# WEST VIRGINIA CODE CHAPTER 16 ARTICLE 48

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## §16-48-1. Short Title.

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

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## §16-48-2. Purpose.

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

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**§16-48-3. Definitions.**

(a) “ABLE Act” means the federal legislation codified in Section 529A of the Internal Revenue Code of 1986, 26 U.S.C. § 529A, and related treasury regulations, as amended from time to time. Any references in this article to Section 529A include related treasury regulations.

(b) “Account” or “ABLE savings account” means an individual savings account established in accordance with the provisions of this article.

(c) “Account owner” means designated beneficiary, as defined in the ABLE Act.

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

(e) “Conservator” means a person appointed by the court pursuant to Chapter 44A of this code.

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

(g) “Eligible individual” means an individual who is entitled to benefits based on blindness or disability under 42 U.S.C. §401 *et seq*. or 42 U.S.C. §1381 *et seq*., as amended, and such blindness or disability occurred before the date on which the individual attained the age specified in the ABLE Act, or an individual who filed a disability certification, to the satisfaction of the secretary, with the secretary for such taxable year.

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

(1) Licensed or chartered by the Insurance Commissioner;

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

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

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

(i) “Guardian” means a person appointed by the court pursuant to Chapter 44A of this code.

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

(k) “Member of the family” has the meaning contained in the ABLE Act.

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(l) “Nonqualified withdrawal” means a withdrawal from an account which is not:

(1) A qualified withdrawal; or

(2) A rollover distribution.

(m) “Program” means the West Virginia ABLE Act savings program established pursuant to this article.

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

(o) “Qualified disability expense” means any qualified disability expense included in the ABLE Act.

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

(q) “Rollover distribution” means a rollover distribution as defined in the ABLE Act.

(r) “Savings agreement” means an agreement between the program manager or the Treasurer and the account owner.

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

(t) “Secretary” means the secretary of the United States Treasury.

(u) “Treasurer” means the West Virginia State Treasurer or his or her designee.

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

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

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

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

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

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

(5) Develop marketing plans and promotion material;

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

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

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

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

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

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

(c) The Treasurer shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code necessary to implement the provisions of this article.

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**§16-48-5. Use of financial organizations as program depositories and managers.**

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

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

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

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

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

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

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

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

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

(b) The Treasurer may enter into any contracts with a financial organization necessary to effectuate the provisions of this article. Any management contract shall include, at a minimum, terms requiring the financial organization to:

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

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

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

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

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

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

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

(8) Provide the Treasurer with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance or securities commission, except to the extent that such report or reports may not be disclosed under law; and

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

(c) The Treasurer may:

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

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

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

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

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**§16-48-6. Establishment of ABLE savings account by designated beneficiary or person or entity with signature authority.**

(a) Any ABLE savings accounts established pursuant to the provisions of this article shall be opened and managed by a designated beneficiary or a person or entity with signature authority, according to the ABLE Act.

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

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

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

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

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

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

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

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

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

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

(2) The total contributions if the:

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

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

(g) (1) An account owner may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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## §16-48-7. Limitation on Liability.

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

(1) Return of principal;

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

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

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

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## §16-48-8. Establishment of savings program trust fund and savings expense fund in State Treasury.

(a) The West Virginia ABLE savings program trust fund is hereby established in the State Treasury. The fund shall be utilized if the Treasurer elects to accept deposits from contributors rather than have deposits sent directly to the program manager. Such fund shall consist of any moneys deposited by contributors in accordance with this article which are not deposited directly with the program manager. All interest derived from the deposit and investment of moneys in such savings trust fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in such savings trust fund may not be credited or transferred to the State General Fund or to any other fund.

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

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

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