WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

ENROLLED

Committee Substitute for Committee Substitute for

SENATE BILL NO. 70

(By Senator [Name], President, Lt. Gov.)

PASSED APRIL 12, 1997

In Effect NINETY DAYS FROM PASSAGE
ENROLLED

COMMITTEE SUBSTITUTE FOR
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Senate Bill No. 70

(SENATORS TOMBLIN, MR. PRESIDENT, CRAIGO, PLYMALE,
JACKSON, PREZIOSO, SNYDER, ROSS, SPROUSE, BALL,
HUNTER, SCHOOLOVER, KIMBLE, DITTMAR, ANDERSON,
OLIVERIO AND SHARPE, original sponsors)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to repeal sections eleven, twelve, thirteen, fourteen,
fifteen, sixteen and seventeen, article thirty, chapter
eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend and reenact
section twelve-a, article twenty-one, chapter eleven of
said code; to amend and reenact sections one, two, three,
four, five, six, seven, eight, nine and ten, article thirty,
chapter eighteen of said code; and to amend and reenact
section four, article ten, chapter thirty-eight of said code, all relating to the creation of a prepaid higher education tuition program; repealing provisions which will no longer apply to the tuition trust; providing an additional modification reducing federal adjusted gross income; the West Virginia prepaid tuition trust act; providing a title, legislative findings and definitions; board of trustees composition, proceedings, powers and oversight by the Legislative oversight commission on education accountability; creating the West Virginia prepaid tuition trust fund; providing a state income tax deduction for purchasers; requiring reports, accounts and annual audits; liberal construction; expiration of article; and to exempt from bankruptcy proceedings payments made to the prepaid tuition trust fund.

Be it enacted by the Legislature of West Virginia:

That sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twelve-a, article twenty-one, chapter eleven of said code be amended and reenacted; that sections one, two, three, four, five, six, seven, eight, nine and ten, article thirty, chapter eighteen of said code be amended and reenacted; and that section four, article ten, chapter thirty-eight of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12a. Additional modification reducing federal adjusted gross income.

1 In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, any payment made under a prepaid tuition contract as provided under section seven, article thirty, chapter eighteen of this code, is also an authorized modification reducing federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the payment is made.
CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.

§18-30-1. Title.

This article shall be known and may be cited as the "West Virginia Prepaid Tuition Trust Act".

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

The Legislature hereby finds and determines that the advancement and improvement of higher education in the state of West Virginia is a proper governmental function and purpose of the state. The Legislature also finds that the creation of a prepaid tuition trust fund, to assist qualified students and their families in financing a portion of the costs of attending an accredited higher education institution or program in the state of West Virginia will increase the number of qualified students who will seek to attend such accredited higher education institutions and programs, which will be of benefit to students, families and to such accredited higher education institutions and programs, and will therefore advance and improve higher education in the state of West Virginia. It is, therefore, the legislative intent of this article to establish a higher education prepaid tuition trust fund to assist qualified students to pay in advance the tuition costs of attending accredited higher education institutions and programs and thereby to encourage such qualified students to attend accredited higher education institutions and programs in the state of West Virginia. The Legislature finds and declares that prepaid tuition trust fund contracts neither contain nor obligate any general revenue funds.

§18-30-3. Definitions.

For the purpose of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise:

(a) "Accredited higher education institution or program" means any accredited higher education institution or accredited higher education program offered through an accredited provider.
(b) “Beneficiary” means any intended or unintended beneficiary of the prepaid tuition contract between the purchaser and the board, including any beneficiary designated by the purchaser, his agent or his estate in the event that the intended beneficiary is unable or unwilling to benefit under the terms of the trust fund.

(c) “Board” means the board of trustees of the prepaid higher education tuition trust fund as provided in section four of this article.

(d) “Outside tuition fee” means the amount of tuition or fees, or both, payable to an accredited higher education institution or program outside the state or independent state institutions or programs upon the election by a beneficiary to attend such institutions or programs. This fee shall generally be the amount of the average public tuition costs or fees, or both, of state institutions of higher learning as determined by the board of trustees on an annual basis.

(e) “Prepaid tuition contract” means a contract entered into by the board of the trust fund and a purchaser pursuant to this article.

(f) “Purchaser” means an individual, corporation or other entity who makes or is obligated to make payments in accordance with a prepaid tuition contract entered into pursuant to this chapter.

(g) “Trust fund” means the prepaid higher education tuition trust fund.

(h) “Tuition” means the quarter, semester or term charges imposed by an accredited higher education institution or program and all mandatory fees required as a condition of enrollment by all students.

§18-30-4. Appointment of board of trustees; terms; compensation; proceedings generally.

