

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **Senate Bill 456**

BY SENATORS NELSON AND ROMANO

[Introduced February 25, 2021; referred  
to the Committee on Pensions; and then to the  
Committee on Finance]



1 A BILL to amend and reenact §20-18-2, §20-18-8, §20-18-20, §20-18-23, and §20-18-27 of the  
2 Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a  
3 new section, designated §20-18-37, all relating to the Natural Resources Police Officers  
4 Retirement System; defining terms; clarifying concurrent employer contribution rate;  
5 clarifying preretirement death benefits; amending conflicting statutory provisions; and  
6 adding a severability clause.

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

**ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE  
OFFICER RETIREMENT SYSTEM.**

**§20-18-2. Definitions.**

1 As used in this article, unless a federal law or regulation or the context clearly requires a  
2 different meaning:

3 (a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the  
4 member's final average salary multiplied by the member's years of credited service: *Provided,*  
5 That members who retire after July 1, 2025, shall have an accrued benefit of two and one-half  
6 percent of the member's final average salary multiplied by the member's years of credited service.  
7 A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue  
8 Code and is subject to the provisions of §20-18-13 of this code.

9 (b) "Accumulated contributions" means the sum of all amounts deducted from the annual  
10 compensation of a member or paid on his or her behalf pursuant to §5-10C-1 *et seq.* of this code,  
11 either pursuant to §20-18-8(a) or §5-10-29 of this code as a result of covered employment  
12 together with regular interest on the deducted amounts.

13 (c) "Active member" means a member who is active and contributing to the plan.

14 (d) "Active military duty" means full-time active duty with any branch of the armed forces  
15 of the United States, including service with the National Guard or reserve military forces when the

16 member has been called to active full-time duty and has received no compensation during the  
17 period of that duty from any board or employer other than the armed forces.

18 (e) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the  
19 mortality table and interest rates as set and adopted by the retirement board in accordance with  
20 the provisions of this article: *Provided*, That when used in the context of compliance with the  
21 federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial  
22 equivalent" shall be computed using the mortality tables and interest rates required to comply with  
23 those requirements.

24 (f) "Annual compensation" means the wages paid to the member during covered  
25 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined  
26 without regard to any rules that limit the remuneration included in wages based upon the nature  
27 or location of employment or services performed during the plan year plus amounts excluded  
28 under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense  
29 allowances, cash or noncash fringe benefits or both, deferred compensation, and welfare benefits.  
30 Annual compensation for determining benefits during any determination period may not exceed  
31 the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of  
32 this code and Section 401(a)(17) of the Internal Revenue Code.

33 (g) "Annual leave service" means accrued annual leave.

34 (h) "Annuity starting date" means the first day of the first calendar month following receipt  
35 of the retirement application by the board or the required beginning date, if earlier: *Provided*, That  
36 the member has ceased covered employment and reached normal retirement age.

37 (i) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity  
38 or other benefit payable by the plan.

39 (†) (j) "Board" means the Consolidated Public Retirement Board created pursuant to §5-  
40 10D-1 *et seq.* of this code.

41           ~~(j)~~ (k) "Covered employment" means either: (1) Employment as a Natural Resources  
42 Police Officer and the active performance of the duties required of a Natural Resources Police  
43 Officer; (2) the period of time which active duties are not performed but disability benefits are  
44 received under §20-18-21 or §20-18-22 of this code; or (3) concurrent employment by a Natural  
45 Resources Police Officer in a job or jobs in addition to his or her employment as a Natural  
46 Resources Police Officer where the secondary employment requires the Natural Resources  
47 Police Officer to be a member of another retirement system which is administered by the  
48 Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code: *Provided*, That  
49 the Natural Resources Police Officer contributes to the fund created in §20-18-7 of this code the  
50 amount specified as the Natural Resource Police Officer's contribution in §20-18-8 of this code.

51           ~~(k)~~ (l) "Credited service" means the sum of a member's years of service, active military  
52 duty, disability service, ~~and~~ eligible annual and sick leave service.

