

COMMITTEE SUBSTITUTE

for

H. B. 2902

(BY DELEGATE(S) CAMPBELL, PERRY, REYNOLDS,
PASDON, RODIGHIERO, ELLINGTON, ROWAN, ROHRBACH, HAMRICK,
E. NELSON AND ASHLEY)

(Originating in the House Committee on Banking and Insurance.)

[February 26, 2015]

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 providing for the establishment of a program to allow savings accounts for individuals with a disability and their families to save private funds to support the individual with a

disability, to be known as the West Virginia ABLE Act; definitions; implementation and administration of the program by the Treasurer; powers and responsibilities of the Treasurer; use of financial organizations as account depositories and managers; establishing procedures and requirements for establishment of an ABLE savings account; limitations on deposits; provisions for change of a designated beneficiary; distributions from accounts; limiting liability of the Treasurer and the state; and establishment of the West Virginia ABLE savings program trust fund and the West Virginia ABLE Savings Expense Fund.

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.

- 1 This article shall be known and may be cited as the
- 2 “Achieving a Better Life Experience in West Virginia Act” or
- 3 the “West Virginia ABLE Act”.

§16-46-2. Purpose.

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

§16-46-3. Definitions.

1 (a) “Account” or “ABLE savings account” means an
2 individual savings account established in accordance with the
3 provisions of this article.

4 (b) “Account owner” means the person who enters into an
5 ABLE savings agreement pursuant to the provisions of this
6 article. The account owner must also be the designated
7 beneficiary. A conservator or guardian may be appointed as an
8 account owner for a designated beneficiary who is a minor or
9 lacks capacity to enter into an agreement.

10 (c) “Conservator” means a person appointed by the court
11 pursuant to article one, chapter forty-four-a of this code.

12 (d) “Designated beneficiary” means a West Virginia resident
13 whose qualified disability expenses may be paid from the

14 account. The designated beneficiary must be an eligible
15 individual at the time the account is established. The account
16 owner may change the designated beneficiary.

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

24 (f) "Financial organization" means an organization autho-
25 riized to do business in the State of West Virginia and is:

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

27 (2) Licensed or chartered by the Commissioner of the

28 Division of Financial Institutions;

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

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

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

34 (h) “Management contract” means the contract executed by
35 the Treasurer and a financial organization selected to act as a
36 depository and manager of the program.

37 (i) “Member of the family” has the meaning contained in
38 Section 529a of the federal Internal Revenue Code of 1986, as
39 amended.

40 (j) “Nonqualified withdrawal” means a withdrawal from an
41 account which is not:

42 (1) A qualified withdrawal; or

43 (2) A rollover distribution.

44 (k) “Program” means the West Virginia ABLE Act savings
45 program established pursuant to this article.

46 (l) “Program manager” means a financial organization
47 selected by the Treasurer to act as a depository and manager of
48 the program.

49 (m) “Qualified disability expense” means any qualified
50 disability expense included in Section 529a of the federal
51 Internal Revenue Code of 1986, as amended.

52 (n) “Qualified withdrawal” means a withdrawal from an
53 account to pay the qualified disability expenses of the designated
54 beneficiary of the account.

55 (o) “Rollover distribution” means a rollover distribution as
56 defined in Section 529a of the Federal Internal Revenue Code of
57 1986, as amended.

58 (p) “Savings agreement” means an agreement between the
59 program manager or the Treasurer and the account owner.

60 (q) “Secretary” means the secretary of the United States
61 Treasury.

62 ® “Treasurer” means the State Treasurer.

§16-46-4. Implementation and administration of program;
Treasurer’s powers and responsibilities.

1 (a) The Treasurer shall implement and administer the
2 program under the terms and conditions established by this
3 article. In order to implement and administer the program, the
4 Treasurer may:

5 (1) Engage the services of consultants on a contract basis for
6 rendering professional and technical assistance and advice;

7 (2) Seek rulings and other guidance from the secretary and
8 the federal Internal Revenue Service relating to the program;

9 (3) Make changes to the program required for the
10 participants in the program to obtain the federal income tax

11 benefits or treatment provided by Section 529a of the federal
12 Internal Revenue Code of 1986, as amended;

13 (4) Charge, impose and collect administrative fees and
14 service charges in connection with any agreement, contract or
15 transaction relating to the program;

16 (5) Develop marketing plans and promotion material;

17 (6) Establish the methods by which the funds held in
18 accounts shall be dispersed;

19 (7) Establish the method by which funds shall be allocated
20 to pay for administrative costs;

21 (8) Do all things necessary and proper to carry out the
22 purposes of this act;

23 (9) Make an annual evaluation of the ABLE savings program
24 and prepare and submit an annual report of such evaluation to
25 the Governor and Legislature; and

26 (10) Notify the Secretary when an account has been opened
27 for a designated beneficiary and submit other reports concerning
28 the program required by the Secretary.

29 (b) The Treasurer may enter into agreements with other
30 states to either allow West Virginia residents to participate in a

31 plan operated by another state or to allow residents of other
32 states to participate in the West Virginia ABLÉ program.

