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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



SECOND ENROLLMENT

House Bill No. 2953

(By Delegates Michael, Mezzatesta and Doyle)



Amended and Again Passed March 16, 2003

In Effect from Passage

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S E C O N D E N R O L L M E N T

H. B. 2953

(BY DELEGATES MICHAEL, MEZZATESTA AND DOYLE)

[Amended and Again Passed March 16, 2003,
as a Result of the Objections of the Governor; in Effect From Passage.]

AN ACT to amend and reenact section six, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article eight, chapter thirty-six of said code, all relating to the administration of the prepaid tuition plan of the West Virginia college prepaid tuition and savings program; clarifying how moneys in the prepaid tuition trust fund are processed when the plan is terminated; closing the prepaid tuition plan to new contracts until further legislative authorization; continuing the plan as to current contract owners; providing for accrual of investment earnings; continuing annual evaluation of actuarial soundness of the prepaid tuition trust fund; requiring annual reports by the chairman of the prepaid tuition trust fund; establishing a mechanism to eliminate any actuarially projected unfunded liability in the prepaid tuition trust fund over a fixed period with funds from the unclaimed property trust fund in an amount not to exceed five hundred thousand dollars annually;

creating the prepaid tuition trust escrow account and establishing purposes therefor; providing for the investment and use of the money in the prepaid tuition trust escrow account; providing for the transfer of funds in the unclaimed property trust fund to the prepaid tuition trust escrow account and to the general revenue fund; and providing for the disposition of funds in the prepaid tuition trust escrow account upon closure of the prepaid tuition trust fund.

Be it enacted by the Legislature of West Virginia:

That section six, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirteen, article eight, chapter thirty-six 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 the
3 board.

4 (b) The prepaid tuition trust fund shall continue to receive
5 all payments from account owners on behalf of beneficiaries of
6 prepaid tuition contracts or from any other source, public or
7 private. Earnings derived from the investment of moneys in the
8 prepaid tuition trust fund shall remain in the prepaid tuition
9 trust fund held in trust in the same manner as payments, except
10 as refunded, applied for purposes of the beneficiaries, and
11 applied for purposes of maintaining and administering the
12 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 on
17 behalf of and for the benefit of the prepaid tuition plan does not
18 constitute a debt of the state, but is solely an obligation of the
19 prepaid tuition trust fund. The state has no obligation to any
20 designated beneficiary or any other person as a result of the
21 prepaid tuition plan. All amounts payable from the prepaid
22 tuition trust fund are limited to amounts available in the prepaid
23 tuition trust fund.

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

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

30 (f) The prepaid tuition plan and the prepaid tuition trust
31 fund shall continue in existence until terminated by the Legisla-
32 ture as it determines or by the board upon determining that
33 continued operation is infeasible. Upon termination of the plan
34 and after payment of all fees, charges, expenses and penalties,
35 the assets of the prepaid tuition trust fund are paid to current
36 account owners, to the extent possible, on a pro rata basis as
37 their interests may appear, and any assets presumed abandoned
38 are reported and remitted to the unclaimed property administra-
39 tor in accordance with the uniform unclaimed property act in
40 article eight, chapter thirty-six of this code. Any assets then
41 remaining in the prepaid tuition trust fund shall revert to the
42 state general revenue fund.

43 (g) Effective the eighth day of March, two thousand three,
44 the prepaid tuition plan is closed to new contracts until the

45 Legislature authorizes the plan to reopen. Closing the plan to
46 new contracts shall not mean the prepaid tuition plan is closed
47 and shall not affect any prepaid tuition plan contracts in effect
48 on the eighth day of March, two thousand three. All contract
49 owners shall continue to pay any amounts due, including
50 without limitation monthly installments, penalties and fees.
51 Earnings derived from the investment of moneys in the prepaid
52 tuition trust fund shall continue to accrue to the fund until the
53 fund is closed in accordance with this article.

54 (h) The board shall continue to have the actuarial soundness
55 of the prepaid tuition trust fund evaluated annually.

56 (i)(1) On or before the first day of December, two thousand
57 three, and each year thereafter, the chairman of the board shall
58 submit to the governor, the president of the Senate, the speaker
59 of the House of Delegates, joint committee on government and
60 finance and the unclaimed property administrator a report
61 certified by an actuary of the actuarial status of the prepaid
62 tuition trust fund at the end of the fiscal year immediately
63 preceding the date of the report. In the event the report for fiscal
64 year two thousand three states there is a projected unfunded
65 liability in the prepaid tuition trust fund, the report shall also
66 state the amount needed for the next fiscal year to eliminate the
67 projected unfunded liability in equal payments over a period of
68 ten fiscal years, concluding the thirtieth day of June, two
69 thousand thirteen. In the event the projected unfunded liability
70 of the prepaid tuition trust fund increases in subsequent reports,
71 the actuary shall calculate the amount needed, less any amount
72 in the prepaid tuition trust escrow account, to eliminate the
73 projected unfunded liability over a period the actuary deter-
74 mines is fiscally responsible.

75 (2) The prepaid tuition trust escrow account is hereby
76 created in the state treasury to guarantee payment of prepaid
77 tuition plan contracts. The board shall invest the prepaid tuition

78 trust escrow account in accordance with the provisions of this
79 article in fixed income securities, and all earnings of the escrow
80 account shall remain in the escrow account.

81 (3) In the event the actuary determines an unfunded liability
82 exists in the prepaid tuition trust fund, the report shall certify
83 the amount of money needed for the next fiscal year to elimi-
84 nate the projected unfunded liability pursuant to the provisions
85 of subdivision (1) of this subsection. The certified amount may
86 not exceed five hundred thousand dollars each year. On or
87 before the fifteenth day of December in which the chairman
88 submitted a report stating the amount needed for the next fiscal
89 year to eliminate a projected unfunded liability, the unclaimed
90 property administrator shall transfer the amount requested, not
91 to exceed five hundred thousand dollars each year, from the
92 unclaimed property trust fund to the prepaid tuition trust escrow
93 account.