53           ~~(l)~~ (m) "Dependent child" means either:

54           (1) An unmarried person under age 18 who is:

55           (A) A natural child of the member;

56           (B) A legally adopted child of the member;

57           (C) A child who at the time of the member's death was living with the member while the  
58 member was an adopting parent during any period of probation; or

59           (D) A stepchild of the member residing in the member's household at the time of the  
60 member's death; or

61           (2) Any unmarried child under age 23:

62           (A) Who is enrolled as a full-time student in an accredited college or university;

63           (B) Who was claimed as a dependent by the member for federal income tax purposes at  
64 the time of the member's death; and

65           (C) Whose relationship with the member is described in subparagraph (A), (B), or (C),  
66 paragraph (1) of this subdivision.

67           ~~(m)~~ (n) “Dependent parent” means the father or mother of the member who was claimed  
68 as a dependent by the member for Federal Income Tax purposes at the time of the member’s  
69 death.

70           ~~(h)~~ (o) “Director” means Director of the Division of Natural Resources.

71           ~~(e)~~ (p) “Disability service” means service credit received by a member, expressed in whole  
72 years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both,  
73 during which time a member receives disability benefits under §20-18-21 or §20-18-22 of this  
74 code.

75           ~~(p)~~ (q) “Division of Natural Resources” or “division” means the West Virginia Division of  
76 Natural Resources.

77           ~~(q)~~ (r) “Effective date” means January 2, 2021.

78           ~~(r)~~ (s) “Employer error” means an omission, misrepresentation, or violation of relevant  
79 provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant  
80 provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the  
81 participating public employer that has resulted in an underpayment or overpayment of  
82 contributions required. A deliberate act contrary to the provisions of this section by a participating  
83 public employer does not constitute employer error.

84           ~~(s)~~ (t) “Final average salary” means the average of the highest annual compensation  
85 received for covered employment by the member during any five consecutive plan years within  
86 the member’s last 10 years of service. If the member did not have annual compensation for the  
87 five full plan years preceding the member’s attainment of normal retirement age and during that  
88 period the member received disability benefits under §20-18-21 or §20-18-22 of this code then  
89 “final average salary” means the average of the monthly salary determined paid to the member  
90 during that period determined as if the disability first commenced after the effective date of this  
91 article with monthly compensation equal to that average monthly compensation which the  
92 member was receiving in the plan year prior to the initial disability multiplied by 12.

93           ~~(t)~~ (u) "Fund" means the West Virginia Natural Resources Police Officer Retirement Fund  
94 created pursuant to §20-18-7 of this code.

95           ~~(u)~~ (v) "Hour of service" means:

96           (1) Each hour for which a member is paid;

97           (2) Each hour for which a member is paid but where no duties are performed due to  
98 vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of  
99 absence, or any combination thereof, and without regard to whether the employment relationship  
100 has terminated. Hours under this paragraph shall be calculated and credited pursuant to West  
101 Virginia Division of Labor rules. A member will not be credited with any hours of service for any  
102 period of time he or she is receiving benefits under §20-18-21 or §20-18-22 of this code; and

103           (3) Each hour for which back pay is either awarded or agreed to be paid by the Division of  
104 Natural Resources, irrespective of mitigation of damages. The same hours of service may not be  
105 credited both under this subdivision and subdivision (1) or (2) of this subsection. Hours under this  
106 paragraph shall be credited to the member for the plan year or years to which the award or  
107 agreement pertains rather than the plan year in which the award, agreement, or payment is made.

108           ~~(v)~~ (w) "Member" means a person first hired as a Natural Resources Police Officer, as  
109 defined in subsection (x) of this section, on or after January 2, 2021, or a Natural Resources  
110 Police Officer first hired prior to the effective date and who elects to become a member pursuant  
111 to §20-18-6 of this code. A member shall remain a member until the benefits to which he or she  
112 is entitled under this article are paid or forfeited or until cessation of membership pursuant to §20-  
113 18-6 of this code.

114           ~~(w)~~ (x) "Monthly salary" means the portion of a member's gross annual compensation  
115 which is paid to him or her per month.

