

H. B. 4419

(By Delegates Hunt, Mr. Speaker (Mr. Miley),
Campbell, Moore, Fleischauer, Manchin, Boggs,
White, Lane, Caputo and Azinger)

[Introduced February 6, 2014; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-21-12i of the Code of West
Virginia, 1931, as amended; to amend and reenact §44-16-1,
§44-16-2, §44-16-3, §44-16-4, §44-16-5 and §44-16-6 of said
code; to amend said code by adding thereto three new sections,
designated §44-16-7, §44-16-8 and §44-16-9, all relating to
the creation and maintenance of the West Virginia Children
with Autism Trust Fund; creating a tax credit for parents and
guardians contributing to a qualified trust fund against
personal income tax obligations; providing for the limited
carryover of unused tax credits; providing for the tax effects
of earnings, proceeds and distributions for qualifying trust
funds; making legislative findings; establishing legislative
purposes; definitions; providing for the creation of trust
fund; establishing eligibility criteria; providing mechanism
for disbursements and maintenance; creating administrative
account; providing for administration through the State
Treasurer; providing for establishment of advisory board;
membership of board; establishing reporting requirements;
providing rule-making authority.

1 *Be it enacted by the Legislature of West Virginia:*

2 That §11-21-12i of the Code of West Virginia, 1931, as
3 amended, be amended and reenacted; that §44-16-1, §44-16-2, §44-16-
4 3, §44-16-4, §44-16-5 and §44-16-6 of said code be amended and
5 reenacted; and that said code be amended by adding thereto three
6 new sections, designated §44-16-7, §44-16-8 and §44-16-9; all to
7 read as follows:

8 **CHAPTER 11. TAXATION.**

9 **ARTICLE 21. PERSONAL INCOME TAX.**

10 **§11-21-12i. Credit for qualifying contribution to a qualified**
11 **trust maintained for the benefit of a child with**
12 **autism; tax treatment of income accrued and**
13 **subsequent withdrawals made from a qualified trust**
14 **maintained for the benefit of a child with autism.**

15 (a) Notwithstanding any other provision of this code, in
16 addition to amounts authorized to be subtracted from federal
17 adjusted gross income pursuant to this article, any contribution
18 made by the parent or guardian of a child with autism into a trust
19 established for the future support of the child, established in
20 accordance with the provisions of article sixteen, chapter forty-
21 four of this code, up to a maximum allowable credit of \$2,000 per
22 year, may be offset as a credit against any tax obligation owed to
23 the state for personal income tax under this article during the
24 year the contribution was made: *Provided*, That the amount of the
25 credit taken in a taxable year may not exceed the tax liability due
26 for the taxable year. In the event that the personal tax obligation

1 owed to the state for a given tax year is less than the tax credit
2 allowed by this section, the amount of any unused credit may be
3 carried forward and applied as an offset against any future
4 personal income tax obligation owed by that person to the state in
5 subsequent taxable years, for up to five years. Further, the
6 accrued deposits and earnings on that account and the subsequent
7 withdrawal of funds from that trust account, made in accordance
8 with the provisions of article sixteen, chapter forty-four of this
9 code, may not be treated as taxable income to either the trust or
10 the beneficiary, for as long as the money is maintained and
11 distributed in accordance with the provisions of that article. The
12 provisions of this section are effective for taxable years
13 beginning after December 31, 2014.

14 (b) The Tax Commissioner shall propose legislative rules
15 providing guidelines to ensure uniform assessment practices
16 statewide to effect the intent of this section.

17 **CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.**

18 **ARTICLE 16. PARENT OR GUARDIAN TRUSTS FOR CHILDREN WITH AUTISM.**

19 **§44-16-1. Title.**

20 This article is known and cited as the "West Virginia Children
21 with Autism Trust Act".

22 **§44-16-2. Legislative findings and purpose.**

23 (a) The Legislature finds:

24 (1) Planning for and providing for the anticipated future
25 needs of a child with autism that causes severe to moderate
26 impairments in their daily living will help the children maintain

1 as much independence as possible and adapt to changing
2 circumstances and expectations as they become adults.

3 (2) Parents and guardians of a child with autism provide
4 critical support for the child, often at a high financial cost, and
5 are concerned about providing for the child's continued welfare in
6 the future, when they are no longer able to provide primary care
7 and support for the child's special needs.

