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2001 MAY -2 P 7:39

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



# ENROLLED

## House Bill No. 3238

(By Delegate Mezzatesta)



Passed April 14, 2001

In Effect from Passage

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

**H. B. 3238**

(BY DELEGATE MEZZATESTA)

[Passed April 14, 2001; in effect from passage.]

AN ACT to amend and reenact section twenty-one, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, five, six, seven and eight, article seven, chapter eighteen-c of said code; and to further amend said article by adding thereto a new section, designated section nine, all relating to the PROMISE scholarship program; providing that the adjutant general may, in lieu of the tuition payment, pay an amount directly to members of the West Virginia National Guard who are participating in the PROMISE scholarship program; making additional findings with respect to the PROMISE scholarship program; changing definitions; abolishing the board and establishing a board of control; specifying certain elements for inclusion in residency requirements; providing for legislative rules and authorizing emergency rules; requiring submission federal student aid application/needs analysis form and an application for the PROMISE scholarship; providing for coordination of aid programs from all sources; providing that the restriction that the PROMISE scholarship in combination with aid from all other sources does not apply to members of the West

Virginia National Guard, and recipients of the Underwood-Smith and engineering, science and technology scholarship programs; clarifying that advanced placement and dual credit course work are not included in the credit hour categories for determining eligibility; replacing "B" average with at least a 3.0 grade point average in required core and electives and other criteria as established by the board; replacing "B" average with appropriate academic progress toward completion of a degree as defined by the board at the undergraduate level; requiring determination and clarification of relationship with other financial aid; allocations to scholarship fund subject to legislative appropriation; providing that nothing requires specific appropriations or guarantees or entitles individuals to awards; and providing for scope and breadth of study of statewide task force on student financial aid to be expanded.

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

That section twenty-one, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two, three, four, five, six, seven and eight, article seven, chapter eighteen-c of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section nine, all to read as follows:

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 1B. NATIONAL GUARD.**

#### **§15-1B-21. Tuition and fees for guard members at institutions of higher education.**

- 1 (a) Any member of the national guard who is enrolled in a
- 2 course of undergraduate study and is attending any accredited
- 3 college, university, business or trade school located in West
- 4 Virginia or is attending any aviation school located in West

5 Virginia for the purpose of taking college-credit courses, may  
6 be entitled to payment of tuitions and fees at that college,  
7 university, business or trade school or aviation school during  
8 the period of his or her service in the national guard: *Provided,*  
9 That the adjutant general may prescribe criteria of eligibility for  
10 payment of tuition and fees at the college, university, business  
11 or trade school or aviation school: *Provided, however,* That  
12 such payment is contingent upon appropriations being made by  
13 the Legislature for this express purpose.

14 (b) The amount of the payment for members attending a  
15 state-supported school shall be determined by the adjutant  
16 general and may not exceed the actual amount of tuition and  
17 fees at the school. The amount of such payment for members  
18 attending a private school shall be determined by the adjutant  
19 general, but in no event may exceed the highest amounts  
20 payable at any state-supported school.

21 (c) Any member of the national guard who is enrolled in a  
22 course of postgraduate study and is attending any accredited  
23 college or university located in West Virginia, and is receiving  
24 payments under the army continuing education system, may be  
25 entitled to payment of tuition and fees at that college or  
26 university during his or her period of service in the national  
27 guard: *Provided,* That the sum of payments received under this  
28 subsection and the army continuing education system may not  
29 exceed the actual amount of tuition and fees at the school and  
30 in no event may exceed the highest amounts payable at any  
31 state-supported school. Such payments are contingent upon  
32 appropriations being made by the Legislature for this express  
33 purpose.

34 (d) The adjutant general may, in lieu of the tuition payment  
35 authorized by this section, pay an amount equal to the amount  
36 of tuition which otherwise would have been paid, directly to  
37 members of the West Virginia National Guard who are partici-

38 pating in the PROMISE scholarship program provided for in  
39 article seven, chapter eighteen-c of this code.

40 (e) The adjutant general shall administer the tuition and fee  
41 payments authorized under this section and shall propose  
42 policies to implement the provisions of this section.

