

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2902**

5 (By Delegates Campbell, Perry, Reynolds, Pasdon, Rodighiero,  
6 Ellington, Rowan, Rohrbach, Hamrick, E. Nelson and Ashley)

7  
8 [Passed March 11, 2015; in effect ninety days from passage.]  
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10  
11 AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
12 designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5, §16-46-6, §16-46-7 and  
13 §16-46-8, all relating to providing for the establishment of a program to allow savings  
14 accounts for individuals with a disability and their families to save private funds to support  
15 the individual with a disability, to be known as the West Virginia ABLE Act; definitions;  
16 implementation and administration of the program by the Treasurer; powers and  
17 responsibilities of the Treasurer; use of financial organizations as account depositories and  
18 managers; establishing procedures and requirements for establishment of an ABLE savings  
19 account; limitations on deposits; provisions for change of a designated beneficiary;  
20 distributions from accounts; limiting liability of the Treasurer and the state; and  
21 establishment of the West Virginia ABLE savings program trust fund and the West Virginia  
22 ABLE Savings Expense Fund.

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

2 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
3 article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5, §16-46-6, §16-46-7 and  
4 §16-46-8, all to read as follows:

5 **ARTICLE 46. WEST VIRGINIA ABLE ACT.**

6 **§16-46-1. Short Title.**

7 This article shall be known and may be cited as the "Achieving a Better Life Experience in  
8 West Virginia Act" or the "West Virginia ABLE Act".

9 **§16-46-2. Purpose.**

10 The purpose of the West Virginia ABLE Act savings program is to authorize the  
11 establishment of savings accounts empowering individuals with a disability and their families to save  
12 private funds to support the individual with a disability and to provide guidelines for the maintenance  
13 of such accounts.

14 **§16-46-3. Definitions.**

15 (a) "Account" or "ABLE savings account" means an individual savings account established  
16 in accordance with the provisions of this article.

17 (b) "Account owner" means the person who enters into an ABLE savings agreement pursuant  
18 to the provisions of this article. The account owner must also be the designated beneficiary. A  
19 conservator or guardian may be appointed as an account owner for a designated beneficiary who is  
20 a minor or lacks capacity to enter into an agreement.

21 (c) "Conservator" means a person appointed by the court pursuant to article one, chapter  
22 forty-four-a of this code..

1 (d)"Designated beneficiary" means a West Virginia resident whose qualified disability  
2 expenses may be paid from the account. The designated beneficiary must be an eligible individual  
3 at the time the account is established. The account owner may change the designated beneficiary.

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

9 (f)"Financial organization" means an organization authorized to do business in the State of  
10 West Virginia and is:

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

12 (2) Licensed or chartered by the Commissioner of the Division of Financial Institutions;

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

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

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

18 (h)"Management contract" means the contract executed by the Treasurer and a financial  
19 organization selected to act as a depository and manager of the program.

20 (i) "Member of the family" has the meaning contained in Section 529a of the federal Internal  
21 Revenue Code of 1986, as amended.

22 (j)"Nonqualified withdrawal" means a withdrawal from an account which is not:

1 (1) A qualified withdrawal; or

2 (2) A rollover distribution.

3 (k)"Program" means the West Virginia ABLE Act savings program established pursuant to  
4 this article.

5 (l)"Program manager" means a financial organization selected by the Treasurer to act as a  
6 depository and manager of the program.

7 (m) "Qualified disability expense" means any qualified disability expense included in  
8 Section 529a of the federal Internal Revenue Code of 1986, as amended.

9 (n)"Qualified withdrawal" means a withdrawal from an account to pay the qualified disability  
10 expenses of the designated beneficiary of the account.

11 (o)"Rollover distribution" means a rollover distribution as defined in Section 529a of the  
12 Federal Internal Revenue Code of 1986, as amended.

13 (p)"Savings agreement" means an agreement between the program manager or the Treasurer  
14 and the account owner.

15 (q)"Secretary" means the secretary of the United States Treasury.

16 (r)"Treasurer" means the State Treasurer.

