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H. B. 2902

(By Delegates Campbell, Perry, Reynolds, Pasdon, Rodighiero,
Ellington, Rowan, Rohrbach, Hamrick, E. Nelson and Ashley)
[Introduced February 24, 2015; referred to the
Committee on Banking and Industry then the Judiciary.]

A BILL to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5, §16-46-6 §16-46-7 and §16-46-8, all relating to creating the ABLE Act which allows savings accounts for individuals with a disability and their families to save private funds to support the individual with a disability.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5, §16-46-6 §16-46-7 and §16-46-8, all to read as follows:

ARTICLE 46. WEST VIRGINIA ABLE ACT.

§16-46-1. Short Title.

This article shall be known and may be cited as the "Achieving a Better Life Experience in

1 West Virginia Act" or the "West Virginia ABLE Act".

2 **§16-46-2. Purpose.**

3 The purpose of the West Virginia ABLE Act savings program is to authorize the
4 establishment of savings account empowering individuals with a disability and their families to save
5 private funds to support the individual with a disability and to provide guidelines for the maintenance
6 of such accounts.

7 **§16-46-3. Definitions.**

8 (a) "Account" or "ABLE savings account" means an individual savings account established
9 in accordance with the provisions of this article.

10 (b) "Account owner" means the person who enters into an ABLE savings agreement pursuant
11 to the provisions of this article. The account owner must also be the designated beneficiary. A
12 conservator or guardian may be appointed as an account owner for a designated beneficiary who is
13 a minor or lacks capacity to enter into an agreement.

14 (c) "Conservator" means a person appointed by the court pursuant to article one, chapter
15 forty-four-a of this code..

16 (d)"Designated beneficiary" means a West Virginia resident whose qualified disability
17 expenses may be paid from the account. The designated beneficiary must be an eligible individual
18 at the time the account is established. The account owner may change the designated beneficiary.

19 (e)"Eligible individual" means an individual who is entitled to benefits based on blindness
20 or disability under 42 U.S.C. § 401 et seq. or 42 U.S.C. § 1381 et seq., as amended, and such
21 blindness or disability occurred before the date on which the individual attained age twenty-six, or
22 an individual who filed a disability certification, to the satisfaction of the secretary, with the

1 secretary for such taxable year.

2 (f)"Financial organization" means an organization authorized to do business in the State of
3 West Virginia and is:

4 (1) Licensed or chartered by the Insurance Commissioner;

5 (2) Licensed or chartered by the Commissioner of the Division of Financial Institutions;

6 (3) Chartered by an agency of the federal government; or

7 (4) Subject to the jurisdiction and regulation of the securities and exchange commission of
8 the federal government.

9 (g)"Guardian" means a person appointed by the court pursuant to article one, chapter forty-
10 four-a of thos code.

11 (h)"Management contract" means the contract executed by the Treasurer and a financial
12 organization selected to act as a depository and manager of the program.

13 (i)"Member of the family" has the meaning contained in Section 529a of the federal Internal
14 Revenue Code of 1986, as amended.

15 (j)"Nonqualified withdrawal" means a withdrawal from an account which is not:

16 (1) A qualified withdrawal; or

17 (2) A rollover distribution.

18 (k)"Program" means the West Virginia ABLE Act savings program established pursuant to
19 this article.

20 (l)"Program manager" means a financial organization selected by the Treasurer to act as a
21 depository and manager of the program.

22 (m) "Qualified disability expense" means any qualified disability expense included in

1 Section 529a of the federal Internal Revenue Code of 1986, as amended.

2 (n)"Qualified withdrawal" means a withdrawal from an account to pay the qualified
3 disability expenses of the designated beneficiary of the account.

4 (o)"Rollover distribution" means a rollover distribution as defined in Section 529a of the
5 Federal Internal Revenue Code of 1986, as amended.

6 (p)"Savings agreement" means an agreement between the program manager or the Treasurer
7 and the account owner.

8 (q)"Secretary" means the secretary of the United States Treasury.

9 (r)"Treasurer" means the State Treasurer.

10 **§16-46-4. Implementation and administration of program; treasurer's responsibilities.**

11 (a) The Treasurer shall implement and administer the program under the terms and conditions
12 established by this act. In order to implement and administer the program, the Treasurer shall :

13 (1) Develop and implement the program in a manner consistent with the provisions of this
14 article;

15 (2) Engage the services of consultants on a contract basis for rendering professional and
16 technical assistance and advice;

17 (3) Seek rulings and other guidance from the secretary and the federal Internal Revenue
18 Service relating to the program;

19 (4) Make changes to the program required for the participants in the program to obtain the
20 federal income tax benefits or treatment provided by Section 529a of the federal Internal Revenue
21 Code of 1986, as amended;

22 (5) Charge, impose and collect administrative fees and service charges in connection with

1 any agreement, contract or transaction relating to the program;

2 (6) Develop marketing plans and promotion material;

3 (7) Establish the methods by which the funds held in accounts shall be dispersed;

4 (8) Establish the method by which funds shall be allocated to pay for administrative costs;

5 (9) Do all things necessary and proper to carry out the purposes of this act;

6 (10) Propose for legislative approval in accordance with article three, chapter twenty-nine-a
7 of this code rules necessary to effectuate the provisions of this article;

8 (11) Make an annual evaluation of the ABLÉ savings program and prepare an annual report
9 of such evaluation to be provided to the Governor and Legislature; and

10 (12) Notify the secretary when an account has been opened for a designated beneficiary and
11 submit other reports concerning the program required by the secretary.