### **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

#### **ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.**

##### **§18C-7-2. Legislative findings and purpose.**

1 The Legislature hereby finds and declares that:

2 (a) The state's college-going rate does not compare  
3 favorably with the member states of the southern regional  
4 education board average, nor with the national average;

5 (b) West Virginia must have an educated work force in  
6 order to attract and retain the high wage, high skill jobs of the  
7 next century;

8 (c) A large percentage of West Virginia residents who  
9 graduate from the state's colleges and universities do not work  
10 in the state following graduation;

11 (d) The percentage of West Virginia's adult population over  
12 the age of twenty-five with at least a bachelor's degree is only  
13 fourteen percent and does not compare favorably with the  
14 member states of the southern regional education board average  
15 or with the national average;

16 (e) Increases in the level of education increases the income  
17 earned by an individual which enhances his or her quality of  
18 life;

19 (f) During the year one thousand nine hundred ninety-  
20 seven, an individual holding a bachelor's degree had an average  
21 earned income which was one hundred seventy-seven percent  
22 of the average income earned by a high school graduate;

23 (g) Students at all levels should have an incentive to  
24 perform at a high academic level;

25 (h) There is a need to provide parents with all tools possible  
26 to aid them in helping their children understand the importance  
27 of high achievement in high school and college;

28 (i) There is a financial need for many students who wish to  
29 attend state institutions of higher education within the state;

30 (j) The West Virginia higher education grant program is a  
31 vitally important source of financial assistance for needy  
32 residents of the state and should continue to receive strong  
33 financial support; and

34 (k) It is the intent of this article to establish a West Virginia  
35 PROMISE scholarship program to deal effectively with the  
36 findings set forth in this section.

**§18C-7-3. Definitions.**

1 (a) "Eligible institution" means:

2 (1) A state institution of higher education as is defined in  
3 section two, article one, chapter eighteen-b of this code;

4 (2) Alderson-Broaddus College, Appalachian Bible  
5 College, Bethany College, the College of West Virginia, Davis  
6 and Elkins College, Ohio Valley College, Salem International  
7 University, the University of Charleston, West Virginia  
8 Wesleyan College and Wheeling Jesuit University, all in West  
9 Virginia: *Provided*, That if any institution listed in this

10 subdivision is not regionally accredited, it shall not be included  
11 as an eligible institution; or

12 (3) Any other regionally accredited institution in this state,  
13 public or private, approved by the board.

14 (b) "Board" means the West Virginia PROMISE scholar-  
15 ship board of control of the West Virginia PROMISE scholar-  
16 ship program as provided for in section four of this article.

17 (c) "Tuition" means the quarter, semester or term charges  
18 imposed by a state institution of higher education and all  
19 mandatory fees required as a condition of enrollment by all  
20 students.

**§18C-7-4. Appointment of the PROMISE scholarship board of  
control; compensation; proceedings generally.**

1 (a) On the effective date of this section, the board of the  
2 PROMISE scholarship program is abolished.

3 As soon as practical after the effective date of this section,  
4 the governor shall appoint the West Virginia PROMISE  
5 scholarship board of control comprised of fifteen members as  
6 follows:

7 (1) The chairperson of the higher education policy commis-  
8 sion or a designee who is a member of the commission;

9 (2) The chancellor of the higher education policy commis-  
10 sion or his or her designee;

11 (3) The state superintendent of schools or his or her  
12 designee;

13 (4) The secretary of education and the arts;

14 (5) The state treasurer or his or her designee;

15 (6) Two members appointed by the governor from a list of  
16 six persons nominated by the president of the Senate: *Provided*,  
17 That no more than two nominees may be from the same  
18 congressional district;

19 (7) Two members appointed by the governor from a list of  
20 six persons nominated by the speaker of the House of Dele-  
21 gates: *Provided*, That no more than two nominees may be from  
22 the same congressional district; and

23 (8) Six at-large private sector members representative of the  
24 state's business and economic community who have knowl-  
25 edge, skill and experience in an academic, business or financial  
26 field.

27 The ten appointed members shall be residents of the state.  
28 The ten appointed members shall be appointed by the governor  
29 with the advice and consent of the Senate. No more than six of  
30 the ten appointed members may be from the same political  
31 party. No more than four of the ten appointed members may be  
32 from the same congressional district.

33 (b) Appointed members shall serve a term of four years and  
34 may be reappointed at the expiration of their terms. In the event  
35 of a vacancy among appointed members, the governor shall  
36 appoint a person representing the same interests to fill the  
37 unexpired term. A person appointed to fill a vacancy shall be  
38 appointed only for the remainder of that term and is eligible for  
39 reappointment. Unless a vacancy occurs due to death, resigna-  
40 tion or removal pursuant to subsection (e) of this section, an  
41 appointed member of the board shall continue to serve until a  
42 successor has been appointed and qualified as provided for in  
43 subsection (a) of this section. Of the initial appointments, the  
44 governor shall appoint three members to a one-year term, two  
45 members to a two-year term, three members to a three-year  
46 term and two members to a four-year term. Thereafter, all terms  
47 shall be for four years.