8 (3) Encouraging the development and setting aside private
9 resources to address those anticipated special needs allows
10 children with autism to remain as self-sufficient as possible,
11 while continuing to provide them with access to support and
12 resources as needed, after their parents are no longer able to help
13 care for them.

14 (4) Providing tax incentives to encourage savings and
15 preplanning will promote the development of sufficient financial
16 resources to meet the future needs of children with autism, and
17 will ultimately benefit all West Virginia citizens.

18 (b) The purposes of this article are as follows:

19 (1) To create a tax incentive to encourage and assist
20 individuals and families in saving private funds for the
21 anticipated future needs of children with autism, to maintain
22 health, independence and quality of life;

23 (2) To provide secure private funding to meet the anticipated
24 needs and support services on behalf of designated beneficiaries
25 with autism that will supplement, but not supplant, benefits
26 provided through private insurance, the Medicaid program under XIX

1 of the Social Security Act, the Supplemental Security Income
2 program under title XVI of the Social Security Act, the
3 beneficiary's employment and other sources;

4 (3) To provide a support mechanism through the establishment
5 of a trust that is intended to protect and preserve assets which
6 have been set aside for the future benefit of a child with autism;
7 and

8 (4) To create a reasonable mechanism to provide for the future
9 needs of both minors and adults with autism after their parents are
10 deceased or are otherwise unable to care for the needs of their
11 children.

12 **§44-16-3. Definitions.**

13 For purposes of this article:

14 "Account" or "trust account" means a "trust account for a
15 child with autism" established in accordance with the provisions of
16 this article.

17 "Account owner" means the parent or guardian of a child with
18 autism who establishes a "trust account for a child with autism"
19 with the State Treasurer's office and makes payments or
20 contributions into that account in accordance with the provisions
21 of this article.

22 "Autism" means a complex developmental disability and spectrum
23 disorder, whose diagnosis must be clinically confirmed by qualified
24 physicians and psychiatrists after extensive examination and
25 testing, defined by a certain set of behaviors and symptoms which
26 affects a person's ability to communicate and interact with others.

1 "Beneficiary" means the individual designated as a beneficiary
2 at the time an account is established, and who is the only
3 individual on whose behalf distributions may be requested and made
4 from the account. Requests for withdrawals may be requested by the
5 beneficiary who has reached the age of eighteen, or on behalf of
6 the beneficiary by his or her appointed guardian in the event the
7 beneficiary is unable or unwilling to manage distributions under
8 the terms of the trust account.

9 "Child with autism" means a child, under the age of eighteen,
10 who has been clinically diagnosed as having autism to a degree to
11 which it results in a moderate or severe impairment in two or more
12 areas of daily living, as the terms "moderate impairment", "severe
13 impairment" and "daily living" are defined under Title II or Title
14 XVI of the Social Security Disability Act, or a child who has been
15 clinically diagnosed with autism and has been determined to be
16 disabled under either Title II or Title XVI the Social Security
17 Disability Act for any reason.

18 "Contribution" means any contribution to a trust account
19 established by a parent or guardian of a child with autism for the
20 future maintenance and support of the autistic child.

21 "Distribution" means any disbursement from a trust account,
22 made in accordance with the provisions of this article.

23 "Qualified autism spectrum or disability expenses" means any
24 expenses which are made for the benefit of an individual with
25 autism who is a designated beneficiary of the trust, in accordance
26 with the provisions of this article.

1 "State Treasurer" means the West Virginia State Treasurer.

2 "Trust" means the instrument of trust establishing the terms
3 and conditions of the trust account created in accordance with the
4 terms of this article.

5 "Trust fund" means the The West Virginia Children with Autism
6 Trust Fund established by this article.

7 "Trustee" means the bank, the court-appointed guardian of the
8 designated beneficiary, or the State Treasurer, acting as the
9 managing trustee of the trust account.

10 **§44-16-4. Creation of the trust account for a child with autism.**

11 (a) Any parent or guardian of a child with autism may
12 establish a trust account for a child with autism, to be managed or
13 maintained for the future benefit of the child, upon the death of
14 the parent or guardian establishing the trust account, or upon the
15 child reaching the age of eighteen, whichever comes first. The
16 account shall be maintained with the State Treasurer, and managed
17 by either the State Treasurer, an approved bank or a court
18 appointed guardian.

19 (b) All contributions or other funds placed in the account
20 shall be managed and invested by the State Treasurer, and may be
21 invested as part of a common trust fund or common investment fund
22 managed by the State Treasurer's office.

