

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2002

FISCAL
NOTE

By Delegates Jeffries, Storch, Hott, Kelly, Dillon,
Pinson, Heckert, Street, Lucas, Miller, and Bridges

[Introduced January 12, 2023; Referred to the
Committee on Health and Human Resources then
Finance]

1 A BILL to amend and reenact §11-21-10a and §11-21-16 of the Code of West Virginia, 1931, as
 2 amended; to amend said code by adding thereto a new section, designated §16-5K-7; and
 3 to amend said code by adding thereto a new article, designated §16-66-1, §16-66-2, and
 4 §16-66-3, all relating to providing support for families; increasing the adoption tax credit for
 5 tax years 2023 forward; defining terms; providing rulemaking authority to the tax
 6 commissioner; establishing eligibility of adopted children of West Virginia residents for
 7 early intervention services; establishing the West Virginia Mothers and Babies Pregnancy
 8 Support Program; defining terms; establishing which organizations are eligible for funding
 9 pursuant to the program; allowing bureau to contract with management agency to provide
 10 program services; and establishing requirements and responsibilities of a management
 11 agency.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-10a. Credit for nonfamily adoption Adoption tax credit.

1 (a) For tax years beginning before December 31, 2022, A a one time credit against the tax
 2 imposed by the provisions of this article shall be allowed as follows:

3 *Nonfamily adoptions.* — For nonfamily adoptions, the credit is equal to \$4,000 which may
 4 be taken in the year of the adoption of each nonfamily child, whose age at adoption is under
 5 eighteen years. This credit may, at the option of the taxpayer, be taken over a period of three
 6 years.

7 For the purpose of this section and credit "nonfamily adoptions" means adoptions of a child
 8 or children by a taxpayer or taxpayers who are not the father, mother, or stepparent of the child.

9 (b) For tax years beginning after December 31, 2022, a tax credit against the tax imposed
 10 by the provisions of this article is allowed for a taxpayer for the qualified expenses paid by taxpayer

11 in the process of an adoption. The tax credit shall not exceed \$5,000 per qualified child.

12 (c) (1) The tax credit provided for in subsection (b) of this section shall be allowed for any
13 expense paid or incurred before the taxable year in which the adoption was final for the taxable
14 year following the taxable year during which the expense was paid or incurred; or

15 (2) In the case of an expense paid or incurred during or after the taxable year in which the
16 adoption shall become final for the taxable year in which such expense is paid or incurred.

17 (3) Under no circumstances shall the total aggregate tax credit provided for in subsection
18 (b) of this section exceed the amount of \$5,000 per qualified child.

19 (d) (1) For purposes of the tax credit provided for in subsection (b) of this section, the tax
20 credit allowed may be taken by only one taxpayer if there is more than one taxpayer in the
21 household.

22 (2) Married individuals filing a joint return shall be treated as one taxpayer.

23 (3) In the case of individuals not described in subdivision (2) of this subsection who are
24 members of the same household, only the taxpayer with the highest adjusted gross income for the
25 taxable year may take the credit. Once the election of who may claim the tax credit has been
26 made, that election is binding for the tax year for which it is made and for subsequent tax years,
27 unless changed pursuant to specific authorization of the Tax Commissioner, for good cause
28 shown.

29 (e) (1) For the purposes of this section the term "qualified adoption expenses" means
30 reasonable and necessary adoption fees, court costs, attorney fees, home study expenses, and
31 other expenses:

32 (A) Which are directly related to, and the principal purpose of which is for, the legal
33 adoption of a qualified child by the taxpayer;

34 (B) Which are not incurred in violation of state or federal law or in carrying out any
35 surrogate parenting arrangement;

36 (C) Which are not expenses in connection with the adoption by an individual of a child who

37 is the child of such individual's spouse;

38 (D) Which are not reimbursed under an employer program or otherwise; and

39 (E) Which are not allowed as a credit pursuant to any other provision of this article.

40 (2) For the purposes of this section a "qualified child" shall mean a child who meets the
41 following criteria:

42 (A) A child who has not attained the age of 18 years;

43 (B) A child who is the subject of an adoption proceeding;

44 (C) A child who is a citizen or resident of the United States; and

45 (D) A child who is a resident of this state or, if a resident of another state, the adoptive
46 parent is a relative of the child. For purposes of this subdivision, the term "relative of the child"
47 shall have the meaning ascribed in §49-1-206 of this code.

