

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2793**

BY DELEGATES MAYNARD, DEAN, HORNBUCKLE, DOYLE

AND PYLES

[Introduced January 31, 2019; referred to the  
Committee on Finance.]

1 A BILL to amend and reenact §18-30-2, §18-30-3, §18-30-4, and §18-30-7 of the Code of West  
 2 Virginia, 1931, as amended, all relating to expanding applicability of educational facilities  
 3 for the West Virginia College Prepaid Tuition and Savings Program.

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

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

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

1 The Legislature hereby finds and determines that enhancing the accessibility and  
 2 affordability of higher education for all citizens of West Virginia will promote a well-educated and  
 3 financially secure population to the ultimate benefit of all citizens of West Virginia, and that  
 4 assisting individuals and families in planning for future educational expenses by making the tax  
 5 incentives in 26 U.S.C. §529 available to West Virginians are proper governmental functions and  
 6 purposes of the state.

7 The Legislature also finds that continuation of the prepaid tuition plan and creation of a  
 8 savings plan will further those governmental functions and purposes. It is, therefore, the legislative  
 9 intent of this article to continue the prepaid tuition plan and to enhance the plan by authorizing the  
 10 creation of a savings plan so that more students may attend eligible higher education institutions.

**§18-30-3. Definitions.**

1 For the purposes of this article, the following terms have the meanings ascribed to them,  
 2 unless the context clearly indicates otherwise or as otherwise provided in 26 U.S.C. §529:

3 (a) "Account" means a prepaid tuition account or a savings plan account established in  
 4 accordance with this article.

5 (b) "Account owner" means the individual, corporation, association, partnership, trust or  
 6 other legal entity who enters into a prepaid tuition contract and is obligated to make payments in  
 7 accordance with the prepaid tuition contract or who enters into a savings plan contract and invests

8 money in a savings plan account.

9 (c) "Beneficiary" means the individual designated as a beneficiary at the time an account  
10 is established, the individual designated as the beneficiary when beneficiaries are changed, the  
11 individual entitled to receive distributions from an account, and any individual designated by the  
12 account owner, his or her agent or his or her estate in the event the beneficiary is unable or  
13 unwilling to receive distributions under the terms of the contract.

14 (d) "Board" means the Board of Trustees of the College Prepaid Tuition and Savings  
15 Program as provided in §18-30-4 of this code.

16 (e) "Distribution" means any disbursement from an account in accordance with 26 U.S.C.  
17 §529.

18 (f) "Eligible educational institution" means an institution of higher education or a private or  
19 religious primary, middle, or secondary school that qualifies under 26 U.S.C. §529 as an eligible  
20 educational institution.

21 (g) "Prepaid tuition account" means an account established by an account owner pursuant  
22 to this article in order for the beneficiary to apply distributions in accordance with the prepaid  
23 tuition plan.

24 (h) "Prepaid tuition contract" means a contract entered into by the board and an account  
25 owner establishing a prepaid tuition account.

26 (i) "Prepaid tuition plan" means the plan that contractually guarantees payment of tuition  
27 at a West Virginia public eligible educational institution.

28 (j) "Program" means the West Virginia College Prepaid Tuition and Savings Program  
29 established under this article.

30 (k) "Qualified ~~higher~~ education expenses" mean ~~higher~~ education expenses permitted  
31 under 26 U.S.C. §529 for enrollment or attendance of a beneficiary at an eligible educational  
32 institution.

33 (l) "Savings plan" means the plan that allows account distributions for qualified higher

34 educational expenses and tuition at private or religious primary, middle, and secondary schools.

35 (m) "Savings plan account" means an account established by an account owner pursuant  
36 to this article in order for the beneficiary to apply distributions toward qualified higher education  
37 expenses and tuition expenses at eligible educational institutions.

38 (n) "Savings plan contract" means a contract entered into by the board or its agent, if any,  
39 and an account owner establishing a savings plan account.

40 (o) "Treasurer" means the West Virginia State Treasurer.

41 (p) "Tuition" means the quarter, semester or term ~~undergraduate~~ charges imposed by an  
42 eligible educational institution and all mandatory fees required as a condition of enrollment by all  
43 students for full-time attendance.

**§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.**

1 (a) The West Virginia College Prepaid Tuition and Savings Program is continued. The  
2 program consists of a prepaid tuition plan and a savings plan.

3 (b) The Board of the College Prepaid Tuition and Savings Program is continued, and all  
4 powers, rights and responsibilities of the Board of Trustees of the Prepaid Tuition Trust Fund are  
5 vested in the Board of the College Prepaid Tuition and Savings Program.