17 **§16-46-4. Implementation and administration of program; Treasurer's powers and**  
18 **responsibilities.**

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

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

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

3 (3) Make changes to the program required for the participants in the program to obtain the  
4 federal income tax benefits or treatment provided by Section 529a of the federal Internal Revenue  
5 Code of 1986, as amended;

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

8 (5) Develop marketing plans and promotion material;

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

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

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

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

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

16 (b) The Treasurer may enter into agreements with other states to either allow West Virginia  
17 residents to participate in a plan operated by another state or to allow residents of other states to  
18 participate in the West Virginia ABLE program.

19 (c) the Treasurer shall propose rules for legislative approval in accordance with the  
20 provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions  
21 of this article.

22 **§16-46-5. Use of financial organizations as program depositories and managers.**

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

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

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

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

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

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

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

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

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

22 (b) The Treasurer may enter into any contracts with a financial organization necessary to

1     effectuate the provisions of this article. Any management contract shall include, at a minimum, terms  
2     requiring the financial organization to:

3             (1) Take any action required to keep the program in compliance with requirements of this  
4     article and any actions not contrary to its contract to manage the program to qualify as a "qualified  
5     ABLE program" as defined in Section 529a of the federal Internal Revenue Code of 1986, as  
6     amended;

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

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

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

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

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

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

20            (8) Provide the Treasurer with copies of all regulatory filings and reports made by the  
21     financial organization during the term of the management contract or while the financial organization  
22     is holding any accounts, other than confidential filings or reports that will not become part of the

1 program. The program manager shall make available for review by the Treasurer the results of any  
2 periodic examination of such manager by any state or federal banking, insurance or securities  
3 commission, except to the extent that such report or reports may not be disclosed under law; and

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

6 (c) The Treasurer may:

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

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

13 (3) Terminate or not renew a management agreement. If the Treasurer terminates or does not  
14 renew a management agreement, the Treasurer shall take custody of accounts held by such program  
15 manager and shall seek to promptly transfer such accounts to another financial organization that is  
16 selected as a program manager or depository and into investment instruments as similar to the  
17 original instruments as possible.

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

20 **§16-46-6. Establishment of ABLE savings account by beneficiary, conservator, or guardian.**

21 (a) Any ABLE savings accounts established pursuant to the provisions of this article shall  
22 be opened by a designated beneficiary or a conservator or guardian of a designated beneficiary who

1 lacks capacity to enter into a contract and each beneficiary may have only one account. The Treasurer  
2 may establish a nonrefundable application fee. An application for such account shall be in the form  
3 prescribed by the Treasurer and contain:

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

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

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

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

9 (b) Any person may make contributions to an ABLE savings account after the account is  
10 opened, subject to the limitations imposed by Section 529a of the federal Internal Revenue Code of  
11 1986, as amended, or any rules and regulations promulgated by the Secretary pursuant to this article.

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

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

15 (2) The total contributions if the:

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

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

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

21 (A) Change the designated beneficiary of an account to an individual who is a member of  
22 the family of the prior designated beneficiary in accordance with procedures established by the

1     Treasurer; and

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

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

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

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

13            (3) Statements shall be provided to each account owner at least four times each year within  
14    thirty days after the end of the three-month period to which a statement relates. The statement shall  
15    identify the contributions made during the preceding three-month period, the total contributions  
16    made to the account through the end of the period, the value of the account at the end of such period,  
17    distributions made during such period and any other information that the Treasurer requires to be  
18    reported to the account owner.

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

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

1 (2) Moneys in an ABLE savings account:

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

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

5 **§16-46-7. Limitation on Liability.**

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

9 (1) Return of principal;

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

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

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

17 **§16-46-8. Establishment of savings program trust fund and savings expense fund in State**  
18 **Treasury.**

19 (a) The West Virginia ABLE savings program trust fund is hereby established in the State  
20 Treasury. The fund shall be utilized if the Treasurer elects to accept deposits from contributors rather  
21 than have deposits sent directly to the program manager. Such fund shall consist of any moneys  
22 deposited by contributors in accordance with this article which are not deposited directly with the

1 program manager. All interest derived from the deposit and investment of moneys in such savings  
2 trust fund shall be credited to the fund. At the end of any fiscal year, all unexpended and  
3 unencumbered moneys in such savings trust fund may not be credited or transferred to the State  
4 General Fund or to any other fund.

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

8 (2) All expenses incurred by the Treasurer in developing and administering the ABLE  
9 savings program shall be payable from the West Virginia ABLE Savings Expense Fund.