(a) The board of the prepaid college expense trust fund shall consist of nine members and shall include the secretary of education and the arts and the state treasurer, who shall serve as ex officio voting members of the board,
and seven other members with knowledge, skill and experience in an academic, business or financial field. The seven appointed members shall be residents of the state. One member shall be a representative of the university of West Virginia board of trustees selected by the board of trustees from its members as defined in section one, article two, chapter eighteen-b of this code and one member shall be a representative of the board of directors of the state college system selected by the board of directors from its members as defined in section one, article three, chapter eighteen-b of this code. The governor shall appoint three members from nominations as follows: One member shall be a private citizen not employed by, or an officer of, the state or any political subdivision of the state appointed from one or more nominees of the speaker of the House of Delegates; one member shall be a private citizen not employed by, or an officer of, the state or any political subdivision of the state appointed from one or more nominees of the president of the Senate; and one member shall represent the interests of private institutions of higher education located in this state who shall be appointed from one or more nominees of the West Virginia association of private colleges. The governor also shall appoint two members who are representatives of the public. The public members and the member representing the interests of private institutions of higher education shall be appointed by the governor with the advice and consent of the Senate.

(b) Appointed members shall serve a term of five years and may be reappointed at the expiration of their terms. In the event of a vacancy among appointed members, the governor shall appoint a person representing the same interests to fill the unexpired term. Of the initial appointments, the governor shall appoint one member to a one-year term, one member to a two-year term, one member to a three-year term, one member to a four-year term and one member to a five-year term. Thereafter, all terms shall be for five years.

(c) Members of the board of trustees shall serve without compensation, but for the first twelve months after the
effective date of this section members shall be reimbursed by the state treasurer's office for expenses, including travel expenses, actually incurred by a member in the official conduct of the business of the board at the same rate as is paid the employees of the state. Thereafter, the state treasurer may charge back to the trust fund as administrative expenses all expenses, including travel expenses, actually incurred and paid to board members for the conduct of their official duties.

(d) The state treasurer shall be the trustee chairman and presiding officer of the board, and may appoint such other employees as the board considers advisable or necessary. A majority of the members of the board constitute a quorum for the transaction of the business of the trust fund.

§18-30-5. Powers of the board.

In addition to the powers granted by any other provision of this article, the board shall have the powers necessary or convenient to carry out the purposes and provisions of this article, the purposes and objectives of the trust and the powers delegated by any other law of the state or any executive order of the state including, but not limited to, the following express powers:

(a) To adopt and amend bylaws;

(b) To propose legislative rules for promulgation in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article: Provided, That the board may not promulgate emergency rules;

(c) To invest any funds of the trust fund, at the board's discretion, with the West Virginia state board of investments in accordance with applying the provisions of article six, chapter twelve of this code. Any investments made under this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
Fiduciaries shall diversify plan investments to the extent permitted by law so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

(d) To execute contracts and other necessary instruments;

(e) To enter into prepaid tuition contracts;

(f) To impose reasonable limits on the number of prepaid tuition contract purchasers participating in the trust fund at any given period of time;

(g) To impose reasonable requirements for residency for qualified beneficiaries at the time of purchase of the prepaid tuition contract. However, nothing in this subdivision shall be construed to establish residency requirements for matriculation at state institutions of higher education;

(h) To contract for necessary goods and services, to employ necessary personnel and to engage the services of private persons for administrative and technical assistance in carrying out the responsibilities of the trust fund;

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

(j) To define the terms and conditions under which payments may be withdrawn from the trust fund and impose reasonable charges for such withdrawal: Provided, That payments made by employers on behalf of beneficiaries selected by their employees are deemed fully vested in the employees from time of receipt of such payments by the board;

(k) To devise and offer to purchasers other educational programs, such as the purchase of books and other educational supplies;

(l) To impose reasonable time limits on the use of the
§18-30-6. West Virginia prepaid tuition trust created.

(a) There is hereby created within the accounts held by the state treasurer the prepaid tuition trust fund account to be administered by the board until and unless the Legislature shall determine otherwise, and titled the "Prepaid Tuition Trust Fund".

(b) The location of the trust fund shall be the state treasurer's office, and the facilities of the state treasurer shall be used and employed in the administration of the trust fund including, but without limitation thereto, the keeping of records, the management of bank accounts and other investments, the transfer of funds and the safekeeping of securities evidencing investments.

(c) Payments received by the board from purchasers on behalf of beneficiaries or from any other source, public or private, shall be placed in the trust fund.

(d) The corpus, assets and income of the trust fund do not constitute public funds of the state.

(e) The trust fund, through the trustee chairman, is authorized to receive any gift or transfer of property, real or personal of any nature, from any source as may be approved by the board, or any terms and conditions as may be imposed by the board: Provided, That all property received by the trust shall be converted into cash within ninety days of receipt.

(f) The board shall cause an actuarial study to be periodically performed to ensure that sufficient funds are being deposited to the fund to meet the obligations of the trust fund. Specifically, the board shall annually evaluate or cause to be evaluated, the actuarial soundness of the trust fund. If the board finds that additional contribu-
tions are needed in order to preserve the actuarial soundness of the fund, it may adjust the terms of pre-existing and subsequent prepaid tuition contracts to ensure such soundness: Provided, That any necessary adjustment to pre-existing contracts may only be assessed on future payments and not retroactively upon previous payments made by the purchaser or donors to the trust fund. There shall be no obligation of state general revenue funds to the trust fund for any purpose whatsoever.

