

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Committee Substitute

for

Senate Bill 294

BY SENATORS PHILLIPS, JEFFRIES, AND HAMILTON

[Passed April 7, 2021; in effect from passage]

1 AN ACT to amend and reenact §18-30-3, §18-30-4, and §18-30-6 of the Code of West Virginia,
2 1931, as amended; and to amend said code by adding thereto a new section, designated
3 §18-30-6a, all relating to savings and investment programs offered by the state; defining
4 terms; reconciling definition of “qualified education expenses” with federal law for college
5 savings program tax benefit purposes; increasing number of persons on the Board of
6 Trustees of the College Prepaid Tuition and Savings Program; requiring that certain
7 members appointed to the board have experience, knowledge, or skill in a financial field;
8 providing that reasonable efforts shall be made to appoint one member to board with a
9 CFA; authorizing early closure of Prepaid Tuition Trust Plan and fund upon depletion of
10 fund and election of board; authorizing board to expend moneys in the Prepaid Tuition
11 Trust Plan Escrow Fund to satisfy outstanding obligations of the Prepaid Tuition Trust
12 Plan; specifying when Prepaid Tuition Plan account owner assets are presumed
13 abandoned; providing for allocation of moneys remaining in escrow fund upon closure of
14 the Prepaid Tuition Plan; permitting board to maintain a certain amount in the escrow fund
15 for 10 years following closure of the Prepaid Tuition Trust Fund to satisfy potential claims;
16 providing conditions for final closure of escrow fund; creating a nonappropriated special
17 revenue account; transferring moneys from escrow fund to the special revenue account;
18 authorizing receipts to, and expenditures from, the special revenue account for certain
19 purposes related to new savings and investment programs; providing for investment of
20 moneys in special revenue account; removing obsolete language; and making technical
21 corrections.

Be it enacted by the Legislature of West Virginia:

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

§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 “Account” means a prepaid tuition account or a savings plan account established in
4 accordance with this article.

5 “Account owner” means the individual, corporation, association, partnership, trust, or other
6 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 “Beneficiary” means the individual designated as a beneficiary at the time an account is
10 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 “Board” means the Board of Trustees of the College Prepaid Tuition and Savings Program,
15 as provided in §18-30-4 of this code.

16 “Distribution” means any disbursement from an account in accordance with 26 U.S.C.
17 §529.

18 “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 “Outstanding obligations of the Prepaid Tuition Plan” means the outstanding contract
22 obligations of the board to persons owning Prepaid Tuition Plan accounts. The term also includes
23 any fees, charges, expenses, penalties, or any other obligation or liability of the Prepaid Tuition
24 Trust Fund or plan.

25 “Prepaid tuition account” means an account established by an account owner pursuant to
26 this article, in order for the beneficiary to apply distributions in accordance with the Prepaid Tuition
27 Plan.

28 “Prepaid tuition contract” means a contract entered into by the board and an account
29 owner establishing a prepaid tuition account.

30 “Prepaid Tuition Plan” means the plan that contractually guarantees payment of tuition at
31 an eligible educational institution.

32 “Program” means the West Virginia College Prepaid Tuition and Savings Program
33 established pursuant to this article and as defined in §18-30-4(a) of this code.

34 “Qualified education expenses” means expenses treated as “qualified higher education
35 expenses” under 26 U.S.C. §529.

36 “Savings plan” means the plan that allows account distributions for qualified higher
37 educational expenses and tuition at private or religious primary, middle, and secondary schools.

38 “Savings plan account” means an account established by an account owner pursuant to
39 this article, in order for the beneficiary to apply distributions toward qualified higher education
40 expenses and tuition expenses at eligible educational institutions.

41 “Savings plan contract” means a contract entered into by the board or its agent, if any,
42 and an account owner establishing a savings plan account.

43 “Treasurer” means the West Virginia State Treasurer.

44 “Tuition” means the quarter, semester, or term charges imposed by an eligible educational
45 institution and all mandatory fees required as a condition of enrollment by all students for full-time
46 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 savings plan and the outstanding obligations of the Prepaid Tuition 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 nine members and includes the following:

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

8 (2) The State Superintendent of Schools, or his or her designee;

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

12 (4) A representative of the Council for Community and Technical College Education, who
13 may or may not be a member of the Council for Community and Technical College Education,
14 appointed by the council who serves as a voting member of the board; and

15 (5) Five other members, appointed by the Governor, with the advice and consent of the
16 Senate, as follows:

17 (A) Three private citizens with knowledge, skill, and experience in a financial field, who
18 are not employed by, or an officer of, the state or any political subdivision of the state: *Provided,*
19 That reasonable efforts shall be made to appoint one such citizen to the board who holds a
20 designation of Chartered Financial Analyst, offered by the CFA Institute; and

21 (B) Two members representing the interests of private institutions of higher education
22 located in this state appointed from one or more nominees of the West Virginia Independent
23 Colleges and Universities.

24 (d) Only state residents are eligible for appointment to the board.

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

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

34 (g) The Treasurer may provide support staff and office space for the board.

35 (h) The Treasurer is the chairperson and presiding officer of the board and may appoint
36 the employees the board considers advisable or necessary. A majority of the members of the
37 board constitutes a quorum for the transaction of the business of the board.

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

1 (a) The Prepaid Tuition Trust Fund is continued within the accounts held by the State
2 Treasurer for administration by the board until such time as the moneys in the fund are depleted
3 and the board elects to close the fund.

4 (b) Upon the closure of the Prepaid Tuition Trust Fund, the board is authorized to expend
5 moneys from the Prepaid Tuition Trust Escrow Fund for the purpose of satisfying outstanding
6 obligations of the Prepaid Tuition Trust Plan, according to the requirements of subsection (h) of
7 this section.