94 (4) In the event the money in the prepaid tuition trust fund
95 is insufficient to cover the amount of money needed to meet the
96 current obligations of the prepaid tuition trust fund, the board
97 may withdraw from the prepaid tuition trust escrow account the
98 amount of money needed to meet current obligations of the
99 prepaid tuition trust fund.

100 (5) Notwithstanding any provision of this code to the
101 contrary, the governor, after consultation with the budget
102 section of the finance division of the department of administra-
103 tion, may request an appropriation to the board in the amount
104 of the deficiency to meet the current obligations of the prepaid
105 tuition trust fund, in the budget presented to the next session of
106 the Legislature for its consideration. The Legislature is not
107 required to make any appropriation pursuant to this subsection,
108 and the amount of the deficiency is not a debt or a liability of
109 the state.

110 (6) As used in this section, “current obligations of the
111 prepaid tuition trust fund” means amounts required for the
112 payment of contract distributions or other obligations of the
113 prepaid tuition trust fund, the maintenance of the fund, and
114 operating expenses for the current fiscal year.

115 (7) Nothing in this subsection creates an obligation of state
116 general revenue funds or requires any level of funding by the
117 Legislature.

118 (8) After the prepaid tuition trust fund has been closed and
119 all moneys paid in accordance with this section, any moneys
120 remaining in the prepaid tuition trust escrow account shall be
121 transferred to the general revenue fund and the account closed.

122 (j) To fulfill the charitable and public purpose of this
123 article, neither the earnings nor the corpus of the prepaid tuition
124 trust fund is subject to taxation by the state or any of its
125 political subdivisions.

126 (k) Notwithstanding any provision of this code to the
127 contrary, money in the prepaid tuition trust fund is exempt from
128 creditor process and not subject to attachment, garnishment or
129 other process; is not available as security or collateral for any
130 loan, or otherwise subject to alienation, sale, transfer, assign-
131 ment, pledge, encumbrance or charge; and is not subject to
132 seizure, taking, appropriation or application by any legal or
133 equitable process or operation of law to pay any debt or liability
134 of any account owner, beneficiary or successor in interest.

135 (1) No provision of this section may be construed to
136 interfere with the operation of the savings plan authorized under
137 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 known
2 address of each person appearing from the holders reports to be
3 entitled to the property and the name and last known address of
4 each insured person or annuitant and beneficiary and with
5 respect to each policy or annuity listed in the report of an
6 insurance company, its number, the name of the company and
7 the amount due.

8 (b) The unclaimed property fund is continued. The adminis-
9 trator shall deposit all funds received pursuant to this article in
10 the unclaimed property fund, including the proceeds from the
11 sale of abandoned property under section twelve of this article.
12 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 owners,
17 including without limitation the costs of mailing and publica-
18 tion to locate owners;

19 (3) Reasonable service charge; and

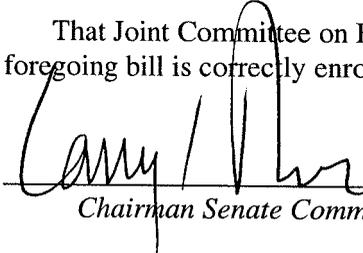
20 (4) Expenses incurred in examining records of holders of
21 property and in collecting the property from those holders.

22 (c) The unclaimed property trust fund is continued within
23 the state treasury. After deducting the expenses specified in
24 subsection (b) of this section and maintaining a sum of money
25 from which to pay claims duly allowed, the administrator shall
26 transfer the remaining moneys in the unclaimed property fund
27 to the unclaimed property trust fund.

28 (d) On or before the fifteenth day of December of each year
29 and after receipt of a report from the chairman of the board of
30 trustees of the West Virginia college prepaid tuition and savings
31 program stating the amount certified by an actuary in accordance
32 with the provisions of section six, article thirty, chapter
33 eighteen of this code, notwithstanding any provision of this
34 code to the contrary, the administrator shall transfer the sum of
35 money certified by the actuary from the unclaimed property
36 trust fund to the prepaid tuition trust escrow account, the
37 amount transferred not to exceed five hundred thousand dollars
38 annually.

39 (e) After transferring any money required by subsection (d)
40 of this section, the administrator shall transfer moneys remaining
41 in the unclaimed property trust fund to the general revenue
42 fund.

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



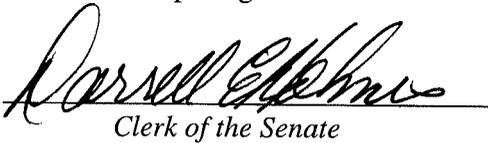
Chairman Senate Committee



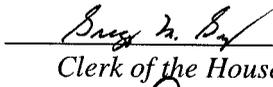
Chairman House Committee

Originating in the House.

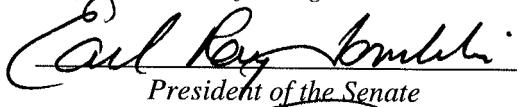
In effect from passage



Clerk of the Senate



Clerk of the House of Delegates

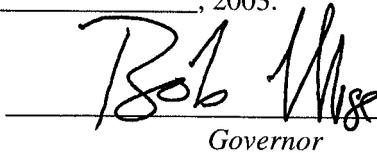


President of the Senate



Speaker of the House of Delegates

The within is approved this the 2nd
day of April, 2003.



Governor

PRESENTED TO THE
GOVERNOR

Date 3/26/03

Time 4:10 p