116           ~~(x)~~ (y) "Natural Resources Police Officer" means any person regularly employed in the  
117 service of the division as a law-enforcement officer on or after the effective date of this article,  
118 and who is eligible to participate in the fund. The term shall not include Emergency Natural

119 Resources Police Officers as defined in §20-7-1(c) of this code, Special Natural Resources Police  
120 Officers as defined in §20-7-1(d) of this code, Forestry Special Natural Resources Police Officers  
121 as defined in §20-7-1(e) of this code, or Federal Law Enforcement Officer as defined in §20-7-1b  
122 of this code.

123 ~~(y)~~ (z) “Normal form” means a monthly annuity which is 1/12 of the amount of the member’s  
124 accrued benefit which is payable for the member’s life. If the member dies before the sum of the  
125 payments he or she receives equals his or her accumulated contributions on the annuity starting  
126 date, the named beneficiary or beneficiaries shall receive in one lump sum the difference between  
127 the accumulated contributions at the annuity starting date and the total of the retirement income  
128 payments made to the member.

129 ~~(z)~~ (aa) “Normal retirement age” means the first to occur of the following: (1) Attainment  
130 of age 55 years and the completion of 15 or more years of service; (2) while still in covered  
131 employment, attainment of at least age 55 years, and when the sum of current age plus years of  
132 service equals or exceeds 70 years; or (3) attainment of at least age 62 years, and completion of  
133 10 years of service: *Provided*, That any member shall in qualifying for retirement pursuant to this  
134 article have 10 or more years of service, all of which years shall be actual, contributory ones.

135 ~~(aa)~~ (bb) “Partially disabled” means a member’s inability to engage in the duties of a  
136 Natural Resources Police Officer by reason of any medically determinable physical or mental  
137 impairment that can be expected to result in death or that has lasted or can be expected to last  
138 for a continuous period of not less than 12 months. A member may be determined partially  
139 disabled for the purposes of this article and maintain the ability to engage in other gainful  
140 employment which exists within the state but which ability would not enable him or her to earn an  
141 amount at least equal to two thirds of the average annual compensation earned by all active  
142 members of this plan during the plan year ending as of the most recent June 30, as of which plan  
143 data has been assembled and used for the actuarial valuation of the plan.



144           ~~(bb)~~ (cc) “Plan” means the West Virginia Natural Resources Police Officers Retirement  
145 System established by this article.

146           ~~(ee)~~ (dd) “Plan year” means the 12-month period commencing on July 1 of any designated  
147 year and ending the following June 30.

148           ~~(dd)~~ (ee) “Public Employees Retirement System” means the West Virginia Public  
149 Employees Retirement System created by §5-10-1 *et seq.* of this code.

150           ~~(ee)~~ (ff) “Qualified public safety employee” means any employee of the division who  
151 provides police protection, fire-fighting services, or emergency medical services for any area  
152 within the jurisdiction of the state or political subdivision, or such other meaning given to the term  
153 by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-  
154 1(b)(2)(v) as they may be amended from time to time.

155           ~~(ff)~~ (gg) “Regular interest” means the rate or rates of interest per annum, compounded  
156 annually, as the board adopts in accordance with the provisions of this article.

157           ~~(gg)~~ (hh) “Required beginning date” means April 1 of the calendar year following the later  
158 of: (i) The calendar year in which the member attains age 72; or (ii) the calendar year in which he  
159 or she retires or otherwise separates from covered employment.

160           ~~(hh)~~ (ii) “Retirant” means any member who commences an annuity payable by the  
161 retirement system.

162           ~~(ii)~~ (jj) “Retire” or “retirement” means a member’s termination from the employ of a  
163 participating public employer and the commencement of an annuity by the plan.

164           ~~(jj)~~ (kk) “Retirement income payments” means the annual retirement income payments  
165 payable under the plan.

166           ~~(kk)~~ (ll) “Spouse” means the person to whom the member is legally married on the annuity  
167 starting date.

168           (##) (mm) “Substantial gainful employment” or “gainful employment” means employment is  
169 which an individual may earn up to an amount that is determined by the United States Social  
170 Security Administration as substantial gainful activity and still receive total disability benefits.

171           ~~(mm)~~ (nn) “Surviving spouse” means the person to whom the member was legally married  
172 at the time of the member’s death and who survived the member.

