience Act; and

240 (b) regulations, if any, issued by the United States Department of the Treasury.

241 (3) The study shall include:

242 (a) an evaluation of the process for determining whether an individual is an eligible

243 individual;

244 (b) an evaluation of whether the department should designate a person other than the

245 department to be the account administrator;

246 (c) establishing a reasonable fee or reasonable service charge that the account

247 administrator may charge to offset the costs of administering an account;

248 (d) an evaluation of similar programs in other states;

249 (e) whether the state should enter into agreements with:

250 (i) other contracting states; or

251 (ii) other states that provide a qualified Achieving a Better Life Experience program

252 under the federal Achieving a Better Life Experience Act;

253 (f) an evaluation of best practices for administering accounts, including:

- 254 (i) the investment of contributions made into accounts; and
- 255 (ii) contracting for personnel, goods, and services; and
- 256 (g) an evaluation of reporting requirements for the department.
- 257 (4) The study may include other issues as determined by the department.
- 258 (5) The department shall report to the Social Services Appropriations Subcommittee on
- 259 or before the November 2015 interim meeting on the issues the department studies under this
- 260 section.

261 (6) As part of the report required by Subsection (5), the department shall make
262 recommendations on whether the state Achieving a Better Life Experience Program should be
263 modified.

264 Section 12. Section **59-7-618** is enacted to read:

265 **59-7-618. Nonrefundable tax credit for contribution to state Achieving A Better**
266 **Life Experience Program account.**

267 (1) As used in this section:

268 (a) "Account" means the same as that term is defined in Section [35A-12-102](#).

269 (b) "Account administrator" means the same as that term is defined in Section
270 [35A-12-102](#).

271 (c) "Contributor" means a corporation that:

272 (i) makes a contribution to an account; and

273 (ii) receives a statement from the account administrator in accordance with Section
274 [35A-12-304](#) itemizing the contribution.

275 (d) "State Achieving a Better Life Experience Program" means the same as that term is
276 defined in Section [35A-12-102](#).

277 (2) A contributor to an account created under the state Achieving a Better Life
278 Experience Program may claim a nonrefundable tax credit as provided in this section.

279 (3) Subject to the other provisions of this section, the tax credit is equal to the product
280 of:

281 (a) 5%; and

282 (b) the total amount of contributions:
283 (i) the contributor makes for the taxable year; and
284 (ii) for which the contributor receives a statement from the account administrator in
285 accordance with Section 35A-12-304 itemizing the contributions.

286 (4) A contributor may not claim a tax credit under this section:
287 (a) for an amount of excess contribution that is returned to the contributor in
288 accordance with Section 35A-12-302; or
289 (b) with respect to an amount the contributor deducts on a federal income tax return.

290 (5) A tax credit under this section may not be carried forward or carried back.

291 Section 13. Section **59-10-1033** is enacted to read:

292 **59-10-1033. Nonrefundable tax credit for contribution to state Achieving A Better**
293 **Life Experience Program account.**

294 (1) As used in this section:

295 (a) "Account" means the same as that term is defined in Section 35A-12-102.

296 (b) "Account administrator" means the same as that term is defined in Section
297 35A-12-102.

298 (c) "Contributor" means a claimant, estate, or trust that:

299 (i) makes a contribution to an account; and

300 (ii) receives a statement from the account administrator in accordance with Section
301 35A-12-304 itemizing the contribution.

302 (d) "State Achieving a Better Life Experience Program" means the same as that term is
303 defined in Section 35A-12-102.

304 (2) A contributor to an account created under the state Achieving a Better Life
305 Experience Program may claim a nonrefundable tax credit as provided in this section.

306 (3) Subject to the other provisions of this section, the tax credit is equal to the product
307 of:

308 (a) 5%; and

309 (b) the total amount of contributions:

310 (i) the contributor makes for the taxable year; and
311 (ii) for which the contributor receives a statement from the account administrator in
312 accordance with Section 35A-12-304 itemizing the contributions.
313 (4) A contributor may not claim a tax credit under this section:
314 (a) for an amount of excess contribution that is returned to the contributor in
315 accordance with Section 35A-12-302; or
316 (b) with respect to an amount the contributor deducts on a federal income tax return.
317 (5) A tax credit under this section may not be carried forward or carried back.
318 Section 14. Section **63I-2-235** is enacted to read:
319 **63I-2-235. Repeal date -- Title 35A.**
320 Section 35A-12-402 is repealed December 31, 2015.
321 Section 15. **Effective dates.**
322 (1) Except as provided in Subsection (2), this bill takes effect on May 12, 2015.
323 (2) The actions affecting Sections 59-7-618 and 59-10-1033 take effect for a taxable
324 year beginning on or after January 1, 2016.