23 (c) The governing instrument creating the trust shall meet the
24 following requirements:

25 (1) Contributions may be made into the trust account by a
26 parent or guardian establishing the account by cash contribution.

1 (2) Disbursements from the established trust account may only
2 be made from the account for the purpose of paying qualified
3 disability expenses of an individual who is a child with autism who
4 is the designated beneficiary of the trust, and approved pursuant
5 to legislative rules proposed under this article.

6 (3) The following types of expenses, incurred to support the
7 designated beneficiary after the named beneficiary has reached the
8 age of eighteen or after the death of the parent or guardian who
9 established the trust account, shall be treated as qualified
10 disability expenses if made for the benefit of an individual with
11 a disability who is a designated beneficiary of the trust:

12 (A) Education - Expenses for education, including tuition for
13 preschool through post-secondary education, books, supplies and
14 educational materials related to education, tutors and special
15 education services.

16 (B) Housing - Expenses for housing maintained for the
17 beneficiary, separate and apart from the housing used by the parent
18 or guardian who established the trust account while the parent or
19 guardian is still alive, including rent, mortgage payments, home
20 improvements and modifications, maintenance and repairs, real
21 property taxes and utility charges.

22 (C) Transportation - Expenses for transportation, including
23 the use of mass transit, the purchase or modification of vehicles
24 and moving expenses.

25 (D) Employment support - Expenses related to obtaining and
26 maintaining employment, including job-related training, assistive

1 technology and personal assistance supports.

2 (E) Health, prevention and wellness - Expenses for the health
3 and wellness, including premiums for health insurance, medical,
4 vision and dental expenses, habilitation and rehabilitation
5 services, durable medical equipment, therapy, respite care, long
6 term services and supports, and nutritional management.

7 (F) Life necessities - Expenses for life necessities,
8 including clothing, activities that are religious, cultural or
9 recreational, supplies and equipment for personal care, community-
10 based supports, communication services and devices, adaptive
11 equipment, assistive technology, personal assistance supports,
12 financial management and administrative services, expenses for
13 oversight, monitoring or advocacy, and funeral and burial expenses.

14 (G) Assistive technology and personal support services -
15 Expenses for assistive technology and personal support with respect
16 to any item described in subparts (A) through (F) of this
17 subdivision.

18 **§44-16-5. Establishment and Management of the trust account through**
19 **the State Treasurer; creation and composition of the**
20 **trustee advisory board; duties and responsibilities;**
21 **reimbursement of expenses.**

22 (a) The "The West Virginia Children with Autism Trust Fund" is
23 established within the accounts held by the State Treasurer for
24 administration.

25 (b) In administering and managing these trust accounts, the
26 State Treasurer may use the services of a five-person trustee

1 advisory board, for the purpose of verifying that the trusts in
2 question are established for qualifying beneficiaries, and to
3 confirm that the requests for disbursements or distribution of the
4 funds held in trust are for purposes permitted by the terms of the
5 trust and this article. The trustee advisory board consists of five
6 persons appointed by the Governor, one of whom must be a licensed
7 therapist with experience in the delivery of vocational,
8 rehabilitative or support services to persons with disabilities;
9 one of whom is a physician or psychiatrist who has experience in
10 diagnosis and treatment of persons with autism; one of whom has a
11 background in advocacy on behalf of persons with disabilities; and
12 two citizen members.

13 (c) Each of the appointments shall be for five years and
14 members are eligible for reappointment at the expiration of their
15 terms. If a vacancy occurs among appointed members, the Governor
16 shall appoint a person representing the same interests to fill the
17 unexpired term.

18 (d) Members of the board serve without compensation. The State
19 Treasurer may pay all expenses, including travel expenses, actually
20 incurred by board members in the conduct of their official duties.
21 Expense payments are to be made from the administrative account,
22 and are made at the same rate paid to state employees.

23 (e) The board shall meet at least twice each month to review
24 and recommend approval of proposed trusts and the requested
25 distribution of funds from any trust fund established in accordance
26 with the provisions of this article. Individuals may appear in

1 person at those scheduled meetings, or they may participate in the
2 meetings by videoconference or teleconference.

3 (f) The State Treasurer shall provide support staff and office
4 space for the board.