173           ~~(nn)~~ (oo) “Totally disabled” means a member’s inability to engage in substantial gainful  
174 activity by reason of any medically determined physical or mental impairment that can be  
175 expected to result in death or that has lasted or can be expected to last for a continuous period  
176 of not less than 12 months. For purposes of this subdivision:

177           (1) A member is totally disabled only if his or her physical or mental impairment or  
178 impairments are so severe that he or she is not only unable to perform his or her previous work  
179 as a Natural Resources Police Officer but also cannot, considering his or her age, education, and  
180 work experience, engage in any other kind of substantial gainful employment which exists in the  
181 state regardless of whether: (A) The work exists in the immediate area in which the member lives;  
182 (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

183           (2) “Physical or mental impairment” is an impairment that results from an anatomical,  
184 physiological, or psychological abnormality that is demonstrated by medically accepted clinical  
185 and laboratory diagnostic techniques. A member’s receipt of Social Security disability benefits  
186 creates a rebuttable presumption that the member is totally disabled for purposes of this plan.  
187 Substantial gainful employment rebuts the presumption of total disability.

188           ~~(oo)~~ (pp) “Year of service.” A member shall, except in his or her first and last years of  
189 covered employment, or within the plan year of the effective date, be credited with year of service  
190 credit, based upon the hours of service performed as covered employment and credited to the  
191 member during the plan year based upon the following schedule:

192 Hours of Service	Years of Service Credited
193 Less than 500	0

194	500 to 999	1/3
195	1,000 to 1,499	2/3
196	1,500 or more	1

197           During a member's first and last years of covered employment or within the plan year of  
198 the effective date, the member shall be credited with 1/12 of a year of service for each month  
199 during the plan year in which the member is credited with an hour of service. A member is not  
200 entitled to credit for years of service for any time period during which he or she received disability  
201 payments under §20-18-21 or §20-18-22 of this code. Except as specifically excluded, years of  
202 service include covered employment prior to the effective date. Years of service which are  
203 credited to a member prior to his or her receipt of accumulated contributions upon termination of  
204 employment pursuant to §20-18-20 or §5-10-30 of this code, shall be disregarded for all purposes  
205 under this plan unless the member repays the accumulated contributions with interest pursuant  
206 to §20-18-20 of this code or had prior to the effective date made the repayment pursuant to §5-  
207 10-18 of this code.

**§20-18-8. Members' contributions; employer contributions.**

1           (a) There shall be deducted from the monthly salary of each member and paid into the  
2 fund an amount equal to nine and one-half percent of his or her monthly salary.

3           (b) An additional 12 percent of the monthly salary of each member shall be paid to the  
4 fund by the employer.

5           (c) If the board finds that the benefits provided by this article can be actuarially funded with  
6 a lesser contribution, then the board shall reduce the required member or employer contributions  
7 or both. The sums withheld each pay date shall be paid to the fund no later than 15 days following  
8 the end of the pay date.

9           (d) Any active member who has concurrent employment in an additional job or jobs and  
10 the additional employment requires the Natural Resources Police Officer to be a member of  
11 another retirement system which is administered by the Consolidated Public Retirement Board

12 pursuant to §5-10D-1 *et seq.* of this code shall make an additional contribution to the fund of ~~eight~~  
13 nine and one-half percent of his or her monthly salary earned from any additional employment  
14 which requires the Natural Resources Police Officer to be a member of another retirement system  
15 which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.*  
16 of this code. An additional employer contribution shall be paid to the fund by the concurrent  
17 employer for which the member is employed in an amount equal to 12 percent of his or her  
18 monthly salary. If the board finds that the benefits provided by this article can be funded with a  
19 lesser contribution, then the board shall reduce the required member or employer contributions,  
20 or both. The sums withheld each calendar month shall be paid to the fund no later than 15 days  
21 following the end of the calendar month.

**§20-18-20. Refunds to certain members upon discharge or resignation; deferred retirement; preretirement death; forfeitures.**

1 (a) Any member who terminates covered employment and is not eligible to receive  
2 disability or retirement income benefits under this article is, by written request filed with the board,  
3 entitled to receive from the fund the member's accumulated contributions. Except as provided in  
4 subsection (b) of this section, upon withdrawal the member shall forfeit his or her accrued benefit  
5 and cease to be a member.

