

HB 2902

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2015



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2902**

(By Delegate(s) Campbell, Perry, Reynolds,  
Pasdon, Rodighiero, Ellington, Rowan, Rohrbach, Hamrick,  
E. Nelson and Ashley)



Passed March 11, 2015

In effect ninety days from passage.

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COMMITTEE SUBSTITUTE

for

## H. B. 2902

(BY DELEGATE(S) CAMPBELL, PERRY, REYNOLDS,  
PASDON, RODIGHIERO, ELLINGTON, ROWAN, ROHRBACH, HAMRICK,  
E. NELSON AND ASHLEY)

[Passed March 11, 2015;  
in effect ninety days from passage.]

AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5, §16-46-6, §16-46-7 and §16-46-8, all relating to providing for the establishment of a program to allow savings accounts for individuals with a disability and their families to save private funds to support the individual with a disability, to be known as the West Virginia ABLE Act; definitions; implementation and administration of the program by the Treasurer; powers and responsibilities of the Treasurer; use of financial organizations as account depositories and managers;

establishing procedures and requirements for establishment of an ABLE savings account; limitations on deposits; provisions for change of a designated beneficiary; distributions from accounts; limiting liability of the Treasurer and the state; and establishment of the West Virginia ABLE savings program trust fund and the West Virginia ABLE Savings Expense Fund.

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

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

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

**§16-46-1. Short Title.**

1 This article shall be known and may be cited as the  
2 “Achieving a Better Life Experience in West Virginia Act” or  
3 the “West Virginia ABLE Act”.

**§16-46-2. Purpose.**

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

**§16-46-3. Definitions.**

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

4 (b) “Account owner” means the person who enters into an  
5 ABLE savings agreement pursuant to the provisions of this

6 article. The account owner must also be the designated  
7 beneficiary. A conservator or guardian may be appointed as an  
8 account owner for a designated beneficiary who is a minor or  
9 lacks capacity to enter into an agreement.

10 (c) “Conservator” means a person appointed by the court  
11 pursuant to article one, chapter forty-four-a of this code.

12 (d) “Designated beneficiary” means a West Virginia resident  
13 whose qualified disability expenses may be paid from the  
14 account. The designated beneficiary must be an eligible  
15 individual at the time the account is established. The account  
16 owner may change the designated beneficiary.

17 (e) “Eligible individual” means an individual who is entitled  
18 to benefits based on blindness or disability under 42 U.S.C. §401  
19 et seq. or 42 U.S.C. § 1381 et seq., as amended, and such  
20 blindness or disability occurred before the date on which the  
21 individual attained age twenty-six, or an individual who filed a  
22 disability certification, to the satisfaction of the secretary, with  
23 the secretary for such taxable year.

24 (f) “Financial organization” means an organization autho-  
25 rized to do business in the State of West Virginia and is:

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

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

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

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

32 (g) “Guardian” means a person appointed by the court  
33 pursuant to article one, chapter forty-four-a of this code.

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

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

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

42 (1) A qualified withdrawal; or

43 (2) A rollover distribution.

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

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

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

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

55 (o) "Rollover distribution" means a rollover distribution as  
56 defined in Section 529a of the Federal Internal Revenue Code of  
57 1986, as amended.

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

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

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

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

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

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

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

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

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

16 (5) Develop marketing plans and promotion material;

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

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

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

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

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

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

33 (c) The Treasurer shall propose rules for legislative approval  
34 in accordance with the provisions of article three, chapter  
35 twenty-nine-a of this code necessary to implement the provisions  
36 of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

51 (5) Provide the Treasurer with access to the books and  
52 records of the program manager to the extent needed to  
53 determine compliance with the contract, this article and Section  
54 529a of the federal Internal Revenue Code of 1986, as amended;

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

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

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

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

74 (c) The Treasurer may:

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

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

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

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

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

1 (a) Any ABLE savings accounts established pursuant to the  
2 provisions of this article shall be opened by a designated  
3 beneficiary or a conservator or guardian of a designated  
4 beneficiary who lacks capacity to enter into a contract and each  
5 beneficiary may have only one account. The Treasurer may  
6 establish a nonrefundable application fee. An application for  
7 such account shall be in the form prescribed by the Treasurer and  
8 contain:

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

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

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

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

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

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

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

26       (2) The total contributions if the:

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

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

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

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

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

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

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

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

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

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

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

70 (2) Moneys in an ABLE savings account:

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

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

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

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

5 (1) Return of principal;

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

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

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

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

1 (a) The West Virginia ABLE savings program trust fund is  
2 hereby established in the State Treasury. The fund shall be  
3 utilized if the Treasurer elects to accept deposits from

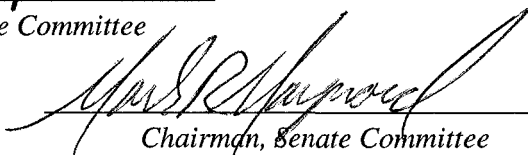
4 contributors rather than have deposits sent directly to the  
5 program manager. Such fund shall consist of any moneys  
6 deposited by contributors in accordance with this article which  
7 are not deposited directly with the program manager. All interest  
8 derived from the deposit and investment of moneys in such  
9 savings trust fund shall be credited to the fund. At the end of any  
10 fiscal year, all unexpended and unencumbered moneys in such  
11 savings trust fund may not be credited or transferred to the State  
12 General Fund or to any other fund.

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

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman, House Committee

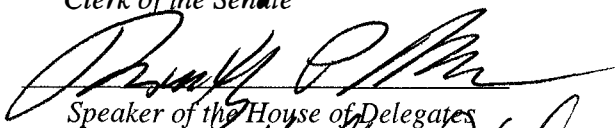
  
Chairman, Senate Committee

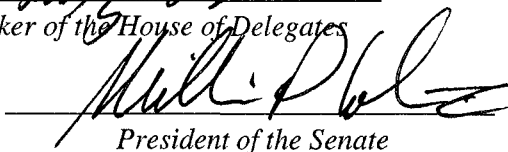
Originating in the House.

In effect ninety days from passage.

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

  
President of the Senate

The within is approved this the 31<sup>st</sup>  
day of March, 2015.

  
Governor

PRESENTED TO THE GOVERNOR

MAR 18 2015

Time 5:30 pm