

HB 3295  
Spec Bill

FILED

2009 MAY -8 PM 3:42

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2009



**ENROLLED**

**House Bill No. 3295**

(By Delegate White)



Passed April 11, 2009

In Effect from Passage

ENROLLED FILED

H. B. 3295

2009 MAY -8 PM 3:42

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

---

(BY DELEGATE WHITE)

---

[Passed April 11, 2009; in effect from passage.]

AN ACT to amend and reenact §18-30-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §36-8-13 of said code; and to amend and reenact §44-1-28 of said code, all relating to the West Virginia State Treasurer's Office; transferring a one time sum of \$8 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund; setting \$1 million as the amount to be transferred annually from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Fund until the actuary certifies there are sufficient funds to pay out all contracts; authorizing investment of the Unclaimed Property Trust Fund; and facilitating payments by the state where the owner has died.

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

That §18-30-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §36-8-13 of said code be amended and reenacted; and that §44-1-28 of said code be amended and reenacted, all to read as follows:

**CHAPTER 18. EDUCATION.**

**ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID  
TUITION AND SAVINGS PROGRAM  
ACT.**

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

1 (a) The "Prepaid Tuition Trust Fund" is continued within  
2 the accounts held by the State Treasurer for administration by  
3 the board.

4 (b) The Prepaid Tuition Trust Fund shall continue to  
5 receive all payments from account owners on behalf of  
6 beneficiaries of prepaid tuition contracts or from any other  
7 source, public or private. Earnings derived from the  
8 investment of moneys in the Prepaid Tuition Trust Fund shall  
9 remain in the Prepaid Tuition Trust Fund held in trust in the  
10 same manner as payments, except as refunded, applied for  
11 purposes of the beneficiaries, and applied for purposes of  
12 maintaining and administering the prepaid tuition plan.

13 (c) The corpus, assets and earnings of the Prepaid Tuition  
14 Trust Fund do not constitute public funds of the state and are  
15 available solely for carrying out the purposes of this article.  
16 Any contract entered into by or any obligation of the board  
17 on behalf of and for the benefit of the Prepaid Tuition Plan  
18 does not constitute a debt of the state, but is solely an  
19 obligation of the Prepaid Tuition Trust Fund. The state has  
20 no obligation to any designated beneficiary or any other  
21 person as a result of the Prepaid Tuition Plan. All amounts  
22 payable from the Prepaid Tuition Trust Fund are limited to  
23 amounts available in the Prepaid Tuition Trust Fund.

24 (d) Nothing in this article or in any prepaid tuition  
25 contract is a promise or guarantee of admission to, continued  
26 enrollment in, or graduation from an eligible educational  
27 institution.

28       (e) The requirements of the provisions of chapter  
29 thirty-two of this code do not apply to the sale of a prepaid  
30 tuition contract by the board, its employees and agents.

31       (f) The Prepaid Tuition Plan and the Prepaid Tuition  
32 Trust Fund shall continue in existence until terminated by the  
33 Legislature as it determines or by the board upon determining  
34 that continued operation is infeasible. Upon termination of  
35 the plan and after payment of all fees, charges, expenses and  
36 penalties, the assets of the Prepaid Tuition Trust Fund are  
37 paid to current account owners, to the extent possible, on a  
38 pro rata basis as their interests may appear, and any assets  
39 presumed abandoned are reported and remitted to the  
40 unclaimed property administrator in accordance with the  
41 Uniform Unclaimed Property Act in article eight, chapter  
42 thirty-six of this code. Any assets then remaining in the  
43 Prepaid Tuition Trust Fund shall revert to the State General  
44 Revenue Fund.

45       (g) Effective March 8, 2003, the prepaid tuition plan is  
46 closed to new contracts until the Legislature authorizes the  
47 plan to reopen. Closing the plan to new contracts does not  
48 mean the Prepaid Tuition Plan is closed and does not affect  
49 any Prepaid Tuition Plan contracts in effect on March 8,  
50 2003. All contract owners shall continue to pay any amounts  
51 due, including without limitation monthly installments,  
52 penalties and fees. Earnings derived from the investment of  
53 moneys in the Prepaid Tuition Trust Fund shall continue to  
54 accrue to the fund until the fund is closed in accordance with  
55 this article.

56       (h) The board shall continue to have the actuarial  
57 soundness of the Prepaid Tuition Trust Fund evaluated  
58 annually.