6 (b) Any member of this plan who ceases employment in covered employment and active  
7 participation in this plan, and who thereafter becomes reemployed in covered employment may  
8 not receive any credited service for any prior withdrawn accumulated contributions from either  
9 this plan or the Public Employees Retirement System relating to the prior covered employment  
10 unless following his or her return to covered employment and active participation in this plan, the  
11 member redeposits in this plan the amount of the withdrawn accumulated contributions submitted  
12 on salary earned while a Natural Resources Police Officer, together with interest on the  
13 accumulated contributions at the rate determined by the board from the date of withdrawal to the  
14 date of redeposit. Upon repayment he or she shall receive the same credit on account of his or

15 her former service in covered employment as if no refund had been made. The repayment  
16 authorized by this subsection shall be made in a lump sum within 60 months of the Natural  
17 Resources Police Officer's reemployment in covered employment or if later, within 60 months of  
18 the effective date of this article.

19 (c) A member of this plan who has elected to transfer from the Public Employees  
20 Retirement System into this plan pursuant to subsection (b) of this section may not, after having  
21 transferred into and become an active member of this plan, reinstate to his or her credit in this  
22 plan any service credit relating to periods of non-Natural Resources Police Officer service which  
23 were withdrawn from the Public Employees Retirement System plan prior to his or her elective  
24 transfer into this plan.

25 (d) Any member of this plan who: (1) Was employed as a Natural Resource Police Officer  
26 prior to the effective date of this article; and (2) was not employed as a Natural Resource Police  
27 Officer on the effective date of this article; and (3) thereafter becomes reemployed in covered  
28 employment, may not receive any credited service for any previously withdrawn accumulated  
29 contributions from either this plan or the Public Employees Retirement System relating to the prior  
30 covered employment unless, following his or her return to covered employment and active  
31 participation in this plan, the member redeposits in this plan the amount of the withdrawn  
32 accumulated contributions submitted on salary earned while a Natural Resources Police Officer,  
33 together with interest on the accumulated contributions at the rate determined by the board from  
34 the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same  
35 credit for his or her former service in covered employment as if no refund had been made. The  
36 repayment required by this subsection shall be made in a lump sum within 60 months of the  
37 Natural Resource Police Officers reemployment in covered employment.

38 (e) In the event a member dies from any cause other than those specified in §20-18-25 of  
39 this code and does not have 10 or more years of credited service, the member's accumulated

40 contributions may be paid to a named beneficiary or beneficiaries. If no beneficiary is named,  
41 then the accumulated contributions shall be paid to the estate of the deceased member.

42 ~~(e)~~ (f) Every member who completes 120 months of covered employment is eligible, upon  
43 cessation of covered employment, to either withdraw his or her accumulated contributions in  
44 accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated  
45 contribution and to receive retirement income payments upon attaining normal retirement age.

46 ~~(f)~~ (g) Notwithstanding any other provision of this article, forfeitures under the plan may  
47 not be applied to increase the benefits any member would otherwise receive under the plan.

**§20-18-23. Awards and benefits for disability — physical examinations; termination of disability.**

1 (a) The board may require any member who has applied for or any retirant who is receiving  
2 disability benefits under this article to submit to a physical examination, mental examination, or  
3 both, by a physician or physicians selected or approved by the board and may cause all costs  
4 incident to the examination and approved by the board to be paid from the fund. The costs may  
5 include hospital, laboratory, x-ray, medical, and physicians' fees. A report of the findings of any  
6 physician shall be submitted in writing to the board for its consideration. If, from the report,  
7 independent information, or from the report and any hearing on the report, the board is of the  
8 opinion and finds that: (1) The member has become reemployed as a law-enforcement officer;  
9 (2) two physicians who have examined the member have found that considering the opportunities  
10 for law enforcement in West Virginia, the member could be so employed as a Natural Resources  
11 Police Officer; or (3) other facts exist to demonstrate that the member is no longer totally disabled  
12 or partially disabled as the case may be, then the disability benefits shall cease. If the member  
13 was totally disabled and is found to have recovered, the board shall determine whether the  
14 member continues to be partially disabled. If the board finds that the member is no longer totally  
15 disabled but is partially disabled, then the member shall continue to receive partial disability  
16 benefits in accordance with this article. Benefits shall cease once the member has been found to

17 be no longer either totally or partially disabled: *Provided*, That the board shall require  
18 recertification for each partial or total disability at regular intervals.