(g) In order to fulfill the charitable and public purposes of this article, neither the income nor the property of the trust fund shall be subject to taxation by the state or any of its political subdivisions.

(h) The board is hereby empowered to propose rules to provide for the withdrawal and disbursement of contract funds on an actuarially sound basis. The board may propose rules to provide a tuition guarantee for beneficiaries attending state institutions of higher education: Provided, that this rule may not be promulgated as an emergency rule subject to oversight by the legislative oversight commission on education accountability as provided by section eleven, article three-a, chapter twenty-nine-a of this code.

(i) There is hereby created a separate account within the state treasurer's office to be known as the "Prepaid Tuition Trust Fund Administrative Account" for the purposes of implementing and maintaining the trust fund accounts pursuant to this article. The board may charge against the fees collected and interest earned from the trust fund accounts, amounts as are reasonable and customary for the state treasurer to fund the administrative costs of maintaining the trust fund accounts. The charges shall be subject to review by the legislative oversight commission on education accountability. Expenditures from the fund are not authorized from collections, but may only be made upon appropriation by the Legislature.


1. As provided in section twelve-a, article twenty-one,
chapter eleven of this code, a purchaser of a prepaid tuition contract, under the provisions of this article, is eligible for a tax deduction.

§18-30-8. Report and account; annual audit.

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

(1) Provide annually summary information on the financial condition of the trust fund to all purchasers of prepaid tuition contracts;

(2) Prepare, or cause to be prepared, an annual accounting and actuarial report of the trust fund and transmit a copy of same to the governor, the president of the Senate, the speaker of the House of Delegates and the legislative oversight commission on education accountability; and

(3) Make all necessary and appropriate arrangements with accredited higher education institutions and programs in order to fulfill its obligations under the prepaid tuition contracts which arrangements shall include the satisfaction by the trust fund of current applicable tuition and fee charges on behalf of a beneficiary to the accredited higher education institution or program.

(b) All accounts of the board, including the trust fund accounts, are subject to an annual external audit, by a nationally recognized accounting firm in conjunction with the annual federal audit.

§18-30-9. Expiration of article.

This article shall become void upon the first day of January, two thousand two, if the trust has not entered into a prepaid tuition contract with a purchaser before that date.

CHAPTER 38. LIENS.

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

§38-10-4. Exemptions of property in bankruptcy proceedings.

Pursuant to the provisions of 11 U.S.C. 522(b)(1), this state specifically does not authorize debtors who are
domiciled in this state to exempt the property specified under the provisions of 11 U.S.C. 522(d).

Any person who files a petition under the federal bankruptcy law may exempt from property of the estate in a bankruptcy proceeding the following property:

(a) The debtor's interest, not to exceed fifteen thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence or in a burial plot for the debtor or a dependent of the debtor.

(b) The debtor's interest, not to exceed two thousand four hundred dollars in value, in one motor vehicle.

(c) The debtor's interest, not to exceed four hundred dollars in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor: Provided, That the total amount of personal property exempted under this subsection shall not exceed eight thousand dollars.

(d) The debtor's interest, not to exceed one thousand dollars in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

(e) The debtor's interest, not to exceed in value eight hundred dollars plus any unused amount of the exemption provided under subsection (a) of this section in any property.

(f) The debtor's interest, not to exceed one thousand five hundred dollars in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor.

(g) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(h) The debtor's interest, not to exceed in value eight
thousand dollars less any amount of property of the estate
transferred in the manner specified in 11 U.S.C. 542(d), in
any accrued dividend or interest under, or loan value of,
any unmatured life insurance contract owned by the
debtor under which the insured is the debtor or an indi-
vidual of whom the debtor is a dependent.

(i) Professionally prescribed health aids for the debtor or
a dependent of the debtor.

(j) The debtor’s right to receive:
(1) A social security benefit, unemployment compen-
sation or a local public assistance benefit;
(2) A veterans’ benefit;
(3) A disability, illness or unemployment benefit;
(4) Alimony, support or separate maintenance, to the
extent reasonably necessary for the support of the debtor
and any dependent of the debtor;
(5) A payment under a stock bonus, pension, profit
sharing, annuity or similar plan or contract on account of
illness, disability, death, age or length of service, to the
extent reasonably necessary for the support of the debtor
and any dependent of the debtor, unless:
(A) Such plan or contract was established by or under
the auspices of an insider that employed the debtor at the
time the debtor’s rights under such plan or contract arose;
(B) Such payment is on account of age or length of
service; and
(C) Such plan or contract does not qualify under Section
401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue
Code of 1954.

(k) The debtor’s right to receive, or property that is
traceable to:
(1) An award under a crime victim’s reparation law;
(2) A payment on account of the wrongful death of an
individual of whom the debtor was a dependent, to the
extent reasonably necessary for the support of the debtor
and any dependent of the debtor;

(3) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(4) A payment, not to exceed fifteen thousand dollars on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent;

(5) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(6) Payments made to the prepaid tuition trust fund on behalf of any beneficiary.

This section shall not be construed to affect the applicability of any provision of the federal bankruptcy law other than 11 U.S.C. 552(d).
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 519 day of May, 1997.

Governor