48 (f) The credit authorized under subsection (b) of this section may, at the election of the
49 eligible taxpayer, be taken as a refundable tax credit in the taxable year in which the taxpayer has
50 first established entitlement thereto as specified in this section, or at the election of the eligible
51 taxpayer, over a period of three successive taxable years, beginning in the taxable year in which
52 credit entitlement is authorized as specified in this section. The credit may not be carried back to
53 any prior taxable year.

54 (g) The Tax Commissioner may propose rules for legislative approval in accordance with
55 the provisions of §29A-3-1 et seq. of this code. The Tax Commissioner may also promulgate or
56 adopt procedural or interpretive rules, as appropriate to assist in administering this section.

§11-21-16. West Virginia personal exemptions of resident individual.

1 (a) *General.* — For any tax imposed under the provisions of this article with respect to any
2 taxable year prior to January 1, 1983, a resident individual shall be allowed a West Virginia
3 exemption of \$600 for each exemption for which he or she is entitled to a deduction for the taxable
4 year for federal income tax purposes. With respect to any taxable year beginning on or after
5 January 1, 1983, and prior to January 1, 1984, said exemption shall be \$700; with respect to any

6 taxable year beginning on or after January 1, 1984, said exemption shall be \$800; and with respect
7 to any taxable year beginning on or after January 1, 1987, said exemption shall be \$2,000. In
8 addition, for tax years beginning on or after July 1, 2023, the resident individual shall be allowed a
9 West Virginia exemption of \$2,000 for an unborn child of the resident individual, who is not
10 electively aborted.

11 (b) *Husband and wife.* — If the West Virginia income taxes of a husband and wife are
12 separately determined but their federal income tax is determined on a joint return, each of them
13 shall be separately entitled, with respect to any taxable year prior to January 1, 1983, to a West
14 Virginia exemption of \$600 for each federal exemption to which he or she would be separately
15 entitled for the taxable year if their federal income taxes had been determined on separate returns.
16 With respect to any taxable year beginning on or after January 1, 1983, and prior to January 1,
17 1984, said exemption shall be \$700; with respect to any taxable year beginning on or after January
18 1, 1984, said exemption shall be \$800; and with respect to any taxable year beginning on or after
19 January 1, 1987, said exemption shall be \$2,000.

20 (c) *Surviving spouse.* — For taxable years beginning after December 31, 1986, a surviving
21 spouse shall be allowed one additional exemption of \$2,000 for the two taxable years beginning
22 after the year of death of the deceased spouse.

23 For purposes of this section and §11-21-12 of this code, a surviving spouse means a
24 taxpayer whose spouse died during the taxable year prior to the taxable year for which the annual
25 return is being filed and who has not remarried at any time before the end of the taxable year for
26 which the annual return is being filed.

27 (d) *Certain dependents.* — Notwithstanding any provisions in this section, for taxable years
28 beginning after December 31, 1986, a resident individual whose exemption amount for federal tax
29 purposes is zero by virtue of section 151(d)(2) of the Internal Revenue Code of 1986, shall be
30 allowed a single West Virginia exemption in the amount of \$500.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.

§16-5K-7. Early intervention services for adopted children.

1 (a) Effective July 1, 2023, a child or children adopted on and after that date whose adoptive
2 parent or parents are residents of West Virginia shall be eligible for any early intervention services
3 provided for families which may be offered by the Department of Health and Human Resources.
4 These services shall include, but are not limited to, Right From the Start, Drug Free Moms and
5 Babies, and Birth to Three.

6 (b) If an early intervention program has federal mandated eligibility requirements as a
7 condition of the receipt of federal funds, an adoptive parent or parents and their newly adopted
8 child or children may be required to meet those federally mandated eligibility requirements for
9 participation in the program.

10 (c) The Department of Health and Human Resources shall recruit additional sites to
11 expand the Drug Free Moms and Babies program and report back to the Legislature if additional
12 funding becomes necessary to operate these sites.

