

No: 3196  
Veto

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

— ● —

# ENROLLED

HOUSE BILL No. 3196

(By Delegate R. Harman + Schifano)

— ● —

Passed June 14, 1987

In Effect From Passage

**ENROLLED**  
**H. B. 3196**

(By DELEGATES R. HARMAN and SCHIFANO)

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[Passed June 14, 1987; in effect from passage.]

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AN ACT to amend and reenact section nineteen-a, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article twenty-one, chapter eleven of said code; to amend and reenact section nineteen-b, article five, chapter eighteen of said code; to amend and reenact section six, article twenty-two-a of said chapter eighteen; to amend article twenty-two-d of said chapter eighteen by adding thereto a new section, designated section ten; to further amend said chapter eighteen by adding thereto a new article, designated article twenty-two-e; and to further amend said chapter eighteen by adding thereto a new article, designated article thirty, all relating to extending for one year the authority for transferring between items of allocation or appropriation with general revenue accounts of state institutions of higher education; allowing a state income tax deduction for payments made under a tuition prepayment contract or tuition trust account contract; providing for student assistance loans for attendance in adult education classes; loans to be administered and received by the state board of education; specifying certain regulations regarding the loans; limiting liability of state board of education; specifying manner of appropriation, allocation and reallocation of moneys for eminent scholars endowment trust fund; creating the distinguished professors endowment trust fund act; and creating the West Virginia education trust act.

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

That section nineteen-a, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twelve, article twenty-one, chapter eleven of said code be amended and reenacted; that section nineteen-b, article five, chapter eighteen of said code be amended and reenacted; that section six, article twenty-two-a of said chapter eighteen be amended and reenacted; that article twenty-two-d of said chapter eighteen be amended by adding thereto a new section, designated section ten; that said chapter eighteen be further amended by adding thereto a new article, designated article twenty-two-e; and that said chapter eighteen be further amended by adding thereto a new article, designated article thirty, all to read as follows:

## **CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.**

### **ARTICLE 2. BUDGET DIVISION.**

#### **§5A-2-19a. Authorizing transfers between items of allocation or appropriation within general and special revenue accounts of state institutions of higher education; expiration of authority to authorize transfers.**

1     (a) Notwithstanding the provisions of section nineteen  
2     of this article and if authorized by a majority of the  
3     board of advisors of the institution of higher education,  
4     the president of such institution may transfer moneys  
5     within the general revenue account or accounts and  
6     between items of allocation or appropriation therein or  
7     subaccounts thereof: *Provided*, That no such transfer  
8     may increase the moneys allocated or appropriated to  
9     any personal services item or subaccount of a general  
10    revenue account of such institution. A request for such  
11    transfer of moneys, when desired, shall be made in  
12    writing by the president of the institution and shall be  
13    submitted to each member of the board of advisors for  
14    such institution. Whenever such request is approved, the

15 board of regents shall be notified of such authorization,  
16 and the transfer shall have been effected prior to any  
17 expenditure of the moneys so transferred. Not more  
18 than five percent of the total allocation or appropriation  
19 in any general revenue account of an institution may be  
20 transferred within such account and between the items  
21 of allocation subaccounts thereof or within such account  
22 and between the items of appropriation thereof. The  
23 authority herein granted shall expire on the thirtieth  
24 day of June, one thousand nine hundred eighty-eight.

25 (b) Notwithstanding the provisions of section nineteen  
26 of this article and any other provisions of this code to  
27 the contrary and notwithstanding the purposes for  
28 which any moneys deposited into special accounts were  
29 collected, the board of regents shall periodically  
30 examine the balance in every special revenue account  
31 established in the state treasury for the board of regents  
32 or a state institution of higher education, and, if the  
33 board determines that a balance exists in excess of that  
34 reasonably required to accomplish the purposes for  
35 which the account was established, the board may  
36 transfer any portion of the excess balance to separate  
37 accounts to be created for each institution which  
38 receives transfers pursuant to this subsection for use by  
39 such state institution of higher education to address its  
40 highest academic priorities in accordance with rules to  
41 be established by the board: *Provided*, That no moneys  
42 so transferred shall be used for personal services except  
43 such amounts as shall be mandated by articles twenty-  
44 two and twenty-six-b of chapter eighteen: *Provided*,  
45 *however*, That no funds shall be transferred pursuant to  
46 this subsection from accounts established under sections  
47 one, one-a and one-b, article twenty-four, chapter  
48 eighteen of the code: *Provided further*, That no funds in  
49 any special account established for a specific state  
50 institution of higher education shall be transferred for  
51 use by another state institution of higher education. The  
52 board shall annually, not later than July first of each  
53 year, provide to the legislative auditor an account of any  
54 such transfers under this section. The authority herein  
55 granted shall expire on the thirtieth day of June, one  
56 thousand nine hundred eighty-eight.

## CHAPTER 11. TAXATION.

## ARTICLE 21. PERSONAL INCOME TAX.

## PART I. GENERAL.

**§11-21-12. West Virginia adjusted gross income of resident individual.**

1     (a) *General.* — The West Virginia adjusted gross  
2     income of a resident individual means his federal  
3     adjusted gross income as defined in the laws of the  
4     United States for the taxable year with the modifica-  
5     tions specified in this section.

6     (b) *Modifications increasing federal adjusted gross*  
7     *income.* — There shall be added to federal adjusted gross  
8     income unless already included therein the following  
9     items, except that modifications (5), (6) and (7) shall be  
10    required only with respect to tax periods ending on or  
11    after the first day of January, one thousand nine  
12    hundred eighty-two:

13    (1) Interest income on obligations of any state other  
14    than this state, or of a political subdivision of any such  
15    other state unless created by compact or agreement to  
16    which this state is a party;

17    (2) Interest or dividend income on obligations or  
18    securities of any authority, commission or instrumental-  
19    ity of the United States, which the laws of the United  
20    States exempt from federal income tax but not from  
21    state income taxes;

22    (3) Income taxes imposed by this state or any other  
23    taxing jurisdiction, to the extent deductible in determin-  
24    ing federal adjusted gross income and not credited  
25    against federal income tax: *Provided*, That this modifi-  
26    cation shall not be made for taxable years beginning  
27    after the thirty-first day of December, one thousand nine  
28    hundred eighty-six;

29    (4) Interest on indebtedness incurred or continued to  
30    purchase or carry obligations or securities the income  
31    from which is exempt from tax under this article, to the  
32    extent deductible in determining federal adjusted gross  
33    income;

34 (5) Interest on a depository institution tax-exempt  
35 savings certificate which is allowed as an exclusion from  
36 federal gross income under section 128 of the Internal  
37 Revenue Code, for the federal taxable year;

38 (6) The amount allowed as a deduction from federal  
39 gross income under section 221 of the Internal Revenue  
40 Code by married couples who file a joint federal return  
41 for the federal taxable year: *Provided*, That this  
42 modification shall not be made for taxable years  
43 beginning after the thirty-first day of December, one  
44 thousand nine hundred eighty-six; and

45 (7) The deferral value of certain income that is not  
46 recognized for federal tax purposes, which value shall  
47 be an amount equal to a percentage of the amount  
48 allowed as a deduction in determining federal adjusted  
49 gross income pursuant to the accelerated cost recovery  
50 system under section 168 of the Internal Revenue Code  
51 for the federal taxable year, with the percentage of the  
52 federal deduction to be added as follows with respect to  
53 the following recovery property: Three-year property —  
54 no modification; five-year property — ten percent; ten-  
55 year property — fifteen percent; fifteen-year public  
56 utility property — twenty-five percent; and fifteen-year  
57 real property — thirty-five percent: *Provided*, That this  
58 modification shall not apply to any person whose federal  
59 deduction is determined by the use of the straight line  
60 method: *Provided, however*, That this modification shall  
61 not be made for taxable years beginning after the thirty-  
62 first day of December, one thousand nine hundred  
63 eighty-six;

64 (c) *Modifications reducing federal adjusted gross*  
65 *income.* — There shall be subtracted from federal  
66 adjusted gross income to the extent included therein:

