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WEST VIRGINIA SENATE

**WEST VIRGINIA LEGISLATURE**

REGULAR SESSION, 1997



**ENROLLED**

*COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR*

**SENATE BILL NO. 70**

(By Senator Toubrin, Mr. President, et al.)



**PASSED APRIL 12, 1997**

**In Effect NINETY DAYS FROM Passage**

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### Senate Bill No. 70

(SENATORS TOMBLIN, MR. PRESIDENT, CRAIGO, PLYMALE,  
JACKSON, PREZIOSO, SNYDER, ROSS, SPROUSE, BALL,  
HUNTER, SCHOONOVER, KIMBLE, DITTMAR, ANDERSON,  
OLIVERIO AND SHARPE, *original sponsors*)

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[Passed April 12, 1997; in effect ninety days from passage.]

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AN ACT to repeal sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve-a, article twenty-one, chapter eleven of said code; to amend and reenact sections one, two, three, four, five, six, seven, eight, nine and ten, article thirty, chapter eighteen of said code; and to amend and reenact

section four, article ten, chapter thirty-eight of said code, all relating to the creation of a prepaid higher education tuition program; repealing provisions which will no longer apply to the tuition trust; providing an additional modification reducing federal adjusted gross income; the West Virginia prepaid tuition trust act; providing a title, legislative findings and definitions; board of trustees composition, proceedings, powers and oversight by the Legislative oversight commission on education accountability; creating the West Virginia prepaid tuition trust fund; providing a state income tax deduction for purchasers; requiring reports, accounts and annual audits; liberal construction; expiration of article; and to exempt from bankruptcy proceedings payments made to the prepaid tuition trust fund.

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

That sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twelve-a, article twenty-one, chapter eleven of said code be amended and reenacted; that sections one, two, three, four, five, six, seven, eight, nine and ten, article thirty, chapter eighteen of said code be amended and reenacted; and that section four, article ten, chapter thirty-eight of said code be amended and reenacted, all to read as follows:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 21. PERSONAL INCOME TAX.**

#### **§11-21-12a. Additional modification reducing federal adjusted gross income.**

1 In addition to amounts authorized to be subtracted from  
2 federal adjusted gross income pursuant to subsection (c),  
3 section twelve of this article, any payment made under a  
4 prepaid tuition contract as provided under section seven,  
5 article thirty, chapter eighteen of this code, is also an  
6 authorized modification reducing federal adjusted gross  
7 income, but only to the extent the amount is not allowable  
8 as a deduction when arriving at the taxpayer's federal  
9 adjusted gross income for the taxable year in which the  
10 payment is made.

**CHAPTER 18. EDUCATION.**

**ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.**

**§18-30-1. Title.**

1 This article shall be known and may be cited as the  
2 “West Virginia Prepaid Tuition Trust Act”.

**§18-30-2. Legislative findings and purpose.**

1 The Legislature hereby finds and determines that the  
2 advancement and improvement of higher education in the  
3 state of West Virginia is a proper governmental function  
4 and purpose of the state. The Legislature also finds that  
5 the creation of a prepaid tuition trust fund, to assist  
6 qualified students and their families in financing a portion  
7 of the costs of attending an accredited higher education  
8 institution or program in the state of West Virginia will  
9 increase the number of qualified students who will seek to  
10 attend such accredited higher education institutions and  
11 programs, which will be of benefit to students, families  
12 and to such accredited higher education institutions and  
13 programs, and will therefore advance and improve higher  
14 education in the state of West Virginia. It is, therefore, the  
15 legislative intent of this article to establish a higher  
16 education prepaid tuition trust fund to assist qualified  
17 students to pay in advance the tuition costs of attending  
18 accredited higher education institutions and programs and  
19 thereby to encourage such qualified students to attend  
20 accredited higher education institutions and programs in  
21 the state of West Virginia. The Legislature finds and  
22 declares that prepaid tuition trust fund contracts neither  
23 contain nor obligate any general revenue funds.

**§18-30-3. Definitions.**

1 For the purpose of this article, the following terms have  
2 the meanings ascribed to them, unless the context clearly  
3 indicates otherwise:

4 (a) “Accredited higher education institution or program”  
5 means any accredited higher education institution or  
6 accredited higher education program offered through an  
7 accredited provider.

