

SB 365

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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998



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SENATE BILL NO. 365

(By Senator JACKSON, ET AL)



PASSED MARCH 14, 1998

In Effect 90 Days From Passage

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SECRETARY OF STATE

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FOR

Senate Bill No. 365

(SENATORS JACKSON, CRAIGO, WOOTON, KESSLER, ANDERSON,
SNYDER, WHITE, PREZIOSO, DITTMAR, SCHOONOVER,
BALL, HUNTER, SPROUSE, SHARPE, MCKENZIE, ROSS, BAILEY,
CHAFIN, FANNING, HELMICK, LOVE, WALKER AND
TOMBLIN, MR. PRESIDENT, *original sponsors*)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, four, five, six and eight, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections six-a and ten, all relating to the West Virginia prepaid tuition trust fund; clarifying name of board; legislative findings; expanding definitions; board of trustees; board powers; authorizing

savings program for fees, room and board; permitting obligation of state general revenue funds if authorized by the Legislature; administrative account; expanding report and audit requirements; requiring an actuarial surplus; confidentiality of certain information; permitting board to promulgate emergency rules when changes in federal tax code or regulations require; and ensuring audit compliance with the state audit.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six and eight, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections six-a and ten, all to read as follows:

ARTICLE 30. WEST VIRGINIA PREPAID TUITION TRUST ACT.

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

1 The Legislature hereby finds and determines that the
2 advancement and improvement of higher education in the
3 state of West Virginia is a proper governmental function
4 and purpose of the state. The Legislature also finds that
5 the creation of a prepaid tuition trust fund, to assist
6 qualified students and their families in financing a portion
7 of the costs of attending an accredited higher education
8 institution or program in the state of West Virginia will
9 increase the number of qualified students who will seek to
10 attend the accredited higher education institutions and
11 programs, which will be of benefit to students, families
12 and to the accredited higher education institutions and
13 programs, and will therefore advance and improve higher
14 education in the state of West Virginia. It is, therefore, the
15 legislative intent of this article to establish a prepaid
16 tuition trust fund to assist qualified students to pay in
17 advance the costs of attending accredited higher education
18 institutions and programs and thereby to encourage the
19 qualified students to attend accredited higher education

20 institutions and programs in the state of West Virginia.
21 The Legislature finds and declares that prepaid tuition
22 trust fund contracts neither contain nor obligate any
23 general revenue funds.

§18-30-3. Definitions.

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

4 (a) "Accredited higher education institution or program"
5 means any accredited higher education institution or
6 accredited higher education program offered through an
7 accredited provider.

8 (b) "Beneficiary" means any intended or unintended
9 beneficiary of the prepaid tuition contract between the
10 purchaser and the board, including any beneficiary
11 designated by the purchaser, his or her agent or his or her
12 estate in the event that the intended beneficiary is unable
13 or unwilling to benefit under the terms of the trust fund.

14 (c) "Board" means the board of trustees of the prepaid
15 tuition trust fund as provided in section four of this
16 article.

17 (d) "Outside tuition fee" means the amount of tuition or
18 fees, or both, payable to an accredited higher education
19 institution or program outside the state or independent
20 state institutions or programs upon the election by a
21 beneficiary to attend those institutions or programs. This
22 fee shall generally be the amount of the average public
23 tuition costs or fees, or both, of state institutions of higher
24 learning as determined by the board of trustees on an
25 annual basis.

26 (e) "Prepaid tuition contract" means a contract entered
27 into by the board of the trust fund and a purchaser
28 pursuant to this article.

29 (f) "Purchaser" means an individual, corporation or

30 other entity who makes or is obligated to make payments
31 in accordance with a prepaid tuition contract entered into
32 pursuant to this article.

33 (g) "Room and board" means the charges for lodging and
34 food incurred by a beneficiary while attending an accred-
35 ited higher education institution or program.

36 (h) "Trust fund" means the prepaid tuition trust fund.

37 (i) "Tuition" means the quarter, semester or term charges
38 imposed by an accredited higher education institution or
39 program and all mandatory fees required as a condition of
40 enrollment by all students.