48 (c) Members of the board shall serve without compensation,  
49 but shall be reimbursed by the office of the secretary of  
50 education and the arts for expenses, including travel expenses,  
51 actually incurred by a member in the official conduct of the  
52 business of the board at the same rate as is paid the employees  
53 of the state.

54 (d) The secretary of education and the arts is the chairper-  
55 son and presiding officer of the board. A majority of the  
56 members of the board constitute a quorum for the transaction of  
57 business.

58 (e) The members appointed by the governor may be  
59 removed by the governor for official misconduct, incompe-  
60 tence, neglect of duty or gross immorality, and then only in the  
61 manner prescribed by law for the removal by the governor of  
62 the state elective officers in accordance with section five, article  
63 six, chapter six of this code.

**§18C-7-5. Powers of the West Virginia PROMISE scholarship  
board of control.**

1 In addition to the powers granted by any other provision of  
2 this article, the board has the powers necessary or convenient to  
3 carry out the purposes and provisions of this article including,  
4 but not limited to, the following express powers:

5 (a) To adopt and amend bylaws;

6 (b) To propose legislative rules for promulgation in  
7 accordance with the provisions of article three-a, chapter  
8 twenty-nine-a of this code to effectuate the purposes of this  
9 article;

10 (c) To invest any of its funds at the board's discretion, with  
11 the West Virginia investment management board in accordance  
12 with the provisions of article six, chapter twelve of this code.

13 Any investments made under this article shall be made with the  
14 care, skill, prudence and diligence under the circumstances then  
15 prevailing that a prudent person acting in a like capacity and  
16 familiar with such matters would use in the conduct of an  
17 enterprise of a like character and with like aims. Fiduciaries  
18 shall diversify plan investments to the extent permitted by law  
19 so as to minimize the risk of large losses, unless under the  
20 circumstances it is clearly prudent not to do so;

21 (d) To execute contracts and other necessary instruments;

22 (e) To impose reasonable requirements for residency for  
23 students applying for the PROMISE scholarship which shall  
24 include that an eligible student must have completed at least  
25 one half of the credits required for high school graduation in a  
26 public or private high school in this state or have been provided  
27 instruction in the home or other approved place under Exemp-  
28 tion B, section one, article eight, chapter eighteen of this code  
29 for the two years immediately preceding application. However,  
30 nothing in this subdivision may be construed to establish  
31 residency requirements for matriculation or fee payment  
32 purposes at state institutions of higher education;

33 (f) To contract for necessary goods and services, to employ  
34 necessary personnel and to engage the services of private  
35 persons for administrative and technical assistance in carrying  
36 out the responsibilities of the scholarship program;

37 (g) To solicit and accept gifts, including bequests or other  
38 testamentary gifts made by will, trust or other disposition,  
39 grants, loans and other aids from any source or to participate in  
40 any other way in any federal, state or local governmental  
41 programs in carrying out the purposes of this article;

42 (h) To define the terms and conditions under which  
43 scholarships shall be awarded with the minimum requirements  
44 being set forth in section six of this article; and

45 (i) To establish other policies, procedures and criteria  
46 necessary to implement and administer the provisions of this  
47 article.

**§18C-7-6. Requirements for rules on PROMISE scholarship program; recommendations by PROMISE scholarship board of control; promulgation by higher education policy commission.**

1 (a) The board shall recommend a legislative rule to the  
2 higher education policy commission to implement the provi-  
3 sions of this article. The higher education policy commission  
4 shall promulgate a legislative rule in accordance with the  
5 provisions of article three-a, chapter twenty-nine-a of this code  
6 which shall include at least the following provisions:

7 (1) A requirement that a scholarship will not pay an amount  
8 that exceeds the cost of tuition at state institutions of higher  
9 education and may include an allowance for books and sup-  
10 plies;

11 (2) A requirement that the student shall first submit the  
12 application/needs analysis form used to apply for federal  
13 student aid programs along with an application for the PROM-  
14 ISE scholarship.

