WEST VIRGINIA CODE CHAPTER 18 ARTICLE 30

WV Legislature

§18-30-1. Title.

This article is known and cited as the West Virginia College Savings Program Act.

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

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

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§18-30-3. Definitions.

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

"Account" means a savings plan account established in accordance with this article.

"Account owner" means the individual, corporation, association, partnership, trust, or other legal entity who enters into a savings plan contract and invests money in a savings plan account.

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

"Board" means the Board of Trustees of the West Virginia College and Jumpstart Savings Programs as provided in §18-30-4 of this code.

"Distribution" means any disbursement from an account in accordance with 26 U.S.C. § 529.

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

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

"Prepaid Tuition Program" means the Prepaid Higher Education Program and Plan, which was previously established and authorized by this article as reflected in chapter 80, Acts of the Legislature, Regular Session, 1997, and which was closed in 2021.

"Program" means the West Virginia College Savings Program established pursuant to this article and as defined in §18-30-4(a) of this code.

"Qualified education expenses" means expenses treated as "qualified higher education expenses" under 26 U.S.C. § 529.

"Savings plan" means the plan that allows account distributions for qualified higher educational expenses and tuition at eligible education institutions.

"Savings plan account" means an account established by an account owner pursuant to this article, in order for the beneficiary to apply distributions toward qualified higher education

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expenses and tuition expenses at eligible educational institutions.

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

"Treasurer" means the West Virginia State Treasurer.

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

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§18-30-3a. 2022 Legislative findings; statutory construction.

(a) The Legislature makes the following findings regarding the amendments to this article adopted during the 2022 Regular Session of the Legislature:

(1) Whereas the Prepaid Tuition Program and Plan, administered by the board from 1998 until 2021, was statutorily closed to new accounts in 2001;

(2) Whereas the board initiated a statutorily authorized buyout of all remaining accounts in 2021 and terminated the Prepaid Tuition Program, Plan, and Trust Fund;

(3) Whereas the Jumpstart Savings Act, adopted during the 2021 Regular Session of the Legislature, created a new savings and investment program to become operational on July 1, 2022;

(4) Whereas the Jumpstart Savings Program is structurally similar to the College Savings Program, both programs share the objective of assisting West Virginians to obtain the education and skills that they need for productive and successful livelihoods, and the Jumpstart Savings Act allows state tax rollovers from a SMART529 account into a Jumpstart Savings Account;

(5) Whereas authorizing a single board to administer both the College Savings Program and Jumpstart Savings Program, rather than requiring each program to have a separate board, will significantly reduce management and administrative costs to the state;

(6) Therefore, the Board of Trustees of the College Prepaid Tuition and Savings Program should be continued and re-designated as "the Board of Trustees of the West Virginia College and Jumpstart Savings Programs" and said board should be tasked with administering the College Savings Program, established by this article, and the Jumpstart Savings Program, established by §18-30A-1 *et seq*. of this code.

(b) The Legislature further finds that, whenever possible, this article should be read in pari materia and construed in harmony with the Jumpstart Savings Act, located in §18-30A-1 *et seq*. of this code.

(c) The Legislature further finds that interests in the College Savings Program Trust are intended:

(1) To qualify for relevant federal securities law exemptions for public instrumentalities of a State; and

(2) To be exempt from registration under chapter 32 of the West Virginia Code, the Uniform Securities Act.

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§18-30-4. The Board of Trustees of the West Virginia College and Jumpstart Savings Programs; members; terms; compensation; proceedings generally.

(a) The West Virginia College Savings Program is continued. The program consists of the savings plan administered according to this article and the requirements of 26 U.S.C. §529.

(b) The Board of Trustees of the College Prepaid Tuition and Savings Program is continued as a public instrumentality of the State of West Virginia: *Provided*, That the Board shall hereafter be known as the Board of Trustees of the West Virginia College and Jumpstart Savings Programs.

(c) The board consists of 11 members and includes the following:

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

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

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

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

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

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

(B) Two private citizens, appointed by the Governor, with knowledge, skill, and experience in trade occupations or businesses, to be appointed as follows:

(i) A member representing a labor organization that represents tradespersons in this state; and

(ii) A member representing a business or entity offering trade or skilled labor apprenticeships in this state; and

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

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

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

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

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

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

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§18-30-5. Powers of the board to administer the College Savings Program.

(a) The board shall administer the College Savings Program in accordance with this article and 26 U.S.C. § 529.

