

**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.