59           (i)(1) On or before December 1, 2003, and each year  
60 thereafter, the chairperson of the board shall submit to the  
61 Governor, the President of the Senate, the Speaker of the  
62 House of Delegates, Joint Committee on Government and  
63 Finance and the unclaimed property administrator a report  
64 certified by an actuary of the actuarial status of the Prepaid  
65 Tuition Trust Fund at the end of the fiscal year immediately  
66 preceding the date of the report.

67           (2) The Prepaid Tuition Trust Escrow Fund is continued  
68 in the State Treasury to guarantee payment of Prepaid Tuition  
69 Plan contracts. The board shall invest the Prepaid Tuition  
70 Trust Escrow Fund in accordance with the provisions of this  
71 article in fixed income securities, and all earnings of the  
72 escrow fund shall accrue to the escrow fund and be available  
73 for expenditure in accordance with this section.

74           (A) On July 1, 2009, the unclaimed property  
75 administrator shall transfer the amount of \$8 million from the  
76 Unclaimed Property Trust Fund to the Prepaid Tuition Trust  
77 Escrow Fund.

78           (B) On or before December 15 of each fiscal year and  
79 continuing until the actuary certifies there are sufficient funds to  
80 pay out all contracts, the unclaimed property administrator shall  
81 transfer the amount of \$1 million from the Unclaimed Property  
82 Trust Fund to the Prepaid Tuition Trust Escrow Fund.

83           (3) In the event the money in the Prepaid Tuition Trust  
84 Fund is insufficient to cover the amount of money needed  
85 to meet the current obligations of the Prepaid Tuition Trust  
86 Fund, the board may withdraw from the Prepaid Tuition  
87 Trust Escrow Fund the amount of money needed to meet  
88 current obligations of the Prepaid Tuition Trust Fund.

89           (4) Notwithstanding any provision of this code to the  
90 contrary, the Governor, after consultation with the Budget

91 Office of the Department of Revenue, may request an  
92 appropriation to the board in the amount of the deficiency to  
93 meet the current obligations of the Prepaid Tuition Trust  
94 Fund, in the budget presented to the next session of the  
95 Legislature for its consideration. The Legislature is not  
96 required to make any appropriation pursuant to this  
97 subsection, and the amount of the deficiency is not a debt or  
98 a liability of the state.

99 (5) As used in this section, “current obligations of the  
100 Prepaid Tuition Trust Fund” means amounts required for the  
101 payment of contract distributions or other obligations of the  
102 Prepaid Tuition Trust Fund, the maintenance of the fund, and  
103 operating expenses for the current fiscal year.

104 (6) Nothing in this subsection creates an obligation of  
105 state general revenue funds or requires any level of funding  
106 by the Legislature.

107 (7) After the Prepaid Tuition Trust Fund has been closed  
108 and all moneys paid in accordance with this section, any  
109 moneys remaining in the Prepaid Tuition Trust Escrow Fund  
110 shall be transferred to the General Revenue Fund and the  
111 account closed.

112 (j) To fulfill the charitable and public purpose of this  
113 article, neither the earnings nor the corpus of the Prepaid  
114 Tuition Trust Fund is subject to taxation by the state or any  
115 of its political subdivisions.

116 (k) Notwithstanding any provision of this code to the  
117 contrary, money in the Prepaid Tuition Trust Fund is exempt  
118 from creditor process and not subject to attachment,  
119 garnishment or other process; is not available as security or  
120 collateral for any loan, or otherwise subject to alienation,  
121 sale, transfer, assignment, pledge, encumbrance or charge;

122 and is not subject to seizure, taking, appropriation or  
123 application by any legal or equitable process or operation of  
124 law to pay any debt or liability of any account owner,  
125 beneficiary or successor in interest.

126 (l) The provisions of this section may not be construed to  
127 interfere with the operation of the savings plan authorized  
128 under this article.

## CHAPTER 36. ESTATES AND PROPERTY.

### ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

#### §36-8-13. Deposit of funds.

1 (a) The administrator shall record the name and last  
2 known address of each person appearing from the holders  
3 reports to be entitled to the property and the name and last  
4 known address of each insured person or annuitant and  
5 beneficiary and with respect to each policy or annuity listed  
6 in the report of an insurance company, its number, the name  
7 of the company and the amount due.