(b) The board shall offer and issue interests in the Savings Plan Trust to eligible members of the public.

(c) The board is authorized to take any lawful action necessary to effectuate the provisions of this article and successfully administer the program, subject to applicable state and federal law, including, but not limited to, the following:

(1) Adopt and amend bylaws;

(2) Execute contracts and other instruments for necessary goods and services, employ necessary personnel, and engage the services of private consultants, auditors, counsel, managers, trustees, and any other contractor or professional needed for rendering professional and technical assistance and advice: *Provided*, That selection of these services is not subject to the provisions of §5A-3-1 *et seq*. of this code: *Provided, however*, That all expenditures and monetary and financial transactions may be subject to periodic audits by the Legislative Auditor;

(3) Implement the program through use of financial organizations as account depositories and managers, as provided in §18-30-6 of this code;

(4) Develop and impose requirements, policies, procedures, and guidelines to implement and manage the program;

(5) Establish the method by which funds shall be allocated to pay for administrative costs and assess, collect, and expend administrative fees, charges, and penalties;

(6) Authorize the assessment, collection, and retention of fees and charges against the amounts paid into and the earnings on the trust funds by a financial institution, investment manager, fund manager, West Virginia Investment Management Board, the Board of Treasury Investments, or other professional managing or investing the trust funds and accounts;

(7) Invest and reinvest any of the funds and accounts under the board's control with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board, the Board of Treasury Investments, or other professional investing the funds and accounts: *Provided*, That investments made under this article shall be made in accordance with the provisions of §44-6C-1 *et seq*. of this code;

(8) Solicit and accept gifts, including bequests or other testamentary gifts made by will, trust, or other disposition; grants; loans; aid; and property, real or personal of any nature and from any source, or to participate in any other way in any federal, state, or local

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governmental programs in carrying out the purposes of this article: *Provided*, That the board shall use the property received to effectuate the desires of the donor, and shall convert the property received into cash within 90 days of receipt;

(9) Make all necessary and appropriate arrangements with eligible educational institutions in order to fulfill its obligations under the savings plan contracts; and

(10) Propose legislative rules for promulgation in accordance with §29A-3-1 *et seq*. of this code, including emergency rules when necessary.

(d) The power and duties of the board provided in this article are in addition to the powers and duties of the board provided in §18-30A-1 *et seq*. of this code.

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§18-30-6. Use of financial organizations as program depositories and managers.

(a) The board may implement the program through use of financial organizations as account depositories and managers. The board may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The board may select more than one financial organization and investment instrument for the program. The board shall select financial organizations to act as program depositories and managers, based on the following criteria:

(1) The financial stability and integrity of the financial organization;

(2) The safety of the investment instrument being offered;

(3) The ability of the financial organization to satisfy recordkeeping and reporting requirements;

(4) The financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) The fees, if any, proposed to be charged to the account owners;

(6) The minimum initial deposit and minimum contributions that the financial organization will require;

(7) The ability of the financial organization to accept electronic deposits and withdrawals, including payroll deduction plans; and

(8) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The board may enter into any contracts with a financial organization necessary to effectuate the provisions of this article. Any management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of this article and any other applicable state or federal law;

(2) Keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare the statements required by this article and other applicable state and federal laws;

(3) Compile, summarize, and total information contained in statements required to be prepared under this article and applicable state and federal laws and provide such compilations to the board;

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(4) Provide the board with access to the books and records of the program manager and with any other information needed to determine compliance with the contract, this article, and any other applicable state or federal law;

(5) Hold all accounts for the benefit of the account owner or owners;

(6) Be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the board;

(7) Provide the board with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the board and the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance, or securities commission, except to the extent that such report or reports may not be disclosed under law; and

(8) Ensure that any description of the program, whether in writing or through the use of any medium, is consistent with the marketing plan developed pursuant to the provisions of this article.

(c) The board may:

(1) Enter into contracts it deems necessary for the implementation of the program, including but not limited to a contract with a financial institution, manager, consultant or other professional to provide services to both the College Savings Program and the Jumpstart Savings Program, established in §18-30A-1 *et seq*. of this code;

(2) Require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the board has any reason to be concerned about the financial position, the record-keeping practices, or the status of accounts of such program depository and manager; and

(3) Terminate or decline to renew a management agreement: *Provided*, That if the board terminates or does not renew a management agreement, the board shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

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

[Repealed].