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

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

18 (e) Effective March 8, 2003, the Prepaid Tuition Plan is closed to new contracts. Closing
19 the plan to new contracts does not affect any Prepaid Tuition Plan contracts in effect on March 8,
20 2003. All contract owners shall continue to pay any amounts due, including without limitation
21 monthly installments, penalties, and fees. Earnings derived from the investment of moneys in the
22 Prepaid Tuition Trust Fund shall continue to accrue to the fund until the fund is closed in
23 accordance with this section. Upon a determination of the board that all outstanding contract
24 obligations to persons owning Prepaid Tuition Plan accounts have been satisfied as provided in
25 subsection (h) of this section, the plan shall be closed.

26 (f) The board shall continue to have the actuarial soundness of the Prepaid Tuition Trust
27 Fund evaluated annually until the fund's closure.

28 (g) On or before December 1, 2003, and each year until the Prepaid Tuition Trust Fund's
29 closure, the chairperson of the board shall submit to the Governor, the President of the Senate,
30 the Speaker of the House of Delegates, the Joint Committee on Government and Finance, and
31 the unclaimed property administrator a report certified by an actuary of the actuarial status of the
32 Prepaid Tuition Trust Fund at the end of the fiscal year immediately preceding the date of the
33 report.

34 (h) *Escrow fund; expenditures.* —

35 (1) The Prepaid Tuition Trust Escrow Fund is continued in the State Treasury to guarantee
36 payment of outstanding obligations of the Prepaid Tuition Plan. The board shall invest the Prepaid
37 Tuition Trust Escrow Fund in accordance with the provisions of this article in fixed income
38 securities, and all earnings of the escrow fund shall accrue to the escrow fund and be available
39 for expenditure in accordance with this section.

40 (2) In the event the money in the Prepaid Tuition Trust Fund is insufficient to cover the
41 amount of money needed to meet the outstanding obligations of the Prepaid Tuition Trust Plan,

42 the board may withdraw from the Prepaid Tuition Trust Escrow Fund the amount of money needed
43 to meet outstanding obligations of the Prepaid Tuition Trust Plan.

44 (3) To the extent possible, the board shall satisfy outstanding contract obligations to
45 persons owning Prepaid Tuition Plan accounts, on a pro rata basis as their interests may appear.
46 Any account owner assets presumed abandoned shall be reported and remitted to the unclaimed
47 property administrator in accordance with the Uniform Unclaimed Property Act in §36-8-1 *et seq.*
48 of this code: *Provided*, That notwithstanding the requirements of said article, account owner
49 assets are presumed abandoned 60 days after final payment checks for their remaining plan units
50 are issued and said checks have not been presented for payment.

51 (i) After all outstanding obligations of the Prepaid Tuition Trust Plan have been satisfied in
52 accordance with this section, any moneys remaining in the Prepaid Tuition Trust Fund and the
53 Prepaid Tuition Trust Escrow Fund shall be allocated as follows:

54 (1) Five million dollars shall be transferred to the West Virginia Savings and Investment
55 Program Fulfillment Fund, as set forth in §18-30-6a of this code.

56 (2) Up to \$1,000,000 may be maintained in the Prepaid Tuition Trust Escrow Fund, at the
57 election of the board, for a period not to exceed 10 years following the closure of the Fund for the
58 purpose of satisfying any claims against the Prepaid Tuition Trust Plan arising after the plan's
59 closure: *Provided*, That upon the expiration of 10 years following the date of closure of the Prepaid
60 Tuition Trust Fund or when the balance of the Prepaid Tuition Trust Escrow Fund is zero,
61 whichever occurs first, the account shall be closed and any moneys remaining in the Prepaid
62 Tuition Trust Escrow Fund upon said fund's closure shall revert to the state's General Revenue
63 Fund.

64 (3) All moneys remaining, after the allocations provided in subdivisions (1) and (2) of this
65 subsection, shall revert to the General Revenue Fund.

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

69 (k) Notwithstanding any provision of this code to the contrary, money in the Prepaid Tuition
70 Trust Fund and the Prepaid Tuition Trust Escrow Fund is exempt from creditor process and not
71 subject to attachment, garnishment, or other process; is not available as security or collateral for
72 any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or
73 charge; and is not subject to seizure, taking, appropriation, or application by any legal or equitable
74 process or operation of law to pay any debt or liability of any account owner, beneficiary, or
75 successor in interest.

76 The provisions of this section may not be construed to interfere with the operation of the
77 savings plan authorized under this article.

§18-30-6a. Special revenue account created for fulfillment of savings and investment programs.

1 (a) There is created in the State Treasury a special revenue account, designated the West
2 Virginia Savings and Investment Program Fulfillment Fund to be administered by the State
3 Treasurer for the purposes authorized by this section.

4 (b) The West Virginia Savings and Investment Program Fulfillment Fund shall consist of
5 all moneys made available pursuant to §18-30-6(i) of this code; any moneys that may be
6 appropriated to the fund by the Legislature; all interest or other return earned or received from
7 investment of the fund; any moneys which the fund is authorized to receive under any provision
8 of this code for the purposes of this article; and all gifts, grants, bequests, or transfers made to
9 the fund from any source. Any balance, including accrued interest and other returns, remaining in
10 the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall
11 remain in the fund to be expended as authorized by this section.

12 (c) Moneys in the West Virginia Savings and Investment Program Fulfillment Fund may
13 be used to pay any expenses incurred by the State Treasurer in implementing or administering
14 any savings and investment program with an initial date of operation occurring on or after July 1,
15 2021. Pending the expenditure of any moneys in the fund, the State Treasurer is authorized to
16 invest and reinvest said moneys, and all interest and earnings of the fund shall accrue to the fund
17 and be available for expenditure in accordance with this section.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2021.

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Governor