6 (c) The board consists of eight members and includes the following:

7 (1) The State Treasurer, or his or her designee;

8 (2) The Superintendent of the West Virginia Department of Education, or his or her  
9 designee;

10 ~~(2)~~ (3) A representative of the Higher Education Policy Commission, who may or may not  
11 be a member of the Higher Education Policy Commission, appointed by the commission who  
12 serves as a voting member of the board;

13 ~~(3)~~ (4) A representative of the Council for Community and Technical College Education,  
14 who may or may not be a member of the Council for Community and Technical College Education,

15 appointed by the council who serves as a voting member of the board; and

16 ~~(4)~~ (5) Five other members, appointed by the Governor, with knowledge, skill and  
17 experience in an arts, academic, business or financial field, to be appointed as follows:

18 (A) Two private citizens not employed by, or an officer of, the state or any political  
19 subdivision of the state;

20 (B) One member representing the interests of private institutions of higher education  
21 located in this state appointed from one or more nominees of the West Virginia Association of  
22 Private Colleges; and

23 (C) Two members representing the public.

24 (d) The public members and the member representing the interests of private institutions  
25 of higher education are appointed by the Governor with the advice and consent of the Senate.

26 (e) Only state residents are eligible for appointment to the board.

27 (f) Members appointed by the Governor serve a term of five years and are eligible for  
28 reappointment at the expiration of their terms. If there is a vacancy among appointed members,  
29 the Governor shall appoint a person representing the same interests to fill the unexpired term.

30 (g) Members of the board serve until the later of the expiration of the term for which the  
31 member was appointed or the appointment of a successor. Members of the board serve without  
32 compensation. The Treasurer may pay all expenses, including travel expenses, actually incurred  
33 by board members in the conduct of their official duties. Expense payments are made from the  
34 College Prepaid Tuition and Savings Program Administrative Account, and are made at the same  
35 rate paid to state employees.

36 (h) The Treasurer may provide support staff and office space for the board.

37 (i) The Treasurer is the chairman and presiding officer of the board, and may appoint the  
38 employees the board considers advisable or necessary. A majority of the members of the board  
39 constitute a quorum for the transaction of the business of the board.

**§18-30-7. West Virginia Savings Plan Trust.**

1 (a) The board may establish a Savings Plan Trust, and may establish a Savings Plan Trust  
2 Fund Account, titled the "Savings Plan Trust Fund," within the accounts held by the Treasurer or  
3 with a financial institution, an investment manager, a fund manager, the West Virginia Investment  
4 Management Board or any other person for the purpose of managing and investing the trust fund.  
5 Assets of the Savings Plan Trust are held in trust for account owners and beneficiaries.

6 (b) The Savings Plan Trust Fund shall receive all moneys from account owners on behalf  
7 of beneficiaries of savings plan contracts or from any other source, public or private. Earnings  
8 derived from the investment of the moneys in the college Savings Trust Fund shall remain in the  
9 fund, held in trust in the same manner as contributions, except as refunded, applied for purposes  
10 of the beneficiaries, and applied for purposes of maintaining and administering the savings plan.

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

18 (d) Nothing in this article or in any savings plan contract is a promise or guarantee that the  
19 distributions available for a beneficiary will cover the cost of qualified higher education expenses  
20 at an eligible educational institution, or as a promise or guarantee of admission to, continued  
21 enrollment in, or graduation from an eligible higher education institution.

22 (e) The requirements of the provisions of chapter 32 of this code do not apply to the sale  
23 of a savings plan contract by the board, its employees and agents.

24 (f) The savings plan and any Savings Plan Trust Fund shall continue in existence until  
25 terminated by the Legislature as it determines or by the board upon determining that continued  
26 operation is infeasible. Upon termination of the plan, the balances of savings plan accounts, less

27 any distributions, refunds, fees, charges and penalties, are sent to account owners, to the extent  
28 possible, and any unclaimed assets in the program shall revert to the state in accordance with  
29 the Uniform Unclaimed Property Act in §36-8-1 *et seq.* of this code.

30 (g) The state pledges to account owners and beneficiaries of the savings plans that the  
31 state will not limit or alter the rights under this article which are vested until the obligations are  
32 met and discharged. However, nothing in this subsection prohibits the Legislature from  
33 discontinuing or terminating a savings plan.

34 (h) In order to fulfill the charitable and public purposes of this article, neither the earnings  
35 nor the corpus of the savings plan trust fund is subject to taxation by the state or any of its political  
36 subdivisions.

37 (i) Notwithstanding any provision of this code to the contrary, money in the Savings Plan  
38 Trust Fund is exempt from creditor process and not subject to attachment, garnishment, or other  
39 process; is not available as security or collateral for any loan, or otherwise subject to alienation,  
40 sale, transfer, assignment, pledge, encumbrance or charge; and is not subject to seizure, taking,  
41 appropriation or application by any legal or equitable process or operation of law to pay any debt  
42 or liability of any account owner, beneficiary or successor in interest.

NOTE: The purpose of this bill is to expand the use of the College Prepaid Tuition and Savings Program to private, public, religious, middle, and secondary schools.

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