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

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

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

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

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

(e) The requirements of the provisions of §32-1-101 et seq. of this code do not apply to the sale of a savings plan contract by the board, its employees, and agents.

(f) The savings plan and any Savings Plan Trust Fund shall continue in existence until terminated by the Legislature as it determines or by the board upon determining that continued operation is infeasible. Upon termination of the plan, the balances of savings plan accounts, less any distributions, refunds, fees, charges, and penalties, are sent to account owners, to the extent possible, and any unclaimed assets in the program shall revert to the state in accordance with the Uniform Unclaimed Property Act in §36-8-1 et seq. of this code.

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

(h) In order to fulfill the charitable and public purposes of this article, neither the earnings

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nor the corpus of the savings plan trust fund is subject to taxation by the state or any of its political subdivisions.

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

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§18-30-8. The College and Jumpstart Savings Administrative Account.

(a) There is hereby continued a separate special revenue account within the State Treasury titled the "college prepaid tuition and savings program administrating account", which shall hereafter be known as the College and Jumpstart Savings Administrative Account. The board shall administer and make expenditures from the account for the purposes of implementing, operating, and maintaining the trust funds, the program created by this article, and the program created by §18-30A-1 *et seq*. of this code.

(b) The administrative account shall receive all fees, charges, and penalties collected by the board. Expenditures from the fund are authorized from collections. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund to be expended as authorized by this section.

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§18-30-9. Income tax deduction for purchasers.

As provided in section twelve-a, article twenty-one, chapter eleven of this code, any payment made under a prepaid tuition contract or other college savings plan administered by the board, pursuant to the provisions of this article, is eligible for a tax deduction.

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§18-30-10. Reports and account; annual audit.

(a) In addition to any other requirements of this article, the board shall:

(1) Provide annual statements on the savings plan accounts to the respective account owners; and

(2) Prepare, or have prepared, a quarterly report on the status of the program, including the trust funds and the administrative account, and provide a copy of the report to the Joint Committee on Government and Finance and the Legislative Oversight commission on education accountability.

(b) All accounts of the board, including the trust funds, are subject to an annual external audit by an accounting firm, selected by the board, of which all members or partners assigned to head the audit are members of the American institute of certified public accountants. The audit shall comply with the requirements of §5A-2-33 of this code.

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§18-30-11. Financial aid eligibility.

The calculations of a beneficiary's eligibility for state student financial aid for higher education may not include or consider the value of distributions available in a savings plan account.

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§18-30-12. Confidentiality.

Any information that would tend to disclose the identity of a beneficiary, account owner or donor is exempt from the provisions of chapter twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information in a statistical or other form which does not identify the individuals involved or provide personal information. Account owners are permitted access to their own personal information.

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§18-30-13. Remaining obligations of the Prepaid Tuition Program and Escrow Fund.

(a) The Prepaid Tuition Trust Escrow Fund, which was previously authorized by §18-30-6 of this code, is continued in the State Treasury to guarantee payment of outstanding obligations of the Prepaid Tuition Plan arising after the plan's closure. The board is authorized to take any action necessary to satisfy obligations of the Prepaid Tuition Plan arising after the plan's closure.

(b) The Prepaid Tuition Trust Escrow Fund shall consist of any moneys in the fund on the effective date of this section. Up to $1,000,000 may be maintained in the Prepaid Tuition Trust Escrow Fund for a period not to exceed 10 years following the closure of the Prepaid Tuition Fund for the purpose of satisfying any claims against the Prepaid Tuition Trust Plan arising after the plan's closure: *Provided*, That upon the expiration of 10 years following the date of closure of the Prepaid Tuition Trust Fund or when the balance of the Prepaid Tuition Trust Escrow Fund is zero, whichever occurs first, the account shall be closed and any moneys remaining in the Prepaid Tuition Trust Escrow Fund upon said fund's closure shall revert to the state's General Revenue Fund.

(c) The board shall invest the Prepaid Tuition Trust Escrow Fund, in accordance with the provisions of this article, in fixed income securities, and all earnings of the fund shall accrue to the fund and be available for expenditure in accordance with this section.

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§18-30-14.

Repealed.

Acts, 1997 Reg. Sess., Ch. 80.

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§18-30-15.

Repealed.

Acts, 1997 Reg. Sess., Ch. 80.

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§18-30-16.

Repealed.

Acts, 1997 Reg. Sess., Ch. 80.

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§18-30-17.

Repealed.

Acts, 1997 Reg. Sess., Ch. 80.

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