**§18-30-4. Appointment of board of trustees; terms; compensa-
tion; proceedings generally.**

1 (a) The board of the prepaid tuition trust fund consists
2 of nine members and shall include the secretary of educa-
3 tion and the arts and the state treasurer, who shall serve
4 as ex officio voting members of the board, and seven other
5 members with knowledge, skill and experience in an
6 academic, business or financial field. The seven appointed
7 members shall be residents of the state. One member shall
8 be a representative of the university of West Virginia
9 board of trustees selected by the board of trustees from its
10 members as defined in section one, article two, chapter
11 eighteen-b of this code and one member shall be a repre-
12 sentative of the board of directors of the state college
13 system selected by the board of directors from its members
14 as defined in section one, article three, chapter eighteen-b
15 of this code. The governor shall appoint three members
16 from nominations as follows: One member shall be a
17 private citizen not employed by, or an officer of, the state
18 or any political subdivision of the state appointed from
19 one or more nominees of the speaker of the House of
20 Delegates; one member shall be a private citizen not
21 employed by, or an officer of, the state or any political
22 subdivision of the state appointed from one or more

23 nominees of the president of the Senate; and one member
24 shall represent the interests of private institutions of
25 higher education located in this state who shall be ap-
26 pointed from one or more nominees of the West Virginia
27 association of private colleges. The governor also shall
28 appoint two members who are representatives of the
29 public. The public members and the member representing
30 the interests of private institutions of higher education
31 shall be appointed by the governor with the advice and
32 consent of the Senate.

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

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

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

59 fund.

§18-30-5. Powers of the board.

1 In addition to the powers granted by any other provision
2 of this article, the board has the powers necessary or
3 convenient to carry out the purposes and provisions of this
4 article, the purposes and objectives of the trust and the
5 powers delegated by any other law of the state or any
6 executive order of the state including, but not limited to,
7 the following express powers:

8 (a) To adopt and amend bylaws;

9 (b) To propose legislative rules for promulgation in
10 accordance with the provisions of article three-a, chapter
11 twenty-nine-a of this code to effectuate the purposes of
12 this article: *Provided*, That the board may promulgate
13 emergency rules only when changes in the federal tax code
14 or changes in federal regulations contravene the current
15 rules of the prepaid tuition trust fund board of trustees;

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

28 (d) To execute contracts and other necessary instru-
29 ments;

30 (e) To enter into prepaid tuition contracts;

31 (f) To impose reasonable limits on the number of prepaid
32 tuition contract purchasers participating in the trust fund

33 at any given period of time;

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

40 (h) To contract for necessary goods and services, to
41 employ necessary personnel and to engage the services of
42 private persons for administrative and technical assis-
43 tance in carrying out the responsibilities of the trust fund;

44 (i) To solicit and accept gifts, including bequests or other
45 testamentary gifts made by will, trust or other disposition,
46 grants, loans and other aids from any source or to partici-
47 pate in any other way in any federal, state or local govern-
48 mental programs in carrying out the purposes of this
49 article;

50 (j) To define the terms and conditions under which
51 payments may be withdrawn from the trust fund and
52 impose reasonable charges for the withdrawal: *Provided,*
53 That payments made by employers on behalf of beneficia-
54 raries selected by their employees are considered fully
55 vested in the employees from time of receipt of the pay-
56 ments by the board;

57 (k) To devise and offer to purchasers other educational
58 savings programs, such as the purchase of books, fees,
59 room and board and other educational supplies;

60 (l) To impose reasonable time limits on the use of the
61 benefits provided by the program;

62 (m) To provide for the receipt of contributions to the
63 trust fund in lump sums or installment payments; and

64 (n) To establish other policies, procedures and criteria
65 necessary to implement and administer the provisions of
66 this article.

§18-30-6. West Virginia prepaid tuition trust created.

1 (a) There is continued within the accounts held by the
2 state treasurer the prepaid tuition trust fund account to be
3 administered by the board until and unless the Legislature
4 determines otherwise, and titled the "Prepaid Tuition
5 Trust Fund".

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

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

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

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

25 (f) The board shall cause an actuarial study to be
26 periodically performed to ensure that sufficient funds are
27 being deposited to the fund to meet the obligations of the
28 trust fund. Specifically, the board shall annually evaluate
29 or cause to be evaluated, the actuarial soundness of the
30 trust fund. If the board finds that additional contribu-
31 tions are needed in order to preserve the actuarial sound-
32 ness of the fund, it may adjust the terms of preexisting
33 and subsequent prepaid tuition contracts to ensure the
34 fund's soundness: *Provided*, That any necessary adjust-

35 ment to preexisting contracts may only be assessed on
36 future payments and not retroactively upon previous
37 payments made by the purchaser or donors to the trust
38 fund. There may be no obligation of state general revenue
39 funds to the trust fund for any purpose whatsoever, unless
40 authorized by the Legislature.

