

SB0292S01 compared with SB0292

~~text~~ shows text that was in SB0292 but was deleted in SB0292S01.

text shows text that was not in SB0292 but was inserted into SB0292S01.

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Senator Todd Weiler proposes the following substitute bill:

ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM

AND TAX CREDITS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ enacts the Achieving a Better Life Experience Program Act;
- ▶ requires the Department of Workforce Services to conduct a study related to the program; ~~text~~
- ▶ enacts nonrefundable tax credits for contributions to accounts created under the program; and

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- provides a repeal date for the study.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

ENACTS:

35A-12-101, Utah Code Annotated 1953

35A-12-102, Utah Code Annotated 1953

35A-12-201, Utah Code Annotated 1953

35A-12-202, Utah Code Annotated 1953

35A-12-301, Utah Code Annotated 1953

35A-12-302, Utah Code Annotated 1953

35A-12-303, Utah Code Annotated 1953

35A-12-304, Utah Code Annotated 1953

35A-12-305, Utah Code Annotated 1953

35A-12-401, Utah Code Annotated 1953

35A-12-402, Utah Code Annotated 1953

59-7-618, Utah Code Annotated 1953

59-10-1033, Utah Code Annotated 1953

63I-2-235, Utah Code Annotated 1953

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

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

CHAPTER 12. ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM ACT

Part 1. General Provisions

35A-12-101. Title.

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

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

35A-12-102. Definitions.

As used in this chapter:

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

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

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

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

(a) an eligible individual; or

(b) if the eligible individual is under 18 years of age or is incapacitated, a parent or legal guardian of the eligible individual.

(5) "Beneficiary" means an individual who is:

(a) an eligible individual;

(b) a resident of:

(i) this state; or

(ii) a contracting state; and

(c) designated as the beneficiary of an account under an account agreement.

(6) "Contracting state" means a state that:

(a) does not have an Achieving a Better Life Experience program that meets the requirements to be a qualified Achieving a Better Life Experience program under the federal Achieving a Better Life Experience Act; and

(b) has entered into a contract with this state to provide residents of the other state access to the state Achieving a Better Life Experience Program.

(7) "Eligible individual" means an individual who, before the individual turns 26 years of age:

(a) as determined by the department, has a medically determinable physical or mental impairment that:

(i) results in marked and severe functional limitations that can be expected to result in death; or

(ii) has lasted or can be expected to last for a continuous period of 12 months or more;

or

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(b) is eligible for benefits under title II or title XVI of the Social Security Act on the basis of blindness.

(8) "Federal Achieving a Better Life Experience Act" means the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014, Pub. L. No. 113-295, 128 Stat. 4010.

(9) "Qualified disability expenses" means the same as that term is defined in the federal Achieving a Better Life Experience Act.

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

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

Part 2. State Achieving a Better Life Experience Program

35A-12-201. Creation of program.

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

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

(a) this chapter;

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

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

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

(4) Subject to Subsection 35A-12-301(3), the department shall ensure that contributions to an account:

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

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

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

35A-12-202. Application.

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

(b) The form:

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

(A) an eligible individual; and

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

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

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

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

(~~f3~~3) If the individual who will be designated as the beneficiary of the account is eligible for benefits under title II or title XVI of the Social Security Act on the basis of blindness, the individual shall submit documentation that the individual is eligible for the benefits.

(~~f3~~4) (a) Within a 60-day period after the date an individual who seeks to become an account owner files an application under Subsection (1), the department shall make a determination as to whether the individual who will be designated as the beneficiary of the account is:

(i) an eligible individual; and

(ii) a resident of this state or a contracting state.

(b) If the department determines that the individual who will be designated as the beneficiary of the account meets the requirements of Subsection (~~f3~~4)(a), the department shall issue the individual who seeks to become an account owner a certificate to authorize the individual to enter into an account agreement.

(c) If the department determines that the individual who would be designated as the beneficiary of the account does not meet the requirements of Subsection (~~f3~~4)(a), the department shall inform the individual who seeks to become an account owner in writing that:

(i) the individual who would be designated as the beneficiary of the account does not meet the requirements of Subsection (~~f3~~4)(a); and

(ii) provide the individual who seeks to become an account owner with an opportunity to provide new or additional documentation to the department to establish that the individual who would be designated as the beneficiary of the account meets the requirements of

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Subsection ~~(3)4~~(a).

