

WEST VIRGINIA LEGISLATURE
2021 THIRD EXTRAORDINARY SESSION

ENGROSSED

House Bill 328

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

(BY REQUEST OF THE EXECUTIVE)

[Introduced October 11, 2021; referred to the Committee on Finance]

1 A BILL to amend and reenact §16-48-3, §16-48-4, and §16-48-6 of the Code of West Virginia,
2 1931, as amended, all relating generally to the West Virginia ABLE Act; defining terms;
3 authorizing the State Treasurer to promulgate emergency rules; permitting a person with
4 signature authority, according to federal law, to open and manage an account on behalf
5 of a designated beneficiary; and clarifying that the State Treasurer may require an
6 application to open an ABLE account.

Be it enacted by the Legislature of West Virginia:

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) "Account owner" means designated beneficiary, as defined in the ABLE Act.

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

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

11 (f) "Designated beneficiary" means a West Virginia resident who owns the account and
12 who was an eligible individual when the account was established or who succeeded the former
13 designated beneficiary.

14 (g) "Eligible individual" means an individual who is entitled to benefits based on blindness
15 or disability under 42 U.S.C. §401 *et seq.* or 42 U.S.C. §1381 *et seq.*, as amended, and such
16 blindness or disability occurred before the date on which the individual attained the age specified

17 in the ABLE Act, or an individual who filed a disability certification, to the satisfaction of the
18 secretary, with the secretary for such taxable year.

19 (h) "Financial organization" means an organization authorized to do business in the State
20 of West Virginia and that is:

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

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

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

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

26 (i) "Guardian" means a person appointed by the court pursuant to ~~§44A-1-1 et seq~~ chapter
27 44A of this code.

28 (j) "Management contract" means the contract executed by the Treasurer and a financial
29 organization selected to act as a depository and manager of the program.

30 (k) "Member of the family" has the meaning contained in the ABLE Act.

31 (l) "Nonqualified withdrawal" means a withdrawal from an account which is not:

32 (1) A qualified withdrawal; or

33 (2) A rollover distribution.

34 (m) "Program" means the West Virginia ABLE Act savings program established pursuant
35 to this article.

36 (n) "Program manager" means a financial organization selected by the Treasurer to act as
37 a depository and manager of the program.

38 (o) "Qualified disability expense" means any qualified disability expense included in the
39 ABLE Act.

40 (p) "Qualified withdrawal" means a withdrawal from an account to pay the qualified
41 disability expenses of the designated beneficiary of the account.

42 (q) "Rollover distribution" means a rollover distribution as defined in the ABLE Act.

43 (r) "Savings agreement" means an agreement between the program manager or the
44 Treasurer and the account owner.

45 (s) "Signature authority" means the authority of the designated beneficiary or of a person
46 on behalf of a designated beneficiary in accordance with the ABLE Act to establish and manage
47 an ABLE account.

48 ~~(s)~~ (t) "Secretary" means the secretary of the United States Treasury.

49 ~~(t)~~ (u) "Treasurer" means the West Virginia State Treasurer or his or her designee.

§16-48-4. Implementation and administration of program; Treasurer's powers and responsibilities.

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

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

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

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

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

13 (5) Develop marketing plans and promotion material;

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

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

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

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

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

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

24 (c) The Treasurer shall propose rules for legislative approval in accordance with §29A-3-
25 1 *et. seq.* ~~the provisions of article three, chapter twenty-nine-a~~ of this code necessary to
26 implement the provisions of this article.

**§16-48-6. Establishment of ABLE savings account by designated beneficiary or person or
entity with signature authority. ~~parent, conservator, 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, 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~~ designated beneficiary or a person or entity with signature
5 authority, according to the ABLE Act.

6 (b) Each designated beneficiary may have only one account.

7 (c) In the absence of a conservator, a guardian may manage an ABLE account regardless
8 of the amount of a designated beneficiary's personal assets. The Department of Health and
9 Human Resources may not manage an ABLE account.

10 (d) The Treasurer may require a designated beneficiary or a person with signature
11 authority to submit an application to the Treasurer to establish an account. The Treasurer may
12 establish a nonrefundable application fee. An application for such account shall be in the form
13 prescribed by the Treasurer and contain:

14 (1) The name, address, and social security number of the designated beneficiary;

15 (2) The name, address, and social security number or federal employer identification
16 number of the person or entity opening or managing the ABLE account on behalf of the designated
17 beneficiary;

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

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

20 ~~(b)~~ (e) Any person may make contributions to an ABLE savings account after the account
21 is opened, subject to the limitations imposed by the ABLE Act.

22 ~~(e)~~ (f) Contributions to ABLE savings accounts may only be made in cash. The Treasurer
23 or program manager shall reject or promptly withdraw:

24 (1) Contributions in excess of the limits established pursuant to subsection ~~(b)~~ (e), or

25 (2) The total contributions if the:

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

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

30 ~~(d)~~ (g) (1) An account owner may:

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

34 (B) Transfer all or a portion of an account to another ABLE savings account, the
35 designated beneficiary of which is a member of the family as defined in the ABLE Act.

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

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

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

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

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

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

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

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

56 (B) Are disregarded for the purposes of determining eligibility for or the amount of a public
57 assistance program, unless required by federal law;

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

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

NOTE: The purpose of this bill is to permit a person with signature authority, according to the federal ABLE Act, to open and manage an account on behalf of a designated beneficiary.

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