33 (c) The Treasurer shall propose rules for legislative approval
34 in accordance with the provisions of article three, chapter
35 twenty-nine-a of this code necessary to implement the provisions
36 of this article.

§16-46-5. Use of financial organizations as program depositories and managers.

1 (a) The Treasurer may implement the program through use
2 of financial organizations as account depositories and managers.
3 The Treasurer may solicit proposals from financial organizations
4 to act as depositories and managers of the program. Financial
5 organizations submitting proposals shall describe the investment
6 instruments which will be held in accounts. The Treasurer may
7 select more than one financial organization and investment
8 instrument for the program. The Treasurer shall select financial
9 organizations to act as program depositories and managers from
10 among the bidding financial organizations that demonstrate the
11 most advantageous combination, both to potential program
12 participants and this state of the following criteria:

13 (1) The financial stability and integrity of the financial
14 organization;

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

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

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

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

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

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

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

30 (b) The Treasurer may enter into any contracts with a
31 financial organization necessary to effectuate the provisions of

32 this article. Any management contract shall include, at a
33 minimum, terms requiring the financial organization to:

34 (1) Take any action required to keep the program in
35 compliance with requirements of this article and any actions not
36 contrary to its contract to manage the program to qualify as a
37 “qualified ABLE program” as defined in Section 529a of the
38 federal Internal Revenue Code of 1986, as amended;

39 (2) Keep adequate records of each account, keep each
40 account segregated from each other account and provide the
41 Treasurer with the information necessary to prepare the
42 statements required by section six of this article, and
43 amendments thereto;

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

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

51 (5) Provide the Treasurer with access to the books and
52 records of the program manager to the extent needed to
53 determine compliance with the contract, this article and Section
54 529a of the federal Internal Revenue Code of 1986, as amended;

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

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

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

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

74 (c) The Treasurer may:

75 (1) Enter into such contracts as it deems necessary and
76 proper for the implementation of the program;

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

82 (3) Terminate or not renew a management agreement. If the
83 Treasurer terminates or does not renew a management
84 agreement, the Treasurer shall take custody of accounts held by
85 such program manager and shall seek to promptly transfer such
86 accounts to another financial organization that is selected as a
87 program manager or depository and into investment instruments
88 as similar to the original instruments as possible.

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

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

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

9 (1) The name, address and social security number of the
10 account owner;

11 (2) The name, address and social security number of the
12 designated beneficiary, if the account owner is the beneficiary's
13 trustee conservator or guardian;

14 (3) A certification relating to no excess contributions; and

15 (4) Any additional information as the Treasurer may require.

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

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

24 (1) Contributions in excess of the limits established pursuant
25 to subsection (b); or

26 (2) The total contributions if the:

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

32 (B) The designated beneficiary is not an eligible individual
33 in the current calendar year.

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

35 (A) Change the designated beneficiary of an account to an
36 individual who is a member of the family of the prior designated
37 beneficiary in accordance with procedures established by the
38 Treasurer; and

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

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

46 (e) (1) Distributions may be made from the account for
47 payment of any qualified disability expense for the designated
48 beneficiary of the account made in accordance with the
49 provisions of this article.

50 (2) Any distribution from an account to any individual or for
51 the benefit of any individual during a calendar year shall be
52 reported to the federal Internal Revenue Service and each
53 account owner, the designated beneficiary or the distributee to
54 the extent required by state or federal law.

55 (3) Statements shall be provided to each account owner at
56 least four times each year within thirty days after the end of the
57 three-month period to which a statement relates. The statement
58 shall identify the contributions made during the preceding
59 three-month period, the total contributions made to the account
60 through the end of the period, the value of the account at the end
61 of such period, distributions made during such period and any
62 other information that the Treasurer requires to be reported to the
63 account owner.

64 (4) Statements and information relating to accounts shall be
65 prepared and filed to the extent required by this article and any
66 other state or federal law.

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

70 (2) Moneys in an ABLE savings account:

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

73 (B) May be subject to any claim by the West Virginia
74 Medicaid plan only after the death of the designated beneficiary,
75 subject to limitations imposed by the secretary.

§16-46-7. Limitation on Liability.

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

5 (1) Return of principal;

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

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

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

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

1 (a) The West Virginia ABLÉ savings program trust fund is
2 hereby established in the State Treasury. The fund shall be

3 utilized if the Treasurer elects to accept deposits from
4 contributors rather than have deposits sent directly to the
5 program manager. Such fund shall consist of any moneys
6 deposited by contributors in accordance with this article which
7 are not deposited directly with the program manager. All interest
8 derived from the deposit and investment of moneys in such
9 savings trust fund shall be credited to the fund. At the end of any
10 fiscal year, all unexpended and unencumbered moneys in such
11 savings trust fund may not be credited or transferred to the State
12 General Fund or to any other fund.

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

18 (2) All expenses incurred by the Treasurer in developing and
19 administering the ABLE savings program shall be payable from
20 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.