13 (d) The Bureau for Medical Services shall seek approval of and implement a Medicaid
14 state plan amendment to meet the requirements of this section if the program is offered through or
15 funded by the state Medicaid program and a state Medicaid plan amendment would be necessary
16 to effectuate the purposes of this section.

17 (e) Use of early intervention services are optional to an adoptive parent or parents and
18 nothing in this section should be construed to require an adoptive parent or parents to use any
19 early intervention service as provided in this section.

ARTICLE 66. SUPPORT FOR MOTHERS AND BABIES ACT.

§16-66-1. Definitions.

1 The following terms are defined:

2 "Abortion industry organization" means any organization that performs, prescribes, refers
3 for, encourages or promotes abortion as an option for a pregnant woman, or owns, operates, or
4 manages a facility where abortions are performed and prescribed.

5 "Organization" means the entire legal entity, including any entity or affiliate that controls, is
6 controlled by, or is under common control with such an entity.

7 "Pregnancy help organization" means an organization that seeks to provide a range of
8 services to individuals facing an unintended pregnancy, with the intention of encouraging pregnant
9 women to give birth to their unborn children. Pregnancy help organizations do not perform,
10 prescribe, refer for or encourage abortion, as defined above, nor do they affiliate with any
11 organization that performs, prescribes, refers for, or encourages abortion. Pregnancy help
12 organizations include, but are not limited to, organizations traditionally known as "crisis pregnancy
13 organizations," maternity homes, adoption agencies, and social services agencies that provide
14 material support and other assistance to individuals facing an unintended pregnancy with the
15 intent to help those individuals give birth to their unborn child.

16 "Management agency" means an organization that contracts with the Bureau for Public
17 Health, or department thereof to manage the West Virginia Mothers and Babies Pregnancy
18 Support Program.

19 "Subcontractor" means a pregnancy help organization that contracts with the management
20 agency to provide Pregnancy Support Program services to individuals.

§16-66-2. Establishing the West Virginia Mothers and Babies Pregnancy Support Program.

1 (a) There is established the West Virginia Mothers and Babies Pregnancy Support
2 Program under the Bureau for Public Health.

3 (b) A pregnancy help organization is eligible to receive funding from the program, subject
4 to meeting the standards defined by the managing agency.

5 (c) An abortion industry organization may not receive funding from the program.

6 (d) Funds distributed under the program shall be distributed on a fee per service
7 arrangement with a fee per service/hour arrangement as set by the management agency.

§16-66-3. Management agency.

1 (a) The bureau shall contract with a management agency that exclusively promote and
2 support childbirth and are knowledgeable and supportive of pregnancy help organization
3 operations to receive the funds and administer the program, as the program's management
4 agency.

5 (b) The management agency may not perform, prescribe, refer for, advocate for, or
6 encourage abortion; nor may they affiliate or hold any relationship with any abortion industry
7 organization or any entity that controls, is controlled by, or is under common control with an
8 abortion industry organization.

9 (c) The management agency shall be tasked with the following:

10 (1) Locating and advertising program participation to pregnancy help organizations within
11 the state.

12 (2) Establishing qualification requirements for pregnancy help organization participation
13 which may include, but are not limited to:

14 (A) Adherence to the "Commitment of Care and Competence," as established by the
15 Leadership Alliance of Pregnancy Care Organizations.

16 (B) Participation in trainings organized or led by the management agency.

17 (C) Maintaining policies and processes for child abuse reporting, medical emergencies,
18 and/or addressing client complaints.

19 (D) Requiring a policy that pregnancy help organizations abide by all applicable federal
20 and state laws.

21 (E) Requiring annual evaluations of pregnancy help organization staff and volunteers that
22 interact with clients.

23 (F) Registration as a 501(c)(3) nonprofit organization.

24 (3) Establishing invoicing and reimbursement for pregnancy help organizations receiving
25 funding under the program, including a fee or service schedule whereby costs for each service are
26 set forth.

27 (4) Establishing statistical standards and other reporting requirements.

28 (5) Establishing an auditing procedure for pregnancy help organizations to ensure financial
29 and operational accountability.

30 (d) The management agency must enter into contracts with pregnancy help organizations
31 to operate as subcontractors for serving individuals under the program.

NOTE: The purpose of this bill is to increase support for families.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.