67 (1) Interest income on obligations of the United States  
68 and its possessions to the extent includable in gross  
69 income for federal income tax purposes;

70 (2) Interest or dividend income on obligations or  
71 securities of any authority, commission or instrumental-  
72 ity of the United States to the extent includible in gross  
73 income for federal income tax purposes but exempt

74 from state income taxes under the laws of the United  
75 States, including federal interest dividends paid to  
76 shareholders of a regulated investment company, under  
77 section 852 of the Internal Revenue Code for taxable  
78 years ending after the thirtieth day of June, one  
79 thousand nine hundred eighty-seven;

80 (3) Any gain from the sale or other disposition of  
81 property having a higher fair market value on the first  
82 day of January, one thousand nine hundred sixty-one,  
83 than the adjusted basis at said date for federal income  
84 tax purposes: *Provided*, That the amount of this  
85 adjustment is limited to that portion of any such gain  
86 which does not exceed the difference between such fair  
87 market value and such adjusted basis: *Provided*,  
88 *however*, That if such gain is considered a long-term  
89 capital gain for federal income tax purposes, the  
90 modification shall be limited to forty percent of such  
91 portion of the gain: *Provided further*, That this modifi-  
92 cation shall not be made for taxable years beginning  
93 after the thirty-first day of December, one thousand nine  
94 hundred eighty-six;

95 (4) The amount of any refund or credit for overpay-  
96 ment of income taxes imposed by this state, or any other  
97 taxing jurisdiction, to the extent properly included in  
98 gross income for federal income tax purposes;

99 (5) Annuities, retirement allowances, returns of  
100 contributions and any other benefit received under the  
101 public employees retirement system, the department of  
102 public safety death, disability and retirement fund, the  
103 state teachers retirement system and all forms of  
104 military retirement, including regular armed forces,  
105 reserves and national guard, including any survivorship  
106 annuities derived therefrom, to the extent includible in  
107 gross income for federal income tax purposes: *Provided*,  
108 That notwithstanding any provisions in this code to the  
109 contrary this modification shall be limited to the first  
110 two thousand dollars of benefits received under the  
111 public employees retirement system, the state teachers  
112 retirement system and all forms of military retirement  
113 including regular armed forces, reserves and national  
114 guard for taxable years beginning after the thirty-first

115 day of December, one thousand nine hundred eighty-six;

116 (6) Retirement income received in the form of pen-  
117 sions and annuities after the thirty-first day of De-  
118 cember, one thousand nine hundred seventy-nine, under  
119 any police or firemen's retirement system, including any  
120 survivorship annuities derived therefrom, to the extent  
121 includible in gross income for federal income tax  
122 purposes;

123 (7) Federal adjusted gross income in the amount of six  
124 thousand dollars received from any source after the  
125 thirty-first day of December, one thousand nine hundred  
126 eighty-six, by any person who has attained the age of  
127 sixty-five on or before the last day of the taxable year,  
128 or by any person certified by proper authority as  
129 permanently and totally disabled, regardless of age, on  
130 or before the last day of the taxable year, to the extent  
131 includible in federal adjusted gross income for federal  
132 tax purposes: *Provided*, That if a person has a medical  
133 certification from a prior year and he is still perman-  
134 ently and totally disabled, a copy of the original  
135 certificate is acceptable as proof of disability. A copy of  
136 the form filed for the federal disability income tax  
137 exclusion is acceptable: *Provided, however*, That

138 (i) Where the total modification under subdivisions  
139 (1), (2), (5) and (6) of this subsection is eight thousand  
140 dollars per person or more, no deduction shall be  
141 allowed under this subdivision, and

142 (ii) Where the total modification under subdivisions  
143 (1), (2), (5) and (6) of this subsection is less than eight  
144 thousand dollars per person, the total modification  
145 allowed under this subdivision for all gross income  
146 received by such person shall be limited to the lesser of  
147 six thousand dollars or the difference between eight  
148 thousand dollars and the sum of modifications under  
149 such subdivisions;

150 (8) Federal adjusted gross income in the amount of six  
151 thousand dollars received from any source after the  
152 thirty-first day of December, one thousand nine hundred  
153 eighty-six, by the surviving spouse of any person who  
154 had attained the age of sixty-five or who had been



155 certified as permanently and totally disabled, to the  
156 extent includible in federal adjusted gross income for  
157 federal tax purposes: *Provided*, That

158 (i) Where the total modification under subdivisions  
159 (1), (2), (5), (6) and (7) of this subsection is eight thousand  
160 dollars or more, no deduction shall be allowed under this  
161 subdivision, and

162 (ii) Where the total modification under subdivisions  
163 (1), (2), (5), (6) and (7) of this subsection is less than eight  
164 thousand dollars per person, the total modification  
165 allowed under this subdivision for all gross income  
166 received by such person shall be limited to the lesser of  
167 six thousand dollars or the difference between eight  
168 thousand dollars and the sum of such subdivisions;

169 (9) Any pay or allowances received, after the thirty-  
170 first day of December, one thousand nine hundred  
171 seventy-nine, by West Virginia residents who have not  
172 attained the age of sixty-five, as compensation for active  
173 service in the armed forces of the United States:  
174 *Provided*, That such deduction shall be limited to an  
175 amount not to exceed four thousand dollars: *Provided*,  
176 *however*, That this modification shall not be made for  
177 taxable years beginning after the thirty-first day of  
178 December, one thousand nine hundred eighty-six;

179 (10) Gross income to the extent included in federal  
180 adjusted gross income under section 86 of the Internal  
181 Revenue Code for federal income tax purposes:  
182 *Provided*, That this modification shall not be made for  
183 taxable years beginning after the thirty-first day of  
184 December, one thousand nine hundred eighty-six;

185 (11) The amount of any lottery prize awarded by the  
186 West Virginia state lottery commission, to the extent  
187 properly included in gross income for federal income tax  
188 purposes;

189 (12) The amount of payment made under a tuition  
190 prepayment contract or tuition trust account contract,  
191 or both, as provided under section fourteen, article  
192 thirty, chapter eighteen of this code; and

193 (13) Any other income which this state is prohibited

194 from taxing under the laws of the United States.

195 (d) *Modification for West Virginia fiduciary adjust-*  
196 *ment.* — There shall be added to or subtracted from  
197 federal adjusted gross income, as the case may be, the  
198 taxpayer's share, as beneficiary of an estate or trust, of  
199 the West Virginia fiduciary adjustment determined  
200 under section nineteen of this article.

201 (e) *Partners.* — The amounts of modifications re-  
202 quired to be made under this section by a partner, which  
203 relate to items of income, gain, loss or deduction of a  
204 partnership, shall be determined under section seven-  
205 teen of this article.

206 (f) *Husband and wife.* — If husband and wife deter-  
207 mine their federal income tax on a joint return but  
208 determine their West Virginia income taxes separately,  
209 they shall determine their West Virginia adjusted gross  
210 incomes separately as if their federal adjusted gross  
211 incomes had been determined separately.

## CHAPTER 18. EDUCATION.

### ARTICLE 5. COUNTY BOARD OF EDUCATION.

#### **§18-5-19b. Adult education classes and programs; tuition and student assistance loans; authority of county boards to contract with federal agencies.**

1 (a) The board of education of any county shall have  
2 authority to provide classes and programs for adult  
3 education and to charge tuition for members of such  
4 classes and/or programs, such tuitions not to exceed in  
5 any case the actual cost of operation of such classes  
6 and/or programs. The county board of education shall  
7 also have authority to enter into contracts of agreement  
8 with authorized agencies of the federal government for  
9 the education of adults and to provide, assemble and  
10 house materials and equipment for efficient instruction  
11 in any and all such classes and/or programs, contract  
12 for instruction for the term of the class and/or program  
13 to be offered, and to use school facilities by way of  
14 buildings and equipment under the control of said  
15 board. Any funds accruing from such tuitions shall be

16 credited to adult education in the current expense fund  
17 of the county board of education and reported each year  
18 as of June thirtieth in the manner required for other  
19 financial reports of the board.