8 (b) The Unclaimed Property Fund is continued. The  
9 administrator shall deposit all funds received pursuant to this  
10 article in the Unclaimed Property Fund, including the proceeds  
11 from the sale of abandoned property under section twelve of this  
12 article. In addition to paying claims of unclaimed property duly  
13 allowed, the administrator may deduct the following expenses  
14 from the Unclaimed Property Fund:

15 (1) Expenses of the sale of abandoned property;

16 (2) Expenses incurred in returning the property to  
17 owners, including without limitation the costs of mailing and  
18 publication to locate owners;

19           (3) Reasonable service charge; and

20           (4) Expenses incurred in examining records of holders of  
21 property and in collecting the property from those holders.

22           (c) The Unclaimed Property Trust Fund is continued  
23 within the State Treasury. The administrator may invest the  
24 Unclaimed Property Trust Fund with the West Virginia  
25 Board of Treasury Investments and all earnings shall accrue  
26 to the fund and are available for expenditure in accordance  
27 with this article. After deducting the expenses specified in  
28 subsection (b) of this section and maintaining a sum of  
29 money from which to pay claims duly allowed, the  
30 administrator shall transfer the remaining moneys in the  
31 Unclaimed Property Fund to the Unclaimed Property Trust  
32 Fund.

33           (d) (1) On July 1, 2009, the unclaimed property  
34 administrator shall transfer the amount of \$8 million from the  
35 Unclaimed Property Trust Fund to the Prepaid Tuition Trust  
36 Escrow Fund.

37           (2) On or before December 15 of each year,  
38 notwithstanding any provision of this code to the contrary,  
39 the administrator shall transfer the sum of \$1 million from the  
40 Unclaimed Property Trust Fund to the Prepaid Tuition Trust  
41 Escrow Fund, until the actuary certifies there are sufficient  
42 funds to pay out all contracts.

43           (e) On or before June 1, 2007, the unclaimed property  
44 administrator shall transfer the amount of \$2 million from the  
45 Unclaimed Property Trust Fund to the Deferred  
46 Compensation Matching Fund for operation of the deferred  
47 compensation matching program for state employees. On or  
48 before June 1, 2008, the unclaimed property administrator  
49 shall transfer the amount of \$1 million from the Unclaimed



50 Property Trust Fund to the Deferred Compensation Matching  
51 Fund for operation of the matching program.

52 (f) After transferring any money required by subsections  
53 (d) and (e) of this section, the administrator shall transfer  
54 moncys remaining in the Unclaimed Property Trust Fund to  
55 the General Revenue Fund.

## CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

### ARTICLE 1. PERSONAL REPRESENTATIVES.

#### **§44-1-28. Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications.**

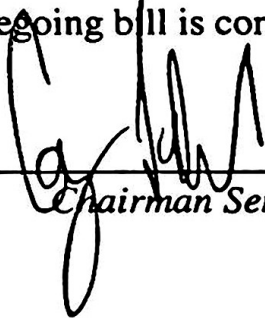
1 (a) When the State of West Virginia, any of its political  
2 subdivisions, the United States or any employer owes wages,  
3 salary, pension payments or money allowed for burial  
4 expenses to a decedent, upon whose estate there has been no  
5 qualification, and the amount owed does not exceed \$5,000,  
6 the State of West Virginia, any of its political subdivisions,  
7 the United States or the decedent's employer, after one  
8 hundred and twenty days from the death of the decedent, may  
9 pay the amount owed to the decedent's surviving spouse, if  
10 any; and if no spouse survived the decedent, then to the  
11 distributees of the decedent under the laws of the State of  
12 West Virginia.

13 (b) When the State Treasurer holds property in  
14 accordance with article eight, chapter thirty-six of this code  
15 on behalf of a decedent upon whose estate there has been no  
16 qualification, and the amount of the property is \$5,000 or  
17 less, the Treasurer may remit the property to the surviving  
18 spouse of the decedent, if any; and if no spouse survives the

19 decedent, then to the distributees of the decedent under the  
20 laws of the State of West Virginia. When the State Treasurer  
21 holds property in accordance with article eight, chapter  
22 thirty-six of this code on behalf of a decedent whose estate is  
23 closed or has no present qualification and a valid will or an  
24 affidavit naming the decedent's distributees has been filed  
25 with the appropriate probate jurisdiction, the Treasurer may  
26 remit the property to the distributees as reflected in the will,  
27 or in the absence of a will, as established by the affidavit, in  
28 accordance with the laws of descent and distribution.

29 (c) Payment in accordance with this section is in full  
30 discharge and acquittance to all persons whomsoever on  
31 account of the property.

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

  
\_\_\_\_\_  
Chairman Senate Committee


  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

In effect from passage.

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is appended this the 5<sup>th</sup>  
day of May, 2009.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 4 2009

Time 10:05 *hr*