12 (b) The Treasurer may enter into agreements with other states to either allow West Virginia
13 residents to participate in a plan operated by another state or to allow residents of other states to
14 participate in the West Virginia ABLÉ program.

15 **§16-46-5. Use of financial organizations as program depositories.**

16 (a) The Treasurer may implement the program through use of financial organizations as
17 account depositories and managers. The Treasurer may solicit proposals from financial organizations
18 to act as depositories and managers of the program. Financial organizations submitting proposals
19 shall describe the investment instruments which will be held in accounts. The Treasurer may select
20 more than one financial organization and investment instrument for the program. The Treasurer shall
21 select as program depositories and managers the financial organization, from among the bidding
22 financial organizations, that demonstrates the most advantageous combination, both to potential

1 program participants and this state, of the following factors:

2 (1) Financial stability and integrity of the financial organization;

3 (2) The safety of the investment instrument being offered;

4 (3) The ability of the financial organization to satisfy recordkeeping and reporting
5 requirements;

6 (4) The financial organization's plan for promoting the program and the investment the
7 organization is willing to make to promote the program;

8 (5) The fees, if any, proposed to be charged to the account owners;

9 (6) The minimum initial deposit and minimum contributions that the financial organization
10 will require;

11 (7) The ability of the financial organization to accept electronic withdrawals, including
12 payroll deduction plans; and

13 (8) Other benefits to the state or its residents included in the proposal, including fees payable
14 to the state to cover expenses of operation of the program.

15 (b) The Treasurer may enter into any contracts with a financial organization necessary to
16 effectuate the provisions of this article. Any management contract shall include, at a minimum, terms
17 requiring the financial organization to:

18 (1) Take any action required to keep the program in compliance with requirements of this
19 article and any actions not contrary to its contract to manage the program to qualify as a "qualified
20 ABLE program" as defined in Section 529a of the federal Internal Revenue Code of 1986, as
21 amended;

22 (2) Keep adequate records of each account, keep each account segregated from each other

1 account and provide the Treasurer with the information necessary to prepare the statements required
2 by section six of this article, and amendments thereto;

3 (3) Compile and total information contained in statements required to be prepared under
4 section six of this article, and amendments thereto, and provide such compilations to the Treasurer;

5 (4) If there is more than one program manager, provide the Treasurer with such information
6 as is necessary to determine compliance with section six of this article;

7 (5) Provide the Treasurer with access to the books and records of the program manager to the
8 extent needed to determine compliance with the contract, this article and Section 529a of the federal
9 Internal Revenue Code of 1986, as amended;

10 (6) Hold all accounts for the benefit of the account owner or owners;

11 (7) Be audited at least annually by a firm of certified public accountants selected by the
12 program manager and provide the results of such audit to the Treasurer;

13 (8) Provide the Treasurer with copies of all regulatory filings and reports made by the
14 financial organization during the term of the management contract or while the financial organization
15 is holding any accounts, other than confidential filings or reports that will not become part of the
16 program. The program manager shall make available for review by the Treasurer the results of any
17 periodic examination of such manager by any state or federal banking, insurance or securities
18 commission, except to the extent that such report or reports may not be disclosed under law; and

19 (9) Ensure that any description of the program, whether in writing or through the use of any
20 media, is consistent with the marketing plan developed pursuant to the provisions of this article.

21 (c) The Treasurer may:

22 (1) Enter into such contracts as it deems necessary and proper for the implementation of the

1 program;

2 (2) Require that an audit be conducted of the operations and financial position of the program
3 depository and manager at any time if the Treasurer has any reason to be concerned about the
4 financial position, the record keeping practices or the status of accounts of such program depository
5 and manager; and

6 (3) Terminate or not renew a management agreement. If the Treasurer terminates or does not
7 renew a management agreement, the Treasurer shall take custody of accounts held by such program
8 manager and shall seek to promptly transfer such accounts to another financial organization that is
9 selected as a program manager or depository and into investment instruments as similar to the
10 original instruments as possible.

11 (d) The Treasurer and the Department of Health and Human Resources are authorized to
12 exchange data regarding eligible individuals to carry out the purposes of this act.

13 **§16-46-6. Establishment of ABLE savings account by beneficiary, conservator, or guardian.**

14 (a) Any ABLE savings accounts established pursuant to the provisions of this article shall
15 be opened by a designated beneficiary or a conservator or guardian of a designated beneficiary who
16 lacks capacity to enter into a contract and each beneficiary may have only one account. The Treasurer
17 may establish a nonrefundable application fee. An application for such account shall be in the form
18 prescribed by the Treasurer and contain the:

19 (1) Name, address and social security number of the account owner;

20 (2) Name, address and social security number of the designated beneficiary, if the account
21 owner is the beneficiary's trustee conservator or guardian;

22 (3) Certification relating to no excess contributions; and

1 (4) Additional information as the Treasurer may require.

2 (b) Any person may make contributions to an ABLE savings account after the account is
3 opened, subject to the limitations imposed by Section 529a of the federal Internal Revenue Code of
4 1986, as amended, or any rules and regulations promulgated by the secretary pursuant to this article.

5 (c) Contributions to ABLE savings accounts may only be made in cash. The Treasurer or
6 program manager shall reject or promptly withdraw contributions:

7 (1) In excess of the limits established pursuant to subsection (b); or

8 (2) The total contributions if the:

9 (A) Value of the account is equal to or greater than the account maximum established by the
10 Treasurer. Such account maximum must be equal to the account maximum for postsecondary
11 education savings accounts established pursuant to article thirty, chapter eighteen of this code .; or

12 (B) Designated beneficiary is not an eligible individual in the current calendar year.

13 (d) (1) An account owner may:

14 (A) Change the designated beneficiary of an account to an individual who is a member of the
15 family of the prior designated beneficiary in accordance with procedures established by the
16 Treasurer; and

17 (B) Transfer all or a portion of an account to another ABLE savings account, the designated
18 beneficiary of which is a member of the family as defined in Section 529a of the federal Internal
19 Revenue Code of 1986, as amended.

20 (2) No account owner may use an interest in an account as security for a loan. Any pledge
21 of an interest in an account is of no force and effect.

22 (e) (1) If there is any distribution from an account to any individual or for the benefit of any

1 individual during a calendar year, such distribution shall be reported to the federal Internal Revenue
2 Service and each account owner, the designated beneficiary or the distributee to the extent required
3 by state or federal law.

4 (2) Statements shall be provided to each account owner at least four times each year within
5 thirty days after the end of the three-month period to which a statement relates. The statement shall
6 identify the contributions made during the preceding three-month period, the total contributions
7 made to the account through the end of the period, the value of the account at the end of such period,
8 distributions made during such period and any other information that the Treasurer requires to be
9 reported to the account owner.

10 (3) Statements and information relating to accounts shall be prepared and filed to the extent
11 required by this article and any other state or federal law.

12 (f) (1) The program shall provide separate accounting for each designated beneficiary. An
13 annual fee may be imposed upon the account owner for the maintenance of an account.

14 (2) Moneys in an ABLE savings account:

15 (A) Are exempt from attachment, execution or garnishment; and

16 (B) May be claimed by the West Virginia Medicaid plan only after the death of the
17 designated beneficiary subject to limitations imposed by the secretary.

18 **§16-46-7. Limitation on Liability.**

19 (a) Nothing in this act creates any obligation of the Treasurer, the state or any agency or
20 instrumentality of the state to guarantee for the benefit of any account owner or designated
21 beneficiary with respect to the:

22 (1) Return of principal;

1 (2) Rate of interest or other return on any account; or

2 (3) Payment of interest or other return on any account.

3 (b) The Treasurer may propose rules for legislative approval in accordance with article three,
 4 chapter twenty-nine-a of this code to provide that every contract, application or other similar
 5 document that may be used in connection with opening an account clearly indicates that the account
 6 is not insured by the state and that the principal deposited and the investment return are not
 7 guaranteed by the state.

8 **§16-46-8. Establishment of savings program trust fund and savings expense fund in State**
 9 **Treasury.**

10 (a) The West Virginia ABLE savings program trust fund is hereby established in the State
 11 Treasury. The fund shall be utilized if the Treasurer elects to accept deposits from contributors rather
 12 than have deposits sent directly to the program manager. Such fund shall consist of any moneys
 13 deposited by contributors in accordance with this article which are not deposited directly with the
 14 program manager. All interest derived from the deposit and investment of moneys in such savings
 15 trust fund shall be credited to the fund. At the end of any fiscal year, all unexpended and
 16 unencumbered moneys in such savings trust fund may not be credited or transferred to the State
 17 General Fund or to any other fund.

18 (b) (1) The West Virginia ABLE Savings Expense Fund is hereby established in the State
 19 Treasury. The fund shall consist of moneys received from the ABLE savings program manager, or
 20 any governmental or private grants and any state general fund appropriations, if any, for the program.

21 (2) All expenses incurred by the Treasurer in developing and administering the ABLE
 22 savings program shall be payable from the West Virginia ABLE Savings Expense Fund.

NOTE: The purpose of this bill is to allow savings accounts for individuals with a disability and their families to save private funds to support that individual with a disability.

Article 46**KEYBOARD**(Type information) is new; therefore, it has been completely underscored.