20 (b) Student assistance loans for attendance in adult  
21 education classes and/or programs shall be available in  
22 accordance with the applicable provisions of article  
23 twenty-two-d of this chapter to an eligible student  
24 pursuant to regulations promulgated by the state board  
25 of education, who shall administer such loan program  
26 as it relates to adult education classes and/or programs,  
27 and who shall stand in the place of the board of regents  
28 for purposes of loans received pursuant to this section.  
29 The limitations on investment provided for in section  
30 four of said article twenty-two-d shall remain in full  
31 force and effect.

32 State board regulations shall be in accordance with  
33 the provisions of article twenty-two-d to the extent  
34 practicable, except that the regulations shall provide for  
35 the following:

36 (1) The eligible student must be a high school  
37 graduate or equivalent or must be eighteen years of age;

38 (2) Maximum loan amounts and the maximum  
39 number of loans received by any eligible student shall  
40 be prescribed by regulation of the state board;

41 (3) The loan agreement may provide for the repay-  
42 ment of interest only until such time as the eligible  
43 student is no longer enrolled in the approved adult  
44 education class and/or program. However, in all cases,  
45 repayment of the principal shall commence at such time  
46 as the eligible student is no longer enrolled in the adult  
47 education class or program for which a loan or loans  
48 were received pursuant to this section: *Provided*, That  
49 an eligible student who enrolls in an institution of  
50 higher education subsequent to such adult education  
51 enrollment may defer such payment until completion or  
52 withdrawal from the institution of higher education; and

53 (4) Notwithstanding the time in which the eligible  
54 lending institution may provide for the repayment of the

55 loan, the linked deposit shall be terminated at the  
56 maturity date next succeeding complete repayment or  
57 five years after cessation of enrollment, whichever is  
58 sooner.

59 The state board is not liable to any eligible lending  
60 institution in any manner for payment of the principal  
61 or interest on the loan to an eligible student.

62 (c) The board of education of any county shall have  
63 authority to enter into contracts of agreement with  
64 temporary teachers for the purpose of teaching adult  
65 education classes or programs which do not exceed  
66 ninety days or seven hundred twenty hours. The  
67 appointment of a temporary teacher is a contract of  
68 agreement for the duration of the class or program, and  
69 the temporary teacher shall not accrue benefits of  
70 retirement, personal leave, medical or life insurance,  
71 seniority rights, or any other provisions relating to  
72 salaries, wages and benefits pursuant to article four,  
73 chapter eighteen-a of this code: *Provided*, That such  
74 temporary appointment does not preclude the benefits  
75 mandated by federal law, workers' compensation and  
76 liability insurance coverage for the duration of the class  
77 or program.

**ARTICLE 22A. EMINENT SCHOLARS ENDOWMENT TRUST  
FUND ACT.**

**§18-22A-6. Administration of fund.**

1 (a) Moneys from the general revenue of the state shall  
2 be appropriated by separate line item in the budget for  
3 faculty endowments to be used solely for the purposes  
4 of this article and of article twenty-two-e of this chapter.  
5 The board shall allocate the appropriation in accordance  
6 with policies which shall be adopted for this purpose,  
7 and any funds allocated and not utilized to establish  
8 endowed chairs for eminent scholars at state colleges  
9 and universities under this article may be reallocated in  
10 accordance with such board policies for the sole purpose  
11 of establishing distinguished professorships at state  
12 colleges and universities pursuant to said article twenty-  
13 two-e.

14 The board may allocate state appropriations to an

15 account only when private moneys have also been  
16 allocated to that account and shall require a minimum  
17 of one private dollar for each dollar of state appropri-  
18 ation. The board shall endeavor, whenever possible, to  
19 allocate one dollar of state appropriations for every two  
20 dollars of private moneys allocated. The board may also  
21 allocate only private moneys to an account.

22 Unless otherwise directed by executive order, the  
23 payment of state appropriations to the fund shall be  
24 made in twelve equal monthly installments, beginning  
25 on the last day of the first month of the fiscal year.

26 (b) The board may, for purposes of investment,  
27 commingle any moneys constituting principal received  
28 from whatever source to the extent allowed under the  
29 terms of the granting of such moneys and shall endeavor  
30 to obtain the highest possible rate of return consistent  
31 with the preservation of the principal. Consistent with  
32 the terms of the appropriation, grant, gift or bequest,  
33 and the provisions of this section, the board may use any  
34 income, principal or combination of income and princi-  
35 pal as it may deem prudent to finance the establishment  
36 of each endowed chair.

37 (c) The board shall designate endowed chairs at the  
38 various colleges and universities as it may deem  
39 appropriate. For each chair so established it shall  
40 designate a separate account administered by the board  
41 to which moneys from the fund shall be deposited. Such  
42 moneys may continue to be deemed principal for  
43 purposes of investment and commingling pursuant to  
44 subsection (b) of this section, and any income, loss or  
45 gain, or increase or decrease in value may be allocated  
46 by the board on such reasonable basis as is prescribed  
47 by the board.

48 (d) For the purpose of encouraging the donation of  
49 private moneys to the fund, the board may designate  
50 specific chairs or specific areas of academic study as  
51 subjects of challenge grants. A specific chair, or a chair  
52 in a designated academic area, shall be established  
53 whenever the total amount of principal and interest  
54 dedicated to it reaches one hundred fifty thousand

55 dollars, with at least one half of the principal being from  
56 private sources.

57 When one hundred fifty thousand dollars has accum-  
58 ulated in the account dedicated to any one chair, the  
59 board shall notify the president of the appropriate  
60 college or university that an appointment to that chair  
61 shall be made.

62 (e) The president of the college or university shall use  
63 at least two thirds of the income from moneys allocated  
64 to an account to supplement the salary of the person  
65 appointed to the endowed chair created by such account.  
66 The sum paid from the fund to the person so appointed  
67 shall be in addition to the contract salary except as  
68 otherwise provided in this section. Such president may  
69 allocate one third or any part thereof to provide or assist  
70 in providing secretarial or other support services for the  
71 endowed chair or may return one third or any part  
72 thereof to the board with the direction that such amount  
73 be added to the principal amount in the account of the  
74 endowed chair from which such income was derived to  
75 protect its future yield.

76 (f) Whenever the endowed chair's salary supplement  
77 received pursuant to this subsection equals fifty percent  
78 of the contract salary, the president of the college or  
79 university may return all or a portion of the excess  
80 amount to the fund, and the board shall designate a new  
81 account for the purpose of establishing another chair at  
82 the same institution or an existing account at the same  
83 institution for receipt of the moneys so returned:  
84 *Provided*, That when the principal amount of any chair  
85 reaches the sum of one million dollars or more, no state  
86 salary may be paid to the holder of the chair, but such  
87 person's entire salary shall be paid from the interest  
88 income.

89 (g) When the total allocations designated for a chair  
90 from both public and private sources do not equal or  
91 exceed one hundred fifty thousand dollars within five  
92 years from the date of the establishment of the account,  
93 the board may designate a new or existing chair at the  
94 institution wherein the fund was established as the

95 recipient of the moneys, regardless of the terms of the  
96 appropriation, grant, gift or bequest, except where  
97 return of the moneys is required by the terms of the  
98 grant, gift or bequest.

ARTICLE 22D. HIGHER EDUCATION STUDENT ASSISTANCE  
LOAN PROGRAM.

**§18-22D-10. Applicability to adult education.**

1 The provisions of this article, except as to the  
2 administration by the board of regents and such other  
3 exceptions as may be provided for in section nineteen-  
4 b, article five of this chapter, or such regulations as may  
5 be promulgated, shall apply to all student assistance  
6 loans for adult education authorized and provided for in  
7 said section nineteen-b. Such adult education loans shall  
8 be administered by the state board of education in  
9 accordance with regulations adopted pursuant to this  
10 article, where practicable, and the provisions of section  
11 nineteen-b, article five of this chapter: *Provided*, That  
12 for purposes of applying the provisions of this article to  
13 adult education loans, references to the board of regents  
14 shall be deemed references to the state board of  
15 education.