8 (b) "Beneficiary" means any intended or unintended  
9 beneficiary of the prepaid tuition contract between the  
10 purchaser and the board, including any beneficiary  
11 designated by the purchaser, his agent or his estate in the  
12 event that the intended beneficiary is unable or unwilling  
13 to benefit under the terms of the trust fund.

14 (c) "Board" means the board of trustees of the prepaid  
15 higher education tuition trust fund as provided in section  
16 four of this article.

17 (d) "Outside tuition fee" means the amount of tuition or  
18 fees, or both, payable to an accredited higher education  
19 institution or program outside the state or independent  
20 state institutions or programs upon the election by a  
21 beneficiary to attend such institutions or programs. This  
22 fee shall generally be the amount of the average public  
23 tuition costs or fees, or both, of state institutions of higher  
24 learning as determined by the board of trustees on an  
25 annual basis.

26 (e) "Prepaid tuition contract" means a contract entered  
27 into by the board of the trust fund and a purchaser  
28 pursuant to this article.

29 (f) "Purchaser" means an individual, corporation or  
30 other entity who makes or is obligated to make payments  
31 in accordance with a prepaid tuition contract entered into  
32 pursuant to this chapter.

33 (g) "Trust fund" means the prepaid higher education  
34 tuition trust fund.

35 (h) "Tuition" means the quarter, semester or term  
36 charges imposed by an accredited higher education  
37 institution or program and all mandatory fees required as  
38 a condition of enrollment by all students.

**§18-30-4. Appointment of board of trustees; terms; compensa-  
tion; proceedings generally.**

1 (a) The board of the prepaid college expense trust fund  
2 shall consist of nine members and shall include the  
3 secretary of education and the arts and the state treasurer,  
4 who shall serve as ex officio voting members of the board,

5 and seven other members with knowledge, skill and  
6 experience in an academic, business or financial field. The  
7 seven appointed members shall be residents of the state.  
8 One member shall be a representative of the university of  
9 West Virginia board of trustees selected by the board of  
10 trustees from its members as defined in section one, article  
11 two, chapter eighteen-b of this code and one member shall  
12 be a representative of the board of directors of the state  
13 college system selected by the board of directors from its  
14 members as defined in section one, article three, chapter  
15 eighteen-b of this code. The governor shall appoint three  
16 members from nominations as follows: One member shall  
17 be a private citizen not employed by, or an officer of, the  
18 state or any political subdivision of the state appointed  
19 from one or more nominees of the speaker of the House of  
20 Delegates; one member shall be a private citizen not  
21 employed by, or an officer of, the state or any political  
22 subdivision of the state appointed from one or more  
23 nominees of the president of the Senate; and one member  
24 shall represent the interests of private institutions of  
25 higher education located in this state who shall be ap-  
26 pointed from one or more nominees of the West Virginia  
27 association of private colleges. The governor also shall  
28 appoint two members who are representatives of the  
29 public. The public members and the member representing  
30 the interests of private institutions of higher education  
31 shall be appointed by the governor with the advice and  
32 consent of the Senate.

33 (b) Appointed members shall serve a term of five years  
34 and may be reappointed at the expiration of their terms.  
35 In the event of a vacancy among appointed members, the  
36 governor shall appoint a person representing the same  
37 interests to fill the unexpired term. Of the initial appoint-  
38 ments, the governor shall appoint one member to a one-  
39 year term, one member to a two-year term, one member to  
40 a three-year term, one member to a four-year term and  
41 one member to a five-year term. Thereafter, all terms  
42 shall be for five years.

43 (c) Members of the board of trustees shall serve without  
44 compensation, but for the first twelve months after the

45 effective date of this section members shall be reimbursed  
46 by the state treasurer's office for expenses, including  
47 travel expenses, actually incurred by a member in the  
48 official conduct of the business of the board at the same  
49 rate as is paid the employees of the state. Thereafter, the  
50 state treasurer may charge back to the trust fund as  
51 administrative expenses all expenses, including travel  
52 expenses, actually incurred and paid to board members for  
53 the conduct of their official duties.

54 (d) The state treasurer shall be the trustee chairman and  
55 presiding officer of the board, and may appoint such other  
56 employees as the board considers advisable or necessary.  
57 A majority of the members of the board constitute a  
58 quorum for the transaction of the business of the trust  
59 fund.

**§18-30-5. Powers of the board.**

1 In addition to the powers granted by any other provision  
2 of this article, the board shall have the powers necessary  
3 or convenient to carry out the purposes and provisions of  
4 this article, the purposes and objectives of the trust and  
5 the powers delegated by any other law of the state or any  
6 executive order of the state including, but not limited to,  
7 the following express powers:

8 (a) To adopt and amend bylaws;

9 (b) To propose legislative rules for promulgation in  
10 accordance with the provisions of article three-a, chapter  
11 twenty-nine-a of this code to effectuate the purposes of  
12 this article: *Provided*, That the board may not promulgate  
13 emergency rules;

14 (c) To invest any funds of the trust fund, at the board's  
15 discretion, with the West Virginia state board of invest-  
16 ments in accordance with applying the provisions of  
17 article six, chapter twelve of this code. Any investments  
18 made under this article shall be made with the care, skill,  
19 prudence and diligence under the circumstances then  
20 prevailing that a prudent person acting in a like capacity  
21 and familiar with such matters would use in the conduct  
22 of an enterprise of a like character and with like aims.

23 Fiduciaries shall diversify plan investments to the extent  
24 permitted by law so as to minimize the risk of large losses,  
25 unless under the circumstances it is clearly prudent not to  
26 do so;

27 (d) To execute contracts and other necessary instru-  
28 ments;

29 (e) To enter into prepaid tuition contracts;

30 (f) To impose reasonable limits on the number of prepaid  
31 tuition contract purchasers participating in the trust fund  
32 at any given period of time;

33 (g) To impose reasonable requirements for residency for  
34 qualified beneficiaries at the time of purchase of the  
35 prepaid tuition contract. However, nothing in this  
36 subdivision shall be construed to establish residency  
37 requirements for matriculation at state institutions of  
38 higher education;

39 (h) To contract for necessary goods and services, to  
40 employ necessary personnel and to engage the services of  
41 private persons for administrative and technical assis-  
42 tance in carrying out the responsibilities of the trust fund;

43 (i) To solicit and accept gifts, including bequests or other  
44 testamentary gifts made by will, trust or other disposition,  
45 grants, loans and other aids from any source or to partici-  
46 pate in any other way in any federal, state or local govern-  
47 mental programs in carrying out the purposes of this  
48 article;

49 (j) To define the terms and conditions under which  
50 payments may be withdrawn from the trust fund and  
51 impose reasonable charges for such withdrawal: *Provided,*  
52 That payments made by employers on behalf of beneficia-  
53 ries selected by their employees are deemed fully vested in  
54 the employees from time of receipt of such payments by  
55 the board;

56 (k) To devise and offer to purchasers other educational  
57 programs, such as the purchase of books and other educa-  
58 tional supplies;

59 (l) To impose reasonable time limits on the use of the



60 tuition benefits provided by the program;

61 (m) To provide for the receipt of contributions to the  
62 trust fund in lump sums or installment payments; and

63 (n) To establish other policies, procedures and criteria  
64 necessary to implement and administer the provisions of  
65 this article.

**§18-30-6. West Virginia prepaid tuition trust created.**

1 (a) There is hereby created within the accounts held by  
2 the state treasurer the prepaid tuition trust fund account  
3 to be administered by the board until and unless the  
4 Legislature shall determine otherwise, and titled the  
5 "Prepaid Tuition Trust Fund".

6 (b) The location of the trust fund shall be the state  
7 treasurer's office, and the facilities of the state treasurer  
8 shall be used and employed in the administration of the  
9 trust fund including, but without limitation thereto, the  
10 keeping of records, the management of bank accounts and  
11 other investments, the transfer of funds and the safekeep-  
12 ing of securities evidencing investments.

13 (c) Payments received by the board from purchasers on  
14 behalf of beneficiaries or from any other source, public or  
15 private, shall be placed in the trust fund.

16 (d) The corpus, assets and income of the trust fund do  
17 not constitute public funds of the state.

18 (e) The trust fund, through the trustee chairman, is  
19 authorized to receive any gift or transfer of property, real  
20 or personal of any nature, from any source as may be  
21 approved by the board, or any terms and conditions as  
22 may be imposed by the board: *Provided*, That all property  
23 received by the trust shall be converted into cash within  
24 ninety days of receipt.