5 (g) The trust fund shall receive all payments from account
6 owners on behalf of beneficiaries of the trust accounts or from any
7 other source, public or private. Earnings derived from the
8 investment of moneys in the trust fund shall remain in the trust
9 fund held in trust in the same manner as payments, except as
10 refunded, applied for purposes of the beneficiaries, and applied
11 for purposes of maintaining and administering the trust.

12 (h) The corpus, assets and earnings of the trust fund are not
13 public funds of the state and are available solely for carrying out
14 the purposes of this article. The state has no obligation to any
15 designated beneficiary or any other person as a result of this
16 article. All amounts payable from the trust fund are limited to
17 amounts available in the trust fund.

18 (i) The trust fund shall continue in existence until
19 terminated by the Legislature as it determines or by the board upon
20 determination that continued operation is infeasible. Upon
21 termination of the trust and after payment of all fees, charges,
22 expenses and penalties, the assets of the trust fund are paid and
23 distributed to the beneficiaries of the account, to the extent
24 possible, on a pro rata basis as their interests may appear, and
25 any assets unused in said account upon the death of a beneficiary
26 shall revert to the beneficiary's estate.

1 (j) Nothing in this subsection creates an obligation of state
2 general revenue funds or requires any level of funding by the
3 Legislature.

4 (k) To fulfill the charitable and public purpose of this
5 article, neither the earnings nor the corpus of the trust fund is
6 subject to taxation by the state or any of its political
7 subdivisions.

8 (l) Notwithstanding any provision of this code to the
9 contrary, money in a qualified trust fund is exempt from creditor
10 process and not subject to attachment, garnishment or other
11 process; is not available as security or collateral for any loan,
12 or otherwise subject to alienation, sale, transfer, assignment,
13 pledge, encumbrance or charge; and is not subject to seizure,
14 taking, appropriation or application by any legal or equitable
15 process or operation of law to pay any debt or liability of any
16 account owner, beneficiary or successor in interest.

17 **§44-16-6. Trust fund program administrative account.**

18 (a) There is created a special revenue account within the
19 State Treasurer's office titled the "West Virginia Children with
20 Autism Trust Fund Program Administrative Account" for the purposes
21 of receiving and disbursing the sums necessary to reimburse the
22 Treasurer and or members of the Trustee Advisory Board for the
23 reasonable and necessary expenses which they respectively incur in
24 implementing, operating and maintaining the trust funds and program
25 created by this article.

26 (b) The administrative account shall receive all fees and

1 charges collected by the board. Expenditures from the trust fund
2 are authorized from collections subject to appropriations made by
3 the Legislature.

4 **§44-16-7. Reports and account; annual audit.**

5 (a) In addition to any other requirements of this article, the
6 board shall:

7 (1) Provide annual summary information on the financial
8 condition of the fund and statements on the trust funds and savings
9 plan accounts to the respective account owners; and

10 (2) Prepare, or have prepared, a quarterly report on the
11 status of the program, including the trust funds and the
12 administrative account, and provide a copy of the report to the
13 Joint Committee on Government and Finance and the Legislative
14 Oversight Commission on Education Accountability.

15 (b) All accounts of the board, including the trust funds, are
16 subject to an annual external audit by an accounting firm, selected
17 by the board, of which all members or partners assigned to head the
18 audit are members of the American Institute of Certified Public
19 Accountants. The audit shall comply with the requirements of
20 section thirty-three, article two, chapter five-a of this code.

21 **§44-16-8. Confidentiality.**

22 Any information that would tend to disclose the identity of a
23 beneficiary, account owner or donor is exempt from the provisions
24 of chapter twenty-nine-b of this code. Nothing in this section
25 prohibits disclosure or publication of information in a statistical
26 or other form which does not identify the individuals involved or

1 provide personal information. Account owners are permitted access
2 to their own personal information.

3 **§44-16-9. Rule-making.**

4 The State Treasurer shall propose legislative rules necessary
5 to carry out the provisions of this article pursuant to chapter
6 twenty-nine of this code.

NOTE: The purpose of this bill is to create a tax credit for parents and guardians of autistic children contributing to a qualified trust fund against their personal income tax obligations, and to create the West Virginia Children with Autism Trust Fund.

§44-16-1, §44-16-2, §44-16-3, §44-16-4, §44-16-5 and §44-16-6 have been completely rewritten; therefore, they have been completely underscored.

§44-16-7, §44-16-8 and §44-16-9 are new; therefore, they have been completely underscored.