ARTICLE 22E. DISTINGUISHED PROFESSORS ENDOWMENT  
TRUST FUND ACT.

**§18-22E-1. Legislative findings.**

1 The Legislature hereby finds that the essence of  
2 excellence in higher education is the attraction and  
3 retention of outstanding faculty; that however necessary  
4 modern facilities and efficient and effective administra-  
5 tion may be, the faculty provides the catalyst by which  
6 all the elements of higher education combine to offer a  
7 quality education. The Legislature further finds that the  
8 attraction and retention of outstanding faculty at all  
9 state colleges and universities, particularly those who  
10 have attained distinction as scholars and teachers,  
11 requires a long-term and permanent commitment from  
12 both public and private sources, that private support  
13 will help strengthen the commitment of citizens and  
14 organizations to the promotion of excellence in higher  
15 education and will provide moneys for salaries compet-

16 itive with those paid to scholars of similar eminence  
17 working for this country's leading colleges and  
18 universities.

19 The Legislature further finds that the appropriation  
20 of public moneys to attract and retain outstanding  
21 faculty and to encourage the commitment of private  
22 moneys with a view toward the accumulation of such  
23 moneys in a trust fund for such purposes is a proper  
24 annual expense of the state, and that the establishment  
25 of a distinguished professors trust fund is a proper  
26 means of providing for the advancement of public  
27 higher education in this state.

#### **§18-22E-2. Definitions.**

1 Whenever the following terms are used in this article,  
2 they shall have the meanings described below:

3 (a) "Board of directors" or "board" means the  
4 members of the board of directors of the distinguished  
5 professors endowment trust fund;

6 (b) "Distinguished professorship" means the position  
7 created pursuant to section six of this article to which  
8 a professor shall be appointed;

9 (c) "Fund" means the distinguished professors endow-  
10 ment trust fund;

11 (d) "Contract salary" means that portion of the  
12 distinguished professors's financial compensation paid  
13 from state moneys but shall not be construed to include  
14 moneys from the distinguished professors endowment  
15 trust fund.

#### **§18-22E-3. Establishment of fund; corporation to administer; board of directors.**

1 There is hereby established the distinguished profes-  
2 sors endowment trust fund, a public corporation, for the  
3 purpose of administering the fund described in this  
4 article. The board of directors of this corporation shall  
5 be those persons appointed and serving as members of  
6 the board of regents.



**§18-22E-4. Corporate powers.**

1 (a) The officers of the corporation shall be the officers  
2 of the board of regents. The procedural rules of the  
3 board of regents shall be used in conducting meetings.

4 (b) The corporation is hereby expressly authorized to  
5 receive appropriations of public moneys and private or  
6 public grants, gifts or bequests. It may hold, invest or  
7 reinvest such moneys and expend the income therefrom  
8 as hereinafter provided. The board may determine  
9 which of the properties and moneys received by it, other  
10 than public appropriations, grants, bequests and  
11 specific gifts, are income and which are additions to  
12 principal.

13 (c) The board shall be exempt from liability for any  
14 loss or decrease in value of the assets or income of the  
15 fund, except as such losses or decreases in value are  
16 shown to be the result of bad faith, gross negligence or  
17 intentional misconduct.

18 For the purpose of valuing assets, the board may use  
19 any commonly accepted techniques of appraisal or  
20 commonly accepted principles of accounting. No agency  
21 of government nor any person, natural or corporate,  
22 shall receive any part of the principal or income from  
23 any appropriation, grant, gift or bequest as a fee for the  
24 acquisition or administration of the appropriation,  
25 grant, gift or bequest.

26 (d) The board shall adhere at all times to the terms  
27 and limitations of any appropriation, grant, gift or  
28 bequest received. However, the board may refuse to  
29 receive any grant, gift or bequest which incorporates  
30 terms and limitations which they deem to be  
31 unacceptable.

32 (e) The board may in its sole discretion borrow money  
33 when necessary in order to avoid the untimely sale of  
34 assets. At no time, however, may the board incur any  
35 debt obligation for such purposes which exceeds twelve  
36 months in duration.

**§18-22E-5. Duties of board of regents.**

1 The board of regents shall provide to the fund all  
2 necessary secretarial services, office space, staff and

3 other assistance required without charge or appropria-  
4 tion therefor.

**§18-22E-6. Administration of fund.**

1 (a) Moneys from the general revenue of the state shall  
2 be appropriated by separate line item in the budget for  
3 faculty endowments to be used solely for the purposes  
4 of this article and of article twenty-two-a of this chapter.  
5 The board shall allocate the appropriation in accordance  
6 with policies which shall be adopted for this purpose,  
7 and any funds allocated and not utilized to establish  
8 distinguished professorships at state colleges and  
9 universities under this article may be reallocated in  
10 accordance with such board policies for the sole purpose  
11 of establishing endowed chairs for eminent scholars at  
12 state colleges and universities pursuant to said article  
13 twenty-two-a.

14 The board may allocate state appropriations to an  
15 account only when private moneys have also been  
16 allocated to that account and shall require a minimum  
17 of one private dollar for each dollar of allocation from  
18 state appropriation. The board shall endeavor, whenever  
19 possible, to allocate one dollar of state appropriations for  
20 every two dollars of private moneys allocated. The board  
21 may also allocate only private moneys to an account.

22 Unless otherwise directed by executive order, the  
23 payment of state appropriations to the fund shall be  
24 made in twelve equal monthly installments, beginning  
25 on the last day of the first month of the fiscal year.

26 (b) The board may, for purposes of investment,  
27 commingle any moneys constituting principal received  
28 from whatever source to the extent allowed under the  
29 terms of the granting of such moneys and shall endeavor  
30 to obtain the highest possible rate of return consistent  
31 with the preservation of the principal. Consistent with  
32 the terms of the appropriation, grant, gift or bequest,  
33 and the provisions of this section, the board may use any  
34 income, principal or combination of income and princi-  
35 pal as it may deem prudent to finance the establishment  
36 of each distinguished professorship.

37 (c) The board shall designate distinguished professor-  
38 ships at the various colleges and universities as it may  
39 deem appropriate. For each professorship so established  
40 it shall designate a separate account administered by  
41 the board to which moneys from the fund shall be  
42 deposited. Such moneys may continue to be deemed  
43 principal for purposes of investment and commingling  
44 pursuant to subsection (b) of this section, and any  
45 income, loss or gain, or increase or decrease in value  
46 may be allocated by the board on such reasonable basis  
47 as is prescribed by the board.

48 (d) For the purpose of encouraging the donation of  
49 private moneys to the fund, the board may designate or  
50 specify areas as subjects of challenge grants. A specific  
51 professorship in a designated academic area shall be  
52 established whenever the total amount of principal and  
53 interest dedicated to it reaches twenty thousand dollars,  
54 with at least one half of the principal being from private  
55 sources.

56 When twenty thousand dollars has accumulated in the  
57 account dedicated to any one professorship, the board  
58 shall notify the president of the appropriate college or  
59 university that an appointment to that professorship  
60 may be made.

61 (e) The president of the college or university may use  
62 the income and up to ten percent of that portion of the  
63 principal of moneys allocated to an account that is in  
64 excess of the amount that is the sum of the total state  
65 appropriation to that account plus an equal amount  
66 contributed from private sources. The president of the  
67 college or university may use such moneys to supple-  
68 ment the salary of the person appointed to the distin-  
69 guished professorship created by such account. The sum  
70 paid from the fund to the person so appointed shall be  
71 in addition to the contract salary except as otherwise  
72 provided in this section. Such president may allocate an  
73 additional ten percent or any part thereof of such excess  
74 principal to provide or assist in providing secretarial or  
75 other support services for the distinguished  
76 professorship.

