

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2848

BY DELEGATES ELLINGTON, SUMMERS, NELSON, AND

BYRD

(BY REQUEST OF THE STATE TREASURER)

[Originating in the Committee on Finance;

February 11, 2019.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-21-12i; and to amend and reenact §16-48-3 and §16-48-6 of said code,
3 all relating to the West Virginia ABLE Act accounts and the moneys deposited therein;
4 adding and clarifying definitions to conform to federal law; adding an attorney in fact and
5 a parent to the persons authorized to create or manage a West Virginia ABLE account as
6 permitted by federal law; amending the age of eligible individuals to conform to federal
7 law; clarifying that a guardian may manage an ABLE account regardless of the amount of
8 a designated beneficiary's assets and that the Department of Health and Human
9 Resources may not manage an ABLE account; adding a federal employer identification
10 number to the items required in an application; authorizing the maximum account value to
11 be the value established by the state of the program manager contracting with the
12 Treasurer; clarifying that moneys in a West Virginia ABLE account or a qualified
13 withdrawal are to be disregarded when determining eligibility for or the amount of public
14 assistance unless required by federal law, moneys in an account or a qualified withdrawal
15 are not subject to claims by the Department of Health and Human Resources unless
16 required by federal law, and on the death of a designed beneficiary moneys in an account
17 are transferred to the estate of the designated beneficiary unless prohibited by federal law;
18 and authorizes contributions to West Virginia ABLE accounts to be subtracted from federal
19 adjusted gross income for purposes of West Virginia personal income taxes and the
20 recapture of amounts subtracted if account funds are used for purposes other than a
21 qualified disability expense; and making various technical revisions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12i. Modifications to federal adjusted income.

1 (a) In addition to amounts authorized to be subtracted from federal adjusted gross income
2 pursuant to §11-21-12(c) of this code, any contributions to an account created pursuant to the
3 West Virginia ABLE Act in §16-48-1 et seq. of this code is also an authorized modification reducing
4 federal adjusted gross income, but only to the extent the amount is not allowable as a deduction
5 when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the
6 payment is made. This modification is available regardless of the type of return form filed and
7 shall not reduce taxable income below zero. The taxpayer may also elect to carry forward the
8 modification over a period not to exceed five taxable years, beginning in the taxable year in which
9 the payment was made.

10 (b) In addition to the amounts authorized to be added to federal adjusted gross income
11 pursuant to §11-21-12(b) of this code, unless already included in federal adjusted gross income
12 for the taxable year, there shall be added to federal adjusted gross income any amount previously
13 deducted from federal adjusted gross income under this section for amounts deposited into an
14 account created pursuant to the West Virginia ABLE Act in §16-48-1 et seq. of this code and
15 subsequently withdrawn from the account for purposes other than a qualified disability expense
16 authorized by the ABLE Act.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 48. WEST VIRGINIA ABLE ACT.

§16-48-3. Definitions.

1 (a) "ABLE Act" means the federal legislation codified in Section 529A of the Internal
2 Revenue Code of 1986, 26 U.S.C. § 529A, and related treasury regulations, as amended from
3 time to time. Any references in this article to Section 529A include related treasury regulations.

4 (b) "Account" or "ABLE savings account" means an individual savings account established
5 in accordance with the provisions of this article.

6 (c) ~~(b) "Account owner" means the person who enters into an ABLE savings agreement~~
7 ~~pursuant to the provisions of this article. The account owner must also be the designated~~

8 ~~beneficiary. A conservator or guardian may be appointed as an account owner for a designated~~
9 ~~beneficiary who is a minor or lacks capacity to enter into an agreement~~ designated beneficiary as
10 defined in the ABLÉ Act.

11 (d) "Attorney in fact" means a person named in a power of attorney with the authority to
12 open and manage an account.

13 ~~(e)~~(e) "Conservator" means a person appointed by the court pursuant to §44A-1-1 et seq.
14 of this code.

15 ~~(d)~~(f) "Designated beneficiary" means a West Virginia resident ~~whose qualified disability~~
16 ~~expenses may be paid from the account. The designated beneficiary must be an eligible individual~~
17 ~~at the time the account is established. The account owner may change the designated beneficiary~~
18 who owns the account and who was an eligible individual when the account was established or
19 who succeeded the former designated beneficiary.

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

25 ~~(f)~~(h) "Financial organization" means an organization authorized to do business in the
26 State of West Virginia and is:

- 27 (1) Licensed or chartered by the Insurance Commissioner;
28 (2) Licensed or chartered by the Commissioner of the 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 and exchange commission
31 of the federal government.