(5) The department may charge a fee in accordance with Title 63J, Chapter 1, Part 5, Fees, for processing an application under this section.

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

Part 3. Administration of Accounts

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

(1) The department shall:

(a) serve as the account administrator; or

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

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

(a) receive contributions to an account; and

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

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

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

35A-12-302. Contributions.

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

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

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

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

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

(2) The account agreement shall designate a beneficiary.

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

(4) An account agreement shall state that:

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

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

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

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

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

(a) this chapter;

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

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

(ii) providing a separate accounting for a beneficiary;

(iii) directing the investment of a contribution;

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

(v) making excess contributions; and

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

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

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

(i) contributions made to an account;

(ii) distributions made from an account; and

(iii) the return of an excess contribution.

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

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

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

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

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contribution.

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

35A-12-305. Reports.

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

(a) this chapter;

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

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

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

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

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

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

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

Part 4. Miscellaneous Provisions

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

(1) This chapter may not be interpreted to:

(a) authorize or provide a disability-related service to an eligible individual;

(b) be a factor in establishing residency; or

(c) provide that contributions made into an account are sufficient to cover the qualified disability expenses of an eligible individual.

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

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

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

35A-12-402. Department study -- Report to ~~{Health and Human}~~Social Services ~~{Interim Committee}~~Appropriations Subcommittee.

(1) During the 2015 interim, the department shall study the implementation of the state Achieving a Better Life Experience Program.

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

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

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

(3) The study shall include:

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

(b) an evaluation of whether the department should designate a person other than the department to be the account administrator;

(c) establishing a reasonable fee or reasonable service charge that the account administrator may charge to offset the costs of administering an account;

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

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

(i) other contracting states; or

(ii) other states that provide a ~~{program similar to the state}~~ **qualified** Achieving a Better Life Experience ~~{Program}~~ **program under the federal Achieving a Better Life Experience Act;**

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

(i) the investment of contributions made into accounts; and

(ii) contracting for personnel, goods, and services; and

(g) an evaluation of reporting requirements for the department.

(4) The study may include other issues as determined by the department.

(5) The department shall report to the ~~{Health and Human}~~ **Social** Services ~~{Interim Committee}~~ **Appropriations Subcommittee** on or before the November 2015 interim meeting on the issues the department studies under this section.

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

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

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

(1) As used in this section:

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

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

(c) "Contributor" means a corporation that:

(i) makes a contribution to an account; and

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

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

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

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

(a) 5%; and

(b) the total amount of contributions:

(i) the contributor makes for the taxable year; and

(ii) for which the contributor receives a statement from the account administrator in accordance with Section 35A-12-304 itemizing the contributions.

(4) A contributor may not claim a tax credit under this section:

(a) for an amount of excess contribution that is returned to the contributor in accordance with Section 35A-12-302; or

(b) with respect to an amount the contributor deducts on a federal income tax return.

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

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

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

(1) As used in this section:

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

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

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

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(i) makes a contribution to an account; and

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

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

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

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

(a) 5%; and

(b) the total amount of contributions:

(i) the contributor makes for the taxable year; and

(ii) for which the contributor receives a statement from the account administrator in accordance with Section 35A-12-304 itemizing the contributions.

(4) A contributor may not claim a tax credit under this section:

(a) for an amount of excess contribution that is returned to the contributor in accordance with Section 35A-12-302; or

(b) with respect to an amount the contributor deducts on a federal income tax return.

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

Section 14. Section **63I-2-235** is enacted to read:

63I-2-235. Repeal date -- Title 35A.

Section 35A-12-402 is repealed December 31, 2015.

Section 15. **Effective dates.**

(1) Except as provided in Subsection (2), this bill takes effect on May 12, 2015.

(2) The actions affecting Sections 59-7-618 and 59-10-1033 take effect for a taxable year beginning on or after January 1, 2016.

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~~as of 3-2-15 3:29 PM~~

~~Office of Legislative Research and General Counsel}~~