77 (f) Whenever the account for a distinguished profes-  
78 sorship equals one hundred fifty thousand dollars, the  
79 board, on recommendation of the president of the college  
80 or university, may convert the account to an eminent  
81 scholars account pursuant to the provisions of article  
82 twenty-two-a of this chapter: *Provided*, That when the  
83 principal amount of any account reaches the sum of one  
84 million dollars or more, no state salary may be paid to  
85 the holder of the professorship, but such person's entire  
86 salary shall be paid from the interest income.

87 (g) When the total allocations designated for a  
88 distinguished professorship from both public and  
89 private sources do not equal or exceed twenty thousand  
90 dollars within five years from the date of the establish-  
91 ment of the account, the board may designate a new or  
92 existing professorship at the institution wherein the  
93 fund was established as the recipient of the moneys,  
94 regardless of the terms of the appropriation, grant, gift  
95 or bequest, except where return of the moneys is  
96 required by the terms of the grant, gift or bequest.

**§18-22E-7. Selection of distinguished professors.**

1 The board of regents shall establish criteria for the  
2 selection of persons to be appointed as distinguished  
3 professors established pursuant to this article. Such  
4 professorships may be filled from either within or  
5 outside the faculty of the college or university, and  
6 outstanding teaching ability shall be part of the criteria  
7 for appointment. The board may establish criteria  
8 which exceeds the provisions of this section.

**§18-22E-8. Authorization to solicit private moneys; terms  
of grants; reports to board of directors;  
handling of moneys.**

1 Each college and university, and each dean and  
2 department chair within each college or university, is  
3 hereby authorized to solicit moneys for distinguished  
4 professorships pursuant to this article. In order to  
5 maximize the effective use of moneys raised, persons or  
6 institutions soliciting moneys shall endeavor, insofar as  
7 is possible, to secure private grants, gifts or bequests  
8 which are unlimited as to their use. All persons and

9 institutions engaged in soliciting moneys shall apprise  
10 the board of their actions and provide periodic reports,  
11 at least once each fiscal year, regarding the amounts  
12 secured and, upon receipt of any moneys, shall forward  
13 them forthwith to the board for deposit in accordance  
14 with section six of this article.

**§18-22E-9. Annual reports.**

1 The board shall make an annual report to the joint  
2 committee on government and finance of the West  
3 Virginia Legislature no later than the first day of  
4 December of each year setting forth with specificity the  
5 sources of all moneys, the allocations of all moneys and  
6 such other information as the joint committee may  
require.

**ARTICLE 30. WEST VIRGINIA EDUCATION TRUST ACT.**

**§18-30-1. Title.**

1 This act shall be known and may be cited as the "West  
2 Virginia Education Trust Act."

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

1 The Legislature hereby finds and declares that it is  
2 in the best interests of the state to encourage its citizens  
3 to obtain a higher education. The Legislature further  
4 finds and declares that tuition costs at institutions of  
5 higher education are difficult for many to either afford  
6 or to predict so that they can plan for a higher  
7 education.

8 In light of these findings, the Legislature declares the  
9 purpose of this act and of the West Virginia education  
10 trust created by this act is to encourage students and  
11 their parents to plan for attendance at an institution of  
12 higher education, to enable them to finance the cost of  
13 a higher education in this state by providing economic  
14 protection against rising tuition costs at state institu-  
15 tions of higher education and economic assistance for  
16 attendance at other institutions of higher education in  
17 this state, and to enhance access to all institutions of  
18 higher education to benefit the state of West Virginia  
19 and its people.

**§18-30-3. Definitions.**

1 As used in this act, except where the context clearly  
2 requires otherwise:

3 (a) "Average tuition cost" means the weighted aver-  
4 age cost per semester for full-time, resident, undergrad-  
5 uate attendance at any state institution of higher  
6 education, such weighted average cost to be arrived at  
7 by adding the products of the cost of tuition at each state  
8 institution of higher education for full-time attendance  
9 per semester times its total number of full-time-  
10 equivalent undergraduate students during a fiscal year,  
11 and then dividing that sum by the total number of full-  
12 time-equivalent undergraduate students attending all  
13 state institutions of higher education in that fiscal year;

14 (b) "Board" means the board of directors of the West  
15 Virginia education trust described in section five of this  
16 article;

17 (c) "Contract" means a tuition prepayment contract or  
18 a tuition trust account contract, or both.

19 (d) "Fund" means the education trust fund created in  
20 section seven of this article;

21 (e) "Institution of higher education" means any public  
22 or private, nonprofit, accredited, degree-granting  
23 college or university;

24 (f) "Purchaser" means a person who makes or is  
25 obligated to make payments pursuant to a tuition  
26 prepayment contract or tuition trust account contract,  
27 or both;

28 (g) "Qualified beneficiary" means any resident of this  
29 state, or any other state, who is named as such in the  
30 tuition prepayment contract or tuition trust account  
31 contract;

32 (h) "Standard tuition unit" means the weighted  
33 average tuition cost divided by the minimum number of  
34 credits per semester required for full-time enrollment  
35 to reflect a cost per credit;

36 (i) "State institution of higher education" means state

37 colleges, state universities, and any community college  
38 as those terms are defined in section two, article twenty-  
39 six of this chapter; and

40 (j) "Trust" means the West Virginia education trust  
41 created in section four of this article;

42 (k) "Tuition" means the cost of tuition and all  
43 mandatory fees required of resident, undergraduate  
44 students per semester at state institutions of higher  
45 education including, but not limited to, fees required  
46 pursuant to sections one, one-a, one-b, and four of article  
47 twenty-four of this chapter;

48 (l) "Tuition prepayment contract" means a contract  
49 entered into by the trust and a purchaser pursuant to  
50 section eight of this article; and

51 (m) "Tuition trust account contract" means a contract  
52 entered into by the trust and a purchaser pursuant to  
53 section nine of this article.

**§18-30-4. West Virginia education trust created.**

1 (a) There is created a public body corporate and  
2 politic to be known as the West Virginia education trust.  
3 The trust may be within the office of the state treasurer  
4 and may utilize the services, personnel and equipment  
5 of such office, but the trust shall exercise its prescribed  
6 statutory powers, duties, and functions independently of  
7 the head of that office.

8 (b) The purposes, powers and duties of the West  
9 Virginia education trust are vested in and shall be  
10 exercised by a board of directors.

**§18-30-5. Appointment of board of directors; terms;  
compensation; proceedings generally.**

1 (a) The board of directors shall consist of the chancel-  
2 lor of the board of regents, who shall be the chairman  
3 of the board, the state treasurer, the state superintend-  
4 ent of schools and six other members with knowledge,  
5 skill and experience in the academic, business or  
6 financial fields, who shall be appointed by the governor,  
7 by and with the advice and consent of the Senate. Of  
8 the six appointed members, four shall be appointed from

9 nominations as follows: One shall be appointed from one  
10 or more nominees of the speaker of the House of  
11 Delegates; one shall be appointed from one or more  
12 nominees of the president of the Senate; one shall be a  
13 president of a state institution of higher education who  
14 shall be appointed from nominees of the president's  
15 council of state colleges and universities; and one shall  
16 represent the interests of private institutions of higher  
17 education located in this state. Of these four members  
18 first appointed, one shall be appointed for a term that  
19 expires on the thirty-first day of December, one  
20 thousand nine hundred eighty-eight, one shall be  
21 appointed for a term that expires on the thirty-first day  
22 of December, one thousand nine hundred eighty-nine,  
23 and two shall be appointed for a term that expires on  
24 the thirty-first day of December, one thousand nine  
25 hundred ninety. Following the expiration of these fixed  
26 terms, a member shall be appointed for a term of three  
27 years. The two remaining members of the board shall  
28 be citizens of the state who shall not otherwise be  
29 officials, appointees or employees of the state while  
30 serving on the board. These two members shall be  
31 appointed to serve at the will and pleasure of the  
32 governor, one of whom shall be designated by the  
33 governor as the president and chief executive officer of  
34 the trust and one of whom shall be designated by the  
35 governor as the vice president of the trust. A member  
36 shall serve until a successor is appointed, and a vacancy  
37 shall be filled for the balance of the unexpired term in  
38 the same manner as the original appointment. The  
39 chancellor, treasurer, state superintendent, or president  
40 of a state institution of higher education may appoint a  
41 designee to serve as a voting member of the board in  
42 such person's absence.