25 (f) The board shall cause an actuarial study to be  
26 periodically performed to ensure that sufficient funds are  
27 being deposited to the fund to meet the obligations of the  
28 trust fund. Specifically, the board shall annually evaluate  
29 or cause to be evaluated, the actuarial soundness of the  
30 trust fund. If the board finds that additional contribu-

31 tions are needed in order to preserve the actuarial sound-  
32 ness of the fund, it may adjust the terms of pre-existing  
33 and subsequent prepaid tuition contracts to ensure such  
34 soundness: *Provided*, That any necessary adjustment to  
35 pre-existing contracts may only be assessed on future  
36 payments and not retroactively upon previous payments  
37 made by the purchaser or donors to the trust fund. There  
38 shall be no obligation of state general revenue funds to the  
39 trust fund for any purpose whatsoever.

40 (g) In order to fulfill the charitable and public purposes  
41 of this article, neither the income nor the property of the  
42 trust fund shall be subject to taxation by the state or any  
43 of its political subdivisions.

44 (h) The board is hereby empowered to propose rules to  
45 provide for the withdrawal and disbursement of contract  
46 funds on an actuarially sound basis. The board may  
47 propose rules to provide a tuition guarantee for beneficia-  
48 raries attending state institutions of higher education:  
49 *Provided*, that this rule may not be promulgated as an  
50 emergency rule subject to oversight by the legislative  
51 oversight commission on education accountability as  
52 provided by section eleven, article three-a, chapter  
53 twenty-nine-a of this code.

54 (i) There is hereby created a separate account within the  
55 state treasurer's office to be known as the "Prepaid  
56 Tuition Trust Fund Administrative Account" for the  
57 purposes of implementing and maintaining the trust fund  
58 accounts pursuant to this article. The board may charge  
59 against the fees collected and interest earned from the  
60 trust fund accounts, amounts as are reasonable and  
61 customary for the state treasurer to fund the administra-  
62 tive costs of maintaining the trust fund accounts. The  
63 charges shall be subject to review by the legislative  
64 oversight commission on education accountability.  
65 Expenditures from the fund are not authorized from  
66 collections, but may only be made upon appropriation by  
67 the Legislature.

**§18-30-7. Income tax deduction for purchasers.**

1 As provided in section twelve-a, article twenty-one,

2 chapter eleven of this code, a purchaser of a prepaid  
3 tuition contract, under the provisions of this article, is  
4 eligible for a tax deduction.

**§18-30-8. Report and account; annual audit.**

1 (a) In addition to any other requirements of this article,  
2 the board shall:

3 (1) Provide annually summary information on the  
4 financial condition of the trust fund to all purchasers of  
5 prepaid tuition contracts;

6 (2) Prepare, or cause to be prepared, an annual account-  
7 ing and actuarial report of the trust fund and transmit a  
8 copy of same to the governor, the president of the Senate,  
9 the speaker of the House of Delegates and the legislative  
10 oversight commission on education accountability; and

11 (3) Make all necessary and appropriate arrangements  
12 with accredited higher education institutions and pro-  
13 grams in order to fulfill its obligations under the prepaid  
14 tuition contracts which arrangements shall include the  
15 satisfaction by the trust fund of current applicable tuition  
16 and fee charges on behalf of a beneficiary to the accred-  
17 ited higher education institution or program.

18 (b) All accounts of the board, including the trust fund  
19 accounts, are subject to an annual external audit, by a  
20 nationally recognized accounting firm in conjunction with  
21 the annual federal audit.

**§18-30-9. Expiration of article.**

1 This article shall become void upon the first day of  
2 January, two thousand two, if the trust has not entered  
3 into a prepaid tuition contract with a purchaser before  
4 that date.

**CHAPTER 38. LIENS.**

**ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANK-  
RUPTCY.**

**§38-10-4. Exemptions of property in bankruptcy proceedings.**

1 Pursuant to the provisions of 11 U.S.C. 522(b)(1), this  
2 state specifically does not authorize debtors who are

3 domiciled in this state to exempt the property specified  
4 under the provisions of 11 U.S.C. 522(d).

5 Any person who files a petition under the federal  
6 bankruptcy law may exempt from property of the estate  
7 in a bankruptcy proceeding the following property:

8 (a) The debtor's interest, not to exceed fifteen thousand  
9 dollars in value, in real property or personal property that  
10 the debtor or a dependent of the debtor uses as a resi-  
11 dence, in a cooperative that owns property that the debtor  
12 or a dependent of the debtor uses as a residence or in a  
13 burial plot for the debtor or a dependent of the debtor.

14 (b) The debtor's interest, not to exceed two thousand  
15 four hundred dollars in value, in one motor vehicle.

16 (c) The debtor's interest, not to exceed four hundred  
17 dollars in value in any particular item, in household  
18 furnishings, household goods, wearing apparel, appli-  
19 ances, books, animals, crops or musical instruments, that  
20 are held primarily for the personal, family or household  
21 use of the debtor or a dependent of the debtor: *Provided,*  
22 That the total amount of personal property exempted  
23 under this subsection shall not exceed eight thousand  
24 dollars.

25 (d) The debtor's interest, not to exceed one thousand  
26 dollars in value, in jewelry held primarily for the personal,  
27 family or household use of the debtor or a dependent of  
28 the debtor.

29 (e) The debtor's interest, not to exceed in value eight  
30 hundred dollars plus any unused amount of the exemption  
31 provided under subsection (a) of this section in any  
32 property.

33 (f) The debtor's interest, not to exceed one thousand five  
34 hundred dollars in value, in any implements, professional  
35 books or tools of the trade of the debtor or the trade of a  
36 dependent of the debtor.

37 (g) Any unmaturred life insurance contract owned by the  
38 debtor, other than a credit life insurance contract.

39 (h) The debtor's interest, not to exceed in value eight

40 thousand dollars less any amount of property of the estate  
41 transferred in the manner specified in 11 U.S.C. 542(d), in  
42 any accrued dividend or interest under, or loan value of,  
43 any unmaturred life insurance contract owned by the  
44 debtor under which the insured is the debtor or an indi-  
45 vidual of whom the debtor is a dependent.

46 (i) Professionally prescribed health aids for the debtor or  
47 a dependent of the debtor.

48 (j) The debtor's right to receive:

49 (1) A social security benefit, unemployment compensa-  
50 tion or a local public assistance benefit;

51 (2) A veterans' benefit;

52 (3) A disability, illness or unemployment benefit;

53 (4) Alimony, support or separate maintenance, to the  
54 extent reasonably necessary for the support of the debtor  
55 and any dependent of the debtor;

56 (5) A payment under a stock bonus, pension, profit  
57 sharing, annuity or similar plan or contract on account of  
58 illness, disability, death, age or length of service, to the  
59 extent reasonably necessary for the support of the debtor  
60 and any dependent of the debtor, unless:

61 (A) Such plan or contract was established by or under  
62 the auspices of an insider that employed the debtor at the  
63 time the debtor's rights under such plan or contract arose;

64 (B) Such payment is on account of age or length of  
65 service; and

66 (C) Such plan or contract does not qualify under Section  
67 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue  
68 Code of 1954.

69 (k) The debtor's right to receive, or property that is  
70 traceable to:

71 (1) An award under a crime victim's reparation law;

72 (2) A payment on account of the wrongful death of an  
73 individual of whom the debtor was a dependent, to the  
74 extent reasonably necessary for the support of the debtor

75 and any dependent of the debtor;

76 (3) A payment under a life insurance contract that  
77 insured the life of an individual of whom the debtor was  
78 a dependent on the date of such individual's death, to the  
79 extent reasonably necessary for the support of the debtor  
80 and any dependent of the debtor;

81 (4) A payment, not to exceed fifteen thousand dollars on  
82 account of personal bodily injury, not including pain and  
83 suffering or compensation for actual pecuniary loss, of the  
84 debtor or an individual of whom the debtor is a depend-  
85 ent;

86 (5) A payment in compensation of loss of future earnings  
87 of the debtor or an individual of whom the debtor is or  
88 was a dependent, to the extent reasonably necessary for  
89 the support of the debtor and any dependent of the debtor;

90 (6) Payments made to the prepaid tuition trust fund on  
91 behalf of any beneficiary.

92 This section shall not be construed to affect the applica-  
93 bility of any provision of the federal bankruptcy law other  
94 than 11 U.S.C. 552(d).

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

*Randy Schoonover*  
.....  
Chairman Senate Committee

*Nick Frantasia*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Carroll E. Gibbs*  
.....  
Clerk of the Senate

*Bryant W. Sims*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*R. K.*  
.....  
Speaker House of Delegates

The within *approved* this the *5th*  
day of *May*, 1997.

*George E. Edwards*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 4/28/97

Time 2:30 pm