15 (3) The amount of the PROMISE scholarship awarded in  
16 combination with aid from all other sources shall not exceed the  
17 cost of education at the institution the recipient is attending:  
18 *Provided*, That this restriction does not apply to members of the  
19 West Virginia National Guard, recipients of an Underwood-  
20 Smith teacher scholarship, and recipients of a West Virginia  
21 engineering, science and technology scholarship;

22 (4) Minimum requirements for eligibility for the scholar-  
23 ship which include:

24 (A) A provision that a student is only eligible to apply for  
25 a scholarship within two years of the time he or she graduates  
26 from high school or, in the case of home school students, passes  
27 the GED examination: *Provided*, That if a student has entered  
28 the United States armed services within two years after he or  
29 she graduates from high school, the student is eligible to apply  
30 for a scholarship within seven years of the time he or she enters  
31 military service: *Provided, however*, That once discharged from  
32 the military, the student is only eligible to apply for one year  
33 from the date of discharge;

34 (B) For individuals with zero to fifteen credits from an  
35 institution of higher education, excluding credits earned in  
36 advanced placement and dual credit courses while the student  
37 is enrolled in high school, that the individual: (i) Maintain at  
38 least a 3.0 grade point average in the required core and elective  
39 course work necessary to prepare students for success in post-  
40 secondary education at the two-year and baccalaureate levels as  
41 determined by the board; and (ii) Meet other criteria as estab-  
42 lished by the board;

43 (C) For individuals with more than fifteen credits from an  
44 institution of higher education, excluding credits earned in  
45 advanced placement and dual credit courses while the student  
46 is enrolled in high school, that the individual attain and main-  
47 tain appropriate academic progress toward the completion of a  
48 degree at the undergraduate education level as defined by the  
49 board; and

50 (D) For all individuals, additional objective standards as the  
51 board considers necessary to promote academic excellence and  
52 to maintain the financial stability of the fund;

53 (5) A provision requiring the student to be enrolled in or in  
54 the process of enrolling in an eligible institution as defined in  
55 section three of this article;

56 (6) Provisions for making the highest and best use of the  
57 PROMISE scholarship program in conjunction with the West  
58 Virginia prepaid tuition trust act set forth in article thirty,  
59 chapter eighteen of this code;

60 (7) A determination of whether to require scholarship  
61 recipients to repay the amount of their scholarship, in whole or  
62 in part, if they choose to work outside the state after graduation;

63 (8) A determination of whether to set aside a portion of the  
64 scholarship funds for targeted scholarships for applicants  
65 accepted or enrolled in an engineering program, science  
66 program, technology program or other designated programs;

67 (9) A determination of what other sources of funding for  
68 higher education, if any, should be deducted from the PROM-  
69 ISE scholarship award;

70 (10) A determination and clarification of the relationship of  
71 PROMISE scholarship awards to all other aid a student may  
72 receive to provide maximum coordination. The determination  
73 shall consider the following:

74 (A) Methods to maximize student eligibility for federal  
75 student aid dollars;

76 (B) A requirement that PROMISE scholarship awards not  
77 supplant tuition and fee waivers; and

78 (C) Clarification of the relationship between the PROMISE  
79 scholarship program, tuition savings plans and other state  
80 student aid and loan programs;

81 (11) A method for the award of scholarships within the  
82 limits of available appropriations; and

83 (12) A method for applicants to appeal determinations of  
84 eligibility and continuation.

85 (b) The Legislature hereby declares that an emergency  
86 situation exists and, therefore, the policy commission may  
87 establish by emergency rule, under the procedures of article  
88 three-a, chapter twenty-nine-a of this code, a rule to implement  
89 the provisions of this section. If established, the rules shall be  
90 filed with the legislative oversight commission on education  
91 accountability and with the office of the secretary of state on or  
92 before the first day of September, two thousand one.

**§18C-7-7. West Virginia PROMISE scholarship fund created.**

1 (a) There is hereby created a special revenue fund in the  
2 state treasury which shall be designated and known as the  
3 “PROMISE scholarship fund”. The fund shall consist of all  
4 appropriations to the fund from the West Virginia lottery, video  
5 lottery, taxes on amusement devices, and any other legislative  
6 appropriations, and all interest earned from investment of the  
7 fund and any gifts, grants or contributions received by the fund.  
8 The allocations to the fund shall be subject to appropriation by  
9 the Legislature. Nothing in this article shall require any specific  
10 level of funding by the Legislature nor guarantee or entitle any  
11 individual to any benefit or grant of funds.