43 (b) Members of the board other than the president  
44 and vice-president of the trust shall serve without  
45 compensation, but shall receive reimbursement for  
46 reasonable and necessary expenses actually incurred in  
47 the performance of their duties as board members  
48 unless such member is otherwise reimbursed as an  
49 employee of the state.



50 (c) A majority of the members of the board serving  
51 shall constitute a quorum for the transaction of business  
52 at a meeting of the board, or the exercise of a power  
53 or function of the trust, notwithstanding the existence  
54 of one or more vacancies. Voting upon action taken by  
55 the board shall be conducted by majority vote of the  
56 members present in person at a meeting of the board,  
57 and, if authorized by the bylaws of the board and when  
58 a quorum is present in person at the meeting, by use  
59 of amplified telephonic equipment. The board shall meet  
60 at the call of the chair and as may be provided in the  
61 bylaws of the trust. Meetings of the board may be held  
62 anywhere within the state.

63 (d) The board is subject to the open governmental  
64 proceedings and freedom of information provisions of  
65 article nine-a, chapter six, and chapter twenty-nine-b,  
66 respectively, of this code.

**§18-30-6. Powers generally.**

1 In addition to the powers granted by other provisions  
2 of this act, the board shall have the powers necessary  
3 or convenient to carry out and effectuate the purposes,  
4 objectives, and provisions of this act, the purposes and  
5 objectives of the trust, and the powers delegated by  
6 other laws or executive orders, including, but not  
7 limited to, the power to:

8 (1) Invest any money of the trust, at the board's  
9 discretion, with the treasurer of the state of West  
10 Virginia, or in any instruments, obligations, securities,  
11 or property determined proper by the board in such  
12 manner as is prescribed for the investment of state  
13 moneys;

14 (2) Name and use depositories for its money in such  
15 manner as is prescribed for the deposit of state moneys;

16 (3) Pay money to institutions of higher education on  
17 account of a qualified beneficiary as provided in a  
18 contract made with the trust and to enter into contrac-  
19 tual or other arrangements that are necessary or  
20 appropriate with institutions of higher education in  
21 order to fulfill the trust's obligations under tuition

22 prepayment and tuition trust account contracts;

23 (4) Administer the education trust fund pursuant to  
24 section seven and other provisions of this article;

25 (5) To make, execute and deliver contracts in accor-  
26 dance with the provisions of sections eight and nine of  
27 this article, which contracts shall set forth terms and  
28 conditions relating to payment, benefits, withdrawal  
29 and any other provisions which clarify the rights and  
30 duties of the parties to the contracts;

31 (6) Delegate to its president, vice-president, or others  
32 such functions and authority as the board considers  
33 necessary or appropriate, including, but not limited to,  
34 the hiring, oversight and supervision of employees of the  
35 trust;

36 (7) Utilize the services, personnel and equipment of  
37 the treasurer's office for the provision of all or a portion  
38 of the services necessary for the management and  
39 operation of the trust;

40 (8) Provide a salary or other stipend to the president  
41 or vice president of the trust or both; contract with  
42 others, public or private, for goods and any services  
43 necessary for the management and operation of the  
44 trust, including the office of the attorney general; and  
45 engage the services of private consultants, actuaries,  
46 managers, legal counsel, and auditors for rendering  
47 professional, management, and technical assistance and  
48 advice, payable out of any money of the trust;

49 (9) Solicit and accept gifts, grants, loans, and other  
50 aids from any person or the federal, state, or a local  
51 government or any agency of the federal, state, or a local  
52 government, or to participate in any other way in any  
53 federal, state or local government program;

54 (10) Certify and approve contracts entered into with  
55 a private sector investment manager which provide  
56 equivalent benefits, rights and duties to purchasers,  
57 beneficiaries, the trust and state institutions of higher  
58 education as a contract offered by the trust, including  
59 provisions relating to administrative fees, charges and  
60 penalties, and the disposition of amounts resulting

61   therefrom;

62   (11) Charge, impose and collect administrative fees,  
63 charges and penalties in connection with any refund or  
64 transfer to an institution of higher education outside this  
65 state and provide for reasonable penalties, including  
66 default, for delinquent payment of amounts due under  
67 a tuition prepayment contract, or for fraud;

68   (12) Procure insurance against any loss in connection  
69 with the trust's property, assets or activities;

70   (13) Sue and be sued; have a seal and alter the same  
71 at pleasure; have perpetual succession; make, execute,  
72 and deliver any additional contracts, conveyances, and  
73 other instruments necessary or convenient to the  
74 exercise of its powers; and make and amend bylaws;

75   (14) Indemnify or procure insurance indemnifying  
76 any member of the board from personal loss or accoun-  
77 tability from liability resulting from a member's action  
78 or inaction as a member of the board;

79   (15) Establish policies, procedures and any other  
80 criteria necessary or convenient to implement this act;

81   (16) Impose reasonable limits on the number of  
82 participants in the trust; and

83   (17) Make transfers of trust moneys in excess of those  
84 needed to insure actuarial soundness to the higher  
85 education grant program established pursuant to article  
86 twenty-two-b of this chapter for use by minority  
87 students.

**§18-30-7. Education trust fund created; assets generally;  
expenditures; exemption from taxation;  
excess funds.**

1   (a) The education trust fund is hereby created, to be  
2 under the jurisdiction and control of the board.  
3 Payments received by the trust from purchasers on  
4 behalf of qualified beneficiaries or from any other  
5 source, public or private, shall be placed in the fund.  
6 The fund may be divided into separate accounts.

7   (b) Assets of the trust shall not be considered state

8 money. The assets of the trust shall be preserved,  
9 invested, and expended solely pursuant to and for the  
10 purposes set forth in this act and shall not be loaned or  
11 otherwise transferred or used by the state for any  
12 purpose other than the purposes of this act: *Provided,*  
13 That this section shall not be construed to prohibit the  
14 trust from investing in, by purchase or otherwise, bonds,  
15 notes, or other obligations of the state, an agency of the  
16 state, or an instrumentality of the state.

17 (c) Unless otherwise provided by resolution of the  
18 board, assets of the trust shall be expended in the  
19 following order of priority:

20 (1) To make payments to institutions of higher  
21 education on account of qualified beneficiaries;

22 (2) To make refunds upon termination of a contract;

23 (3) To pay the costs of administration, management  
24 and organization of the trust and the fund;

25 (4) To the extent moneys in the fund are in excess of  
26 those needed to insure the actuarial soundness of the  
27 trust, to make transfers of such excess funds to the West  
28 Virginia higher education grant program established  
29 pursuant to article twenty-two-b of this chapter.

30 (d) Assets of the trust may be invested in such manner  
31 as is prescribed for the investment of state funds in any  
32 instrument, obligation, security or property considered  
33 appropriate by the trust and may be pooled for invest-  
34 ment purposes with investments of the state, including,  
35 but not limited to, state pension funds.

36 (e) The property of the trust and its income and  
37 operation shall be exempt from all taxation by this state  
38 or any of its political subdivisions.

#### **§18-30-8. Tuition prepayment contract provisions.**

1 (a) A tuition prepayment contract shall provide for  
2 the purchase of tuition guarantees which may be used  
3 by a qualified beneficiary to attend any state institution  
4 of higher education to which the qualified beneficiary  
5 is admitted as an undergraduate without additional cost,  
6 except such increases as shall be mandated due to any

7 non-resident status of the beneficiary, for such number  
8 of semesters or credit hours as are purchased pursuant  
9 to and stated in the tuition prepayment contract. In the  
10 event the qualified beneficiary chooses and is admitted  
11 to a private institution of higher education in this state,  
12 the trust shall pay such institution an amount equal to  
13 the average tuition cost or the cost of the standard  
14 tuition units, whichever has been purchased. In the  
15 event the qualified beneficiary chooses and is admitted  
16 to an institution of higher education located outside this  
17 state, the trust shall pay the institution pursuant to  
18 subsection (c) of section ten of this article.