32 ~~(g)~~(i) "Guardian" means a person appointed by the court pursuant to §44A-1-1 et seq. of
33 ~~the~~ this code.

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

36 ~~(i)~~(k) “Member of the family” has the meaning contained in ~~Section 529a of the federal~~
37 ~~Internal Revenue Code of 1986, as amended~~ the ABLE Act.

38 ~~(j)~~(l) “Nonqualified withdrawal” means a withdrawal from an account which is not:

39 (1) A qualified withdrawal; or

40 (2) A rollover distribution.

41 ~~(k)~~(m) “Program” means the West Virginia ABLE Act savings program established
42 pursuant to this article.

43 ~~(l)~~(n) “Program manager” means a financial organization selected by the Treasurer to act
44 as a depository and manager of the program.

45 ~~(m)~~(o) “Qualified disability expense” means any qualified disability expense included in
46 ~~Section 529a of the federal Internal Revenue Code of 1986, as amended~~ the ABLE Act.

47 ~~(n)~~(p) “Qualified withdrawal” means a withdrawal from an account to pay the qualified
48 disability expenses of the designated beneficiary of the account.

49 ~~(o)~~(q) “Rollover distribution” means a rollover distribution as defined in ~~Section 529a of the~~
50 ~~Federal Internal Revenue Code of 1986, as amended~~ the ABLE Act.

51 ~~(p)~~(r) “Savings agreement” means an agreement between the program manager or the
52 Treasurer and the account owner.

53 ~~(q)~~(s) “Secretary” means the secretary of the United States Treasury.

54 ~~(r)~~(t) “Treasurer” means the State Treasurer.

**§16-48-6. Establishment of ABLE savings account by designated beneficiary, parent,
conservator, or guardian or attorney in fact.**

1 (a) Any ABLE savings accounts established pursuant to the provisions of this article shall
2 be opened and managed by a designated beneficiary, or a parent, conservator, or guardian or
3 attorney in fact of a designated beneficiary who lacks capacity to enter into a contract and each

4 beneficiary may have only one account. In the absence of a conservator, a guardian may manage
5 an ABLE account regardless of the amount of a designated beneficiary's personal assets. The
6 Department of Health and Human Resources may not manage an ABLE account. The Treasurer
7 may establish a nonrefundable application fee. An application for such account shall be in the
8 form prescribed by the Treasurer and contain:

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

11 (2) The name, address and social security number or federal employer identification
12 number of the person or entity opening or managing the ABLE account on behalf of the designated
13 beneficiary; ~~if the account owner is the beneficiary's 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 account after the account is
17 opened, subject to the limitations imposed by ~~Section 529a of the federal Internal Revenue Code~~
18 ~~of 1986, as amended, or any rules and regulations promulgated by the Secretary pursuant to this~~
19 ~~article~~ the ABLE Act.

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

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

23 (2) The total contributions if the:

24 (A) Value of the account is equal to or greater than the account maximum established by
25 the Treasurer. Such account maximum must be equal to the account maximum for postsecondary
26 education savings accounts established pursuant to §18-30-1 *et seq.* of this code; or

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

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

29 (A) Change the designated beneficiary of an account to an eligible individual who is a
30 member of the family of the prior designated beneficiary in accordance with procedures
31 established by the Treasurer; and

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

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

37 (e) (1) Distributions may be made from the account for payment of any qualified disability
38 expense for the designated beneficiary of the account made in accordance with the provisions of
39 this article.

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

43 (3) Statements shall be provided to each account owner at least four times each year
44 within 30 days after the end of the three-month period to which a statement relates. The statement
45 shall identify the contributions made during the preceding three-month period, the total
46 contributions made to the account through the end of the period, the value of the account at the
47 end of such period, distributions made during such period and any other information that the
48 Treasurer requires to be reported to the account owner.

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

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

53 (2) Moneys in an ABLE savings account or a qualified withdrawal:

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

55 ~~(B) May be subject to any claim by the West Virginia Medicaid plan only after the death of~~
56 ~~the designated beneficiary, subject to limitations imposed by the secretary~~ Are disregarded for
57 the purposes of determining eligibility for or the amount of a public assistance program, unless
58 required by federal law;

59 (C) Are not subject to claims by the West Virginia Department of Health and Human
60 Resources unless required by federal law; and

61 (D) On the death of the designated beneficiary, shall be transferred to the estate of the
62 designed beneficiary, unless prohibited by federal law.