41 (g) The board shall build and maintain in the prepaid
42 tuition trust fund an actuarial surplus, at a level recom-
43 mended by the actuaries, to ensure appropriate funding
44 for the trust fund.

45 (h) In order to fulfill the charitable and public purposes
46 of this article, neither the income nor the property of the
47 trust fund is subject to taxation by the state or any of its
48 political subdivisions.

49 (i) The board may propose rules to provide for the
50 withdrawal and disbursement of contract funds on an
51 actuarially sound basis. The board may propose rules to
52 provide a tuition guarantee for beneficiaries attending
53 state institutions of higher education: *Provided*, That this
54 rule may not be promulgated as an emergency rule subject
55 to oversight by the legislative oversight commission on
56 education accountability as provided by section eleven,
57 article three-a, chapter twenty-nine-a of this code.

§18-30-6a. Prepaid tuition trust fund administrative account.

1 There is hereby created a separate account within the
2 state treasurer's office to be known as the prepaid tuition
3 trust fund administrative account for the purposes of
4 implementing and maintaining the trust fund accounts
5 pursuant to this article. The board may charge against the
6 fees collected and interest earned from the trust fund
7 accounts, amounts as are reasonable and customary for
8 the state treasurer to fund the administrative costs of
9 maintaining the trust fund accounts. The charges shall be
10 deposited into the prepaid tuition trust fund administra-
11 tive account. The charges shall be disclosed quarterly,

12 beginning the first day of January, one thousand nine
13 hundred ninety-nine, to the joint committee on govern-
14 ment and finance and the legislative oversight commission
15 on education accountability. Expenditures from the fund
16 are authorized from collections subject to appropriations
17 made by the Legislature.

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

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

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

6 (2) Prepare or cause to be prepared a quarterly report on
7 the status of the program and provide a copy of the report
8 to the joint committee on government and finance and the
9 legislative oversight commission on education account-
10 ability;

11 (3) Prepare, or cause to be prepared, an annual account-
12 ing and actuarial report of the trust fund and transmit a
13 copy of the report to the governor, the president of the
14 Senate, the speaker of the House of Delegates and the
15 legislative oversight commission on education account-
16 ability; and

17 (4) Make all necessary and appropriate arrangements
18 with accredited higher education institutions and pro-
19 grams in order to fulfill its obligations under the prepaid
20 tuition contracts. The arrangements shall include the
21 satisfaction by the trust fund of current applicable tuition
22 and fee charges on behalf of a beneficiary to the accred-
23 ited higher education institution or program.

24 (b) All accounts of the board, including the trust fund
25 accounts, are subject to an annual external audit by an
26 accounting firm, selected by the board, of which all
27 members or partners assigned to head the audit are

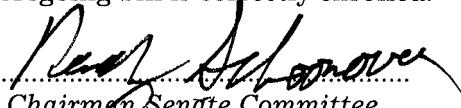
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28 members of the American institute of certified public
29 accountants. The audit shall comply with the require-
30 ments of section thirty-three, article two, chapter five-a of
31 this code.

§18-30-10. Confidentiality.

1 Any information that would tend to disclose the identity
2 of a beneficiary, purchaser or donor is exempt from the
3 provisions of chapter twenty-nine-b of this code.

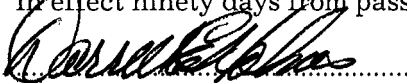
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

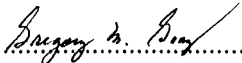

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Chairman Senate Committee

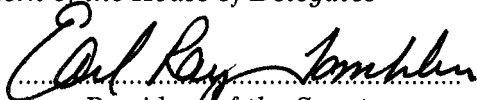

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Chairman House Committee

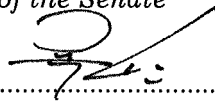
Originated in the Senate.

In effect ninety days from passage.

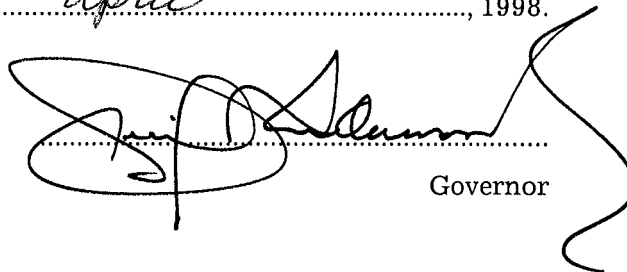

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within approved this the 1st
day of April, 1998.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 10:40 am