19 (b) In addition, a tuition prepayment contract shall  
20 set forth in a clear, understandable manner all of the  
21 following:

22 (1) The amount of management fee not to exceed one  
23 percent of the total investment, plus one percent of the  
24 accrued interest, for each year as to amounts under a  
25 tuition prepayment contract for which a refund is made  
26 pursuant to subsection (a) of section ten of this article,  
27 unless such refund is due to death or permanent total  
28 disability or other termination deemed by the board to  
29 warrant a full refund of the principal and all accrued  
30 interest, if any;

31 (2) The amount of withholding fee not to exceed  
32 fifteen percent of accrued earnings where a refund is  
33 made or where the benefits of a contract are transferred  
34 to an institution of higher education located outside this  
35 state, unless such institution has a reciprocal agreement  
36 with the board of regents pursuant to section ten-b,  
37 article twenty-six of this chapter and the student is  
38 enrolled in a program covered by the agreement;

39 (3) The amount of the payment or payments required  
40 from the purchaser on behalf of the qualified benefi-  
41 ciary, which payments may be in a lump sum or  
42 periodic;

43 (4) The terms and conditions for making the payment,  
44 including, but not limited to, the date or dates upon  
45 which the payment, or portions of the payment, shall be  
46 due;

47 (5) Provisions for late payment charges and for  
48 default;

49 (6) The name and age of the qualified beneficiary  
50 under the contract. The purchaser, with the approval of  
51 and on conditions determined by the trust, may subse-  
52 quently substitute another person for the qualified  
53 beneficiary originally named, but may not sell or  
54 otherwise transfer the contract without the prior  
55 approval of the trust;

56 (7) The name of the person entitled to terminate the  
57 contract, which, as provided by the contract, may be the  
58 purchaser, the qualified beneficiary, or a person to act  
59 on behalf of the purchaser or qualified beneficiary, or  
60 any combination of these persons;

61 (8) The terms and conditions under which the con-  
62 tract may be terminated or transferred out of state in  
63 accordance with section ten of this article, and the  
64 amount of the refund to which the person terminating  
65 the contract, or specifically the purchaser or designated  
66 qualified beneficiary if the contract so provides, shall be  
67 entitled upon termination. The contract shall specifi-  
68 cally state whether the trust shall refund any invest-  
69 ment income attributable to the payments;

70 (9) The period of time from the beginning to the end  
71 of which the qualified beneficiary may receive the  
72 benefits under the contract: *Provided*, That if the time  
73 in which the benefits shall commence is less than four  
74 years from the contract date, the purchaser shall specify  
75 the state institution of higher education that the  
76 qualified beneficiary shall attend, and the actual tuition  
77 at such state institution of higher education shall be  
78 used in determining the amount of payment, refund, and  
79 transfer to the extent that the amount to be transferred  
80 is less than or equal to the amount due the institution  
81 of higher education to which the benefit is transferred:  
82 *Provided, however*, That such time shall be extended for  
83 such amount of time as the qualified beneficiary enters  
84 the military at a time within which a Federal Selective  
85 Service Act is in effect;

86 (10) All other rights and obligations of the purchaser

87 and the trust; and

88 (11) Other terms, conditions and provisions as the  
89 trust considers in its sole discretion to be necessary or  
90 appropriate.

91 (c) The form of any tuition prepayment contract to be  
92 entered into by the trust shall first be approved by the  
93 board.

94 (d) A tuition prepayment contract shall be exempt  
95 from the Uniform Securities Act, chapter thirty-two of  
96 this code.

97 (e) A tuition prepayment contract may provide that,  
98 if after a number of years specified in the contract the  
99 contract has not been terminated or the qualified  
100 beneficiary's rights under the contract have not been  
101 exercised, and after the trust has made a reasonable  
102 effort to locate the purchaser and qualified beneficiary  
103 or the agent of either, the rights of the qualified  
104 beneficiary, the purchaser, or the agent of either shall  
105 be considered terminated.

**§18-30-9. Tuition trust account contract provisions.**

1 (a) A tuition trust account contract shall provide for  
2 the establishment of a trust account with the trust by  
3 the purchaser on behalf of a qualified beneficiary which  
4 shall be transferred on a semester basis to any institu-  
5 tion of higher education to which the qualified benefi-  
6 ciary is admitted to meet the cost of tuition and all  
7 mandatory fees for so many semesters as the qualified  
8 beneficiary is in attendance and funds in the account are  
9 available therefor.

10 (b) In addition, a tuition trust account contract shall  
11 set forth in a clear, understandable manner all of the  
12 following:

13 (1) The amount of management fee not to exceed one  
14 percent of the total investment, plus one percent of the  
15 accrued interest, for each year as to amounts invested  
16 and interest accrued in a tuition trust account contract  
17 for which a refund is made pursuant to subsection (a)  
18 of section ten of this article unless such refund is due

19 to death or permanent total disability or other termina-  
20 tion deemed to warrant a full refund of principal and  
21 all accrued interest, if any;

22 (2) The amount of withholding fee not to exceed  
23 fifteen percent of accrued earnings where a refund is  
24 made or where the benefits of a contract are transferred  
25 to an institution of higher education located outside this  
26 state, unless such institution has a reciprocal agreement  
27 with the board of regents pursuant to section ten-b,  
28 article twenty-six of this chapter for study in a program  
29 not offered at a state institution of higher education;

30 (3) The name and age of the qualified beneficiary  
31 under the contract. The purchaser, with the approval of  
32 and on conditions determined by the trust, may subse-  
33 quently substitute another person for the qualified  
34 beneficiary originally named, but may not sell or  
35 otherwise transfer the contract without the prior  
36 approval of the trust;

37 (4) The name of the person entitled to terminate the  
38 contract, which, as provided by the contract, may be the  
39 purchaser, the qualified beneficiary, or a person to act  
40 on behalf of the purchaser or qualified beneficiary, or  
41 any combination of these persons;

42 (5) The terms and conditions under which the con-  
43 tract may be terminated or transferred out of state in  
44 accordance with section ten of this article, and the  
45 amount of the refund to which the person terminating  
46 the contract, or specifically the purchaser or designated  
47 qualified beneficiary if the contract so provides, shall be  
48 entitled upon termination. The contract shall  
49 specifically state whether the trust shall refund any  
50 investment income attributable to the payments;

51 (6) All other rights and obligations of the purchaser  
52 and the trust; and

53 (7) Other terms, conditions and provisions as the trust  
54 considers in its sole discretion to be necessary or  
55 appropriate.

56 (c) The form of any tuition trust account contract to  
57 be entered into by the trust shall first be approved by



58 the board.

59 (d) A tuition trust account contract shall be exempt  
60 from the Uniform Securities Act, chapter thirty-two of  
61 this code.

62 (e) A tuition trust account contract may provide that,  
63 if after a number of years specified in the contract the  
64 contract has not been terminated or the qualified  
65 beneficiary's rights under the contract have not been  
66 exercised, and after the trust has made a reasonable  
67 effort to locate the purchaser and qualified beneficiary  
68 or the agent of either, the rights of the qualified  
69 beneficiary, the purchaser, or the agent of either shall  
70 be considered terminated.

**§18-30-10. Contract termination; refund; transfer of  
benefits to institutions outside this state;  
penalty; exception.**

1 (a) A tuition prepayment contract and tuition trust  
2 account contract shall authorize a termination of the  
3 contract when any one of the following occurs:

4 (1) The qualified beneficiary dies or is certified by a  
5 qualified physician to be permanently totally disabled.  
6 In such event, notwithstanding any other provisions of  
7 this article, the total investment plus all accrued  
8 interest, if any, shall be refunded to the person  
9 authorized under the contract to receive the refund;

10 (2) The qualified beneficiary is not admitted to an  
11 institution of higher education after making proper  
12 application or fails to meet the standards for continued  
13 admission to an institution of higher education;

14 (3) The qualified beneficiary certifies to the trust,  
15 after he or she has a high school diploma or has reached  
16 the age of majority, that he or she has decided not to  
17 attend an institution of higher education and requests,  
18 in writing, before the fifteenth day of July of the year  
19 in which the qualified beneficiary receives a high school  
20 diploma or reaches the age of majority, that the contract  
21 be terminated;

22 (4) The qualified beneficiary offers proof of the

23 completion of the requirements for a degree pursuant  
24 to a two-year program at an institution of higher  
25 education and chooses no further attendance at an  
26 institution of higher education;

27 (5) The qualified beneficiary enters the military at a  
28 time within which a Federal Selective Service Act is in  
29 effect; or

30 (6) Other circumstances, determined by the trust and  
31 set forth in the contract, occur.