12 (b) The board may expend the moneys in the fund to  
13 implement the provisions of this article.

**§18C-7-8. PROMISE scholarship supplemental fund recreated,  
and promulgation of rules.**

1 (a) The Legislature recognizes that the PROMISE scholar-  
2 ship program may lead to an increased number of individuals  
3 attending the state institutions of higher education, and there-  
4 fore, it may contribute to increases in expenses greater than the  
5 additional tuition income generated by increased enrollment.  
6 Therefore, there is hereby created a special revenue fund in the  
7 state treasury which shall be designated and known as the  
8 “PROMISE scholarship supplemental fund”. The fund shall

9 consist of all appropriations to the fund and all interest earned  
10 from the investment of the fund and any gifts, grants or  
11 contributions received by the fund. The board shall expend the  
12 moneys in this fund to implement the provisions of this article  
13 and may only expend the moneys for state institutions of higher  
14 education.

15 (b) The board shall promulgate rules for administering the  
16 fund in accordance with article three-a, chapter twenty-nine-a  
17 of this code. The rules shall include the following:

18 (1) Provisions for distributing the moneys from the fund to  
19 state institutions of higher education: *Provided*, That the funds  
20 shall be divided among the state institutions of higher education  
21 in a reasonable manner to reflect the actual distribution of  
22 PROMISE scholarship students among the institutions; and

23 (2) A procedure for submitting a budget request to the  
24 governor: *Provided*, That nothing in this article shall require  
25 any appropriation by the Legislature.

**§18C-7-9. Legislative review and determination of the scope and  
breadth of the charge of the statewide task force  
on student financial aid; legislative findings.**

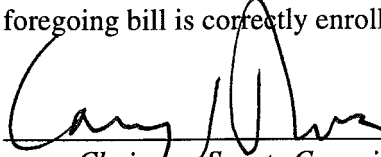
1 (a) The Legislature made findings and established goals for  
2 post-secondary education as set forth in section one-a, article  
3 one, chapter eighteen-b of this code which were enacted  
4 following an in-depth study of the needs of the state for a strong  
5 system of post-secondary education at the regular session of the  
6 Legislature, two thousand. For the state to realize its consider-  
7 able potential in the twenty-first century, it must have a system  
8 for the delivery of post-secondary education which is competi-  
9 tive in the changing national and global environment, is  
10 affordable within the fiscal constraints of the state and for the  
11 state's residents to participate and has the capacity to deliver  
12 the programs and services necessary to meet regional and

13 statewide needs. Among the greatest needs identified were to  
14 improve the levels of adult functional literacy, increase degree  
15 production, develop a system of comprehensive community and  
16 technical college education, expand access to graduate educa-  
17 tion and increase funding for the system of higher education  
18 generally so it has the needed capacity to pursue the state's  
19 public policy agenda.

20 (b) The Legislature finds that the many various programs  
21 for student financial aid, state and federal, are vital parts of a  
22 system that will enable the state to meet its objectives to expand  
23 and diversify the state's economy, increase the competitiveness  
24 of the state's workforce and the availability of professional  
25 expertise, improve the levels of post-secondary educational  
26 attainment of the state's residents and significantly improve the  
27 level of adult functional literacy in the state. Therefore, the  
28 Legislature hereby directs the statewide task force on student  
29 financial aid pursuant to section nine, article fourteen, chapter  
30 eighteen-b of this code to amend the scope and breadth of its  
31 study to adequately consider issues relevant to implementation  
32 of the PROMISE scholarship program.



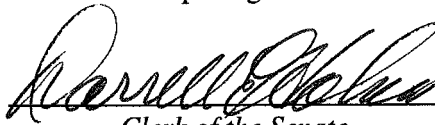
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

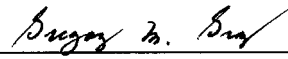
  
\_\_\_\_\_  
Chairman Senate Committee

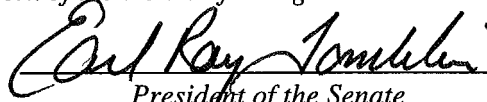
  
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Chairman House Committee

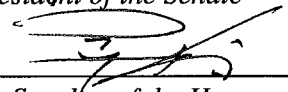
Originating in the House.

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 approved this the 2<sup>nd</sup>  
day of May, 2001.

  
\_\_\_\_\_  
Governor

PRESENTED TO

GOVERNOR

Date 4/27/01

Time 4:40 pm