19 (b) If from the report, or from the report and hearing on the report, the board is of the  
20 opinion and finds that the disabled retirant has recovered from the disability to the extent that he  
21 or she is able to perform adequately the duties of a law-enforcement officer, the board shall within  
22 five working days provide written notice of the finding to the Director of the Division of Natural  
23 Resources, who shall reinstate the retirant to active duty as a member of the department at his or  
24 her rank or classification and assigned to his or her area of assignment prior to the disability  
25 retirement within 45 days of the finding, unless the retirant declines to be reinstated.

26 (c) A disability retirant who is returned to active duty as a Natural Resources Police Officer  
27 for the West Virginia Division of Natural Resources shall again become a member of the  
28 retirement system in which he or she was enrolled and the retirant's credited service ~~in force at~~  
29 ~~the time of retirement~~ shall be restored.

30 (d) If a retirant refuses to submit to a medical examination or submit a statement by his or  
31 her physician certifying continued disability in any period, his or her disability annuity may be  
32 discontinued by the board until the retirant complies. If the refusal continues for one year, all the  
33 retirant's rights in and to the annuity may be revoked by the board.

**§20-18-27. Additional death benefits and scholarships - dependent children.**

1 (a) In addition to the spouse death benefits in §20-18-25 and §20-18-26 of this code, the  
2 surviving spouse is entitled to receive and there shall be paid to the spouse \$100 monthly for  
3 each dependent child.

4 (b) If the surviving spouse dies while receiving death benefits provided in §20-18-25 or  
5 §20-18-26 of this code, or if there is no surviving spouse, the fund shall pay monthly to each  
6 dependent child a sum equal to one fourth of the surviving spouse's entitlement under either ~~§20-~~  
7 ~~7-25~~ §20-18-25 or §20-18-26 of this code. If there is neither a surviving spouse nor a dependent  
8 child, the fund shall pay in equal monthly installments to the dependent parents of the deceased

9 member during their joint lifetimes a sum equal to the amount which a surviving spouse, without  
10 children, would have received: *Provided*, That when there is only one dependent parent surviving,  
11 that parent is entitled to receive during his or her lifetime one-half the amount which both parents,  
12 if living, would have been entitled to receive: *Provided, however*, That if there is no surviving  
13 spouse, dependent child, nor dependent parent of the deceased member the accumulated  
14 contributions shall be paid to a named beneficiary or beneficiaries: *Provided further*, That if there  
15 is no surviving spouse, dependent child, nor dependent parent of the deceased member, nor any  
16 named beneficiary or beneficiaries then the accumulated contributions shall be paid to the estate  
17 of the deceased member.

18 (c) Any person qualifying as a dependent child under this section, in addition to any other  
19 benefits due under this or other sections of this article, is entitled to receive a scholarship to be  
20 applied to the career development education of that person. This sum, up to but not exceeding  
21 \$7,500 per year, shall be paid from the fund to any higher education institution in this state, career-  
22 technical education provider in this state, or other entity in this state approved by the board, to  
23 offset the expenses of tuition, room and board, books, fees, or other costs incurred in a course of  
24 study at any of these institutions so long as the recipient makes application to the board on an  
25 approved form and under such rules as the board may provide, and maintains scholastic eligibility  
26 as defined by the institution or the board. The board may propose legislative rules for promulgation  
27 in accordance with §29A-3-1 *et seq.* of this code which define age requirements, physical and  
28 mental requirements, scholastic eligibility, disbursement methods, institutional qualifications, and  
29 other requirements as necessary and not inconsistent with this section. Scholarship benefits  
30 awarded pursuant to this subsection are not subject to division or payable to an alternate payee  
31 by any Qualified Domestic Relations Order.

**§20-18-37. Severability.**

1 If any part of this article is declared unconstitutional by a court of competent jurisdiction,  
2 such decision shall not affect the validity of the remaining provisions of this article, or the article  
3 in its entirety.