32 (b) Such refund shall be an amount equal to the sum  
33 of payments and accrued interest, if the contract so  
34 provides, minus applicable management and withhold-  
35 ing fees and any amounts transferred to an institution  
36 of higher education prior to termination of the contract.

37 (c) A tuition prepayment contract and tuition trust  
38 account contract shall authorize a person who is entitled  
39 under the contract to transfer the benefits of the  
40 contract and to direct that payment of such benefits, less  
41 any withholding fee stated in the contract, to an  
42 institution of higher education located outside this state:  
43 *Provided*, That such withholding fee shall not be applied  
44 to any person enrolled in a program at an institution of  
45 higher education with which the board of regents has  
46 a reciprocal agreement pursuant to section ten-b, article  
47 twenty-six of this chapter and such program is covered  
48 by the agreement.

**§18-30-11. Report of account; annual audit.**

1 The board shall annually prepare or cause to be  
2 prepared an accounting of the trust, including all  
3 administrative costs and the actuarial soundness of the  
4 trust, and shall transmit a copy of the accounting to the  
5 governor, the president of the Senate, the speaker of the  
6 House of Delegates, and the respective minority leaders  
7 of the Senate and House of Delegates. The board shall  
8 also make available the accounting of the trust to the  
9 purchasers of the trust. The accounts of the board shall  
10 be subject to annual audits by the legislative auditor or  
11 a certified public accountant appointed by the legisla-  
12 tive auditor.

**§18-30-12. Administration of trust.**

1 (a) The trust shall be administered in a manner  
2 reasonably designed to be actuarially sound such that  
3 the assets of the trust will be sufficient to defray the  
4 obligations of the trust.

5 (b) The trust board shall annually evaluate and cause  
6 to be evaluated by a nationally recognized actuary the  
7 actuarial soundness of the trust and determine the  
8 additional assets needed, if any, to defray the obligations  
9 of the trust. If there are not funds sufficient to ensure  
10 the actuarial soundness of the trust as determined by the  
11 nationally recognized actuary, the trust shall adjust  
12 payments of subsequent purchasers to ensure its  
13 actuarial soundness. If there are insufficient numbers of  
14 new purchasers to ensure the actuarial soundness of the  
15 tuition prepayment contracts of the trust, the available  
16 assets of the trust attributable to the tuition prepayment  
17 contracts shall be immediately prorated among the then  
18 existing tuition prepayment contracts, and these shares  
19 shall be applied, at the option of the person to whom the  
20 refund is payable or would be payable under the  
21 contract upon termination of the contract, either  
22 towards the purposes of the tuition prepayment contract  
23 for a qualified beneficiary or disbursed to the person to  
24 whom the refund is payable or would be payable under  
25 the contract upon termination of the contract.

**§18-30-13. Conditions precedent to administration of trust; disclaimer; enforcement.**

1 (a) A tuition prepayment contract or tuition trust  
2 account contract shall not be entered by the trust until  
3 the internal revenue service has issued a ruling or  
4 opinion regarding the federal tax consequences of any  
5 benefits or refunds received from the trust under the  
6 applicable contract. If an unfavorable ruling or opinion  
7 with regard to any benefits or refunds under either  
8 contract is rendered by the internal revenue service, the  
9 board shall present a report to the Legislature outlining  
10 recommendations for the modification and continuance  
11 of the trust or of any provisions under which an  
12 unfavorable ruling or opinion was rendered, including

13 a recommendation as to whether the trust should  
14 proceed to enter into such contracts. If continuation is  
15 recommended, the report shall also include measures  
16 which may be taken to provide that any benefits or  
17 refunds, or certain benefits or refunds, shall not be  
18 considered actually or constructively to be income for  
19 purposes of taxation by the state.

20 (b) Before entering into a tuition prepayment contract  
21 or tuition trust account contract with purchasers, the  
22 state shall solicit answers to appropriate ruling requests  
23 from the securities and exchange commission regarding  
24 the application of federal security laws to the trust. No  
25 contracts shall be entered without the trust making  
26 known to the Legislature the status of the request.

27 (c) Nothing in this act or in a contract entered into  
28 pursuant to this act shall be construed as a promise or  
29 guarantee by the trust or the state that a person will  
30 be admitted to a particular institution of higher  
31 education, will be allowed to continue to attend an  
32 institution of higher education after having been  
33 admitted, or will be graduated from an institution of  
34 higher education.

35 (d) State institutions of higher education, purchasers,  
36 and qualified beneficiaries may enforce this act and any  
37 contract entered into pursuant to this act in the circuit  
38 court of Kanawha County.

**§18-30-14. Income tax deduction for purchasers.**

1 (a) As provided in subdivision (12), subsection (c),  
2 section twelve, article twenty-one, chapter eleven of this  
3 code, the purchaser may subtract for state income tax  
4 purposes from federal adjusted gross income the  
5 following payments made by the purchaser in the tax  
6 year:

7 (1) The amount of payment made under a tuition  
8 prepayment contract or tuition trust account contract,  
9 or both; and

10 (2) The amount of payment made under a contract  
11 with a private sector investment manager, broker-  
12 dealer or agent approved by the securities division of the

13 state auditor of this state or the Securities and Ex-  
14 change Commission for the private placement of  
15 contracts under this article, such contract to be certified  
16 and approved by the board to provide equivalent  
17 benefits, rights and duties to purchasers, beneficiaries,  
18 the trust and institutions of higher education as a tuition  
19 prepayment contract or a tuition trust account contract.

**§18-30-15. Liberal construction; severability.**

1 (a) This article shall be construed liberally to effec-  
2 tuate the legislative intent, the purposes of the article,  
3 and as complete and independent authority for the  
4 performance of each and every act and thing authorized  
5 in the article, and all powers granted herein shall be  
6 broadly interpreted to effectuate such intent and  
7 purposes and not as to limitation of powers.

8 (b) If any section, subsection, paragraph, clause, or  
9 provision of this article shall be adjudged unconstitu-  
10 tional or ineffective, no other section, subsection,  
11 paragraph, clause, or provision of this article shall on  
12 account thereof be considered invalid or ineffective, and  
13 the applicability or invalidity of any section, subsection,  
14 paragraph, clause, or provision of this article in any one  
15 or more instances or under any one or more circumstan-  
16 ces shall not be taken to affect or prejudice its applic-  
17 ability or validity in any other instance or under any  
18 other circumstance.

**§18-30-16. Expiration of act.**

1 This act is repealed effective the first day of January,  
2 one thousand nine hundred ninety-one, if the trust has  
3 not entered into a tuition prepayment contract or tuition  
4 trust account contract with a purchaser before that date.

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

*Bruce O. Williams*  
 Chairman Senate Committee

*J. L. Satter*  
 Chairman House Committee

Originating in the House.

Takes effect from passage.

*Isabel C. Wachs*  
 Clerk of the Senate

*Donald L. Koop*  
 Clerk of the House of Delegates

*Dan Tomlin*  
 President of the Senate

*Robert C. Calvert*  
 Speaker of the House of Delegates

The within *disappeared* this the *29th*  
 day of *June*, 1987.  
*Archie D. Prosser, Jr.*  
 Governor

PRESENTED TO THE

GOVERNOR

Date 6/18/87

Time 4:18 p.m.

RECEIVED

1987 JUN 30 PM 2:29

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE