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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



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SENATE BILL NO. 431

(By Senator JACKSON, ET AL)



PASSED MARCH 21, 1999

In Effect July 4, 1999 ~~Passage~~

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FOR

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FOR

Senate Bill No. 431

(SENATORS JACKSON, TOMBLIN, MR. PRESIDENT, CRAIGO,
WOOTON, CHAFIN, PLYMALE, PREZIOSO, BAILEY, HUNTER,
MINARD, WALKER, SNYDER, ANDERSON, DITTMAR, KESSLER,
EDGELL, SHARPE, ROSS, SCHOONOVER, LOVE, MITCHELL, BALL,
UNGER, REDD, MCCABE, MCKENZIE, SPROUSE AND MINEAR,
original sponsors)

[Passed March 21, 1999; to take effect July 1, 1999]

AN ACT to amend and reenact section twelve-a, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter eighteen-c of said code by adding thereto a new article, designated article six, all relating to student scholar-

ships, aid and the prepaid tuition trust; clarifying the income tax modification; establishing the "West Virginia providing real opportunities for maximizing in-state student excellence scholarship program"; setting forth findings and purpose; defining terms; appointment of board; setting forth the powers of the board; authorizing the board to promulgate rules; setting forth the minimum requirements for the scholarship; creating the scholarship fund; and creating the scholarship program supplemental fund.

Be it enacted by the Legislature of West Virginia:

That section twelve-a, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter eighteen-c of said code be amended by adding thereto a new article, designated article six, 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
2 federal adjusted gross income pursuant to subsection (c),
3 section twelve of this article, any payment made under a
4 prepaid tuition contract as provided under section seven,
5 article thirty, chapter eighteen of this code, is also an
6 authorized modification reducing federal adjusted gross
7 income, but only to the extent the amount is not allowable
8 as a deduction when arriving at the taxpayer's federal
9 adjusted gross income for the taxable year in which the
10 payment is made. This modification is available regardless
11 of the type of return form filed. The taxpayer may also
12 elect to carry forward the modification over a period not
13 to exceed five taxable years, beginning in the taxable year
14 in which the payment was made.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 6. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-6-1. Title.

1 This article shall be known and may be cited as the
2 “West Virginia providing real opportunities for maximiz-
3 ing in-state student excellence (PROMISE) scholarship
4 program”.

§18C-6-2. Legislative findings and purpose.

1 The Legislature hereby finds and declares that:

2 (a) The state’s college-going rate does not compare
3 favorably with the member states of the southern regional
4 education board average, nor with the national average;

5 (b) West Virginia must have an educated work force in
6 order to attract and retain the high wage, high skill jobs of
7 the next century;

8 (c) The percentage of West Virginia’s adult population
9 over the age of twenty-five with at least a bachelor’s
10 degree is only fourteen percent and does not compare
11 favorably with the member states of the southern regional
12 education board average or with the national average;

13 (d) Increases in the level of education increases the
14 income earned by an individual which enhances his or her
15 quality of life;

16 (e) During the year one thousand nine hundred ninety-
17 seven, an individual holding a bachelor’s degree had an
18 average earned income which was one hundred seventy-
19 seven percent of the average income earned by a high
20 school graduate;

21 (f) Students at all levels should have an incentive to
22 perform at a high academic level;

23 (g) There is a need to provide parents with all tools
24 possible to aid them in helping their children understand
25 the importance of high achievement in high school and
26 college;

27 (h) There is a financial need for many students who wish
28 to attend state institutions of higher education within the
29 state;

30 (i) The West Virginia higher education grant program is
31 a vitally important source of financial assistance for needy
32 residents of the state and should continue to receive strong
33 financial support; and

34 (j) It is the intent of this article to establish a West
35 Virginia PROMISE scholarship program to deal effectively
36 with the findings set forth in this section.

§18C-6-3. Definitions.

1 (a) "Eligible institution" means:

2 (1) A state institution of higher education as is defined in
3 section two, article one, chapter eighteen-b of this code;

4 (2) Alderson-Broadus college, Appalachian Bible
5 college, Bethany college, the college of West Virginia,
6 Davis and Elkins college, Ohio Valley college, Salem-
7 Teikyo university, the university of Charleston, West
8 Virginia Wesleyan college and Wheeling Jesuit university,
9 all in West Virginia: *Provided*, That if any institution
10 listed in this subdivision is not regionally accredited, it
11 shall not be included as an eligible institution; or

12 (3) Any other regionally accredited institution in this
13 state, public or private, approved by the board.

14 (b) "Board" means the board of the West Virginia
15 PROMISE scholarship program as provided for in section
16 four of this article.

17 (c) "Tuition" means the quarter, semester or term
18 charges imposed by a state institution of higher education
19 and all mandatory fees required as a condition of enroll-
20 ment by all students.

§18C-6-4. Appointment of board of the PROMISE scholarship program; compensation; proceedings generally.

1 (a) The board of the PROMISE scholarship program
2 consists of thirteen members and shall include the chan-
3 cellor of the university of West Virginia board of trustees;
4 the chancellor of the board of directors of the state college
5 system; the state superintendent of schools or his or her
6 designee; the secretary of education and the arts; the state

7 treasurer or his or her designee; the chair of the Senate
8 committee on finance or his or her designee who is a
9 member of the committee; the chair of the House of
10 Delegates committee on finance or his or her designee who
11 is a member of the committee; the chair of the Senate
12 committee on education or his or her designee who is a
13 member of the committee; the chair of the House of
14 Delegates committee on education or his or her designee
15 who is a member of the committee; and four other ap-
16 pointed members with knowledge, skill and experience in
17 an academic, business or financial field. At least three of
18 the four appointed members shall be residents of the state.
19 The four appointed members shall be appointed by the
20 governor with the advice and consent of the Senate. No
21 more than two of the four appointed members may be
22 from the same party. No more than two of the four
23 appointed members may be from the same congressional
24 district.

25 (b) Appointed members shall serve a term of four years
26 and may be reappointed at the expiration of their terms.
27 In the event of a vacancy among appointed members, the
28 governor shall appoint a person representing the same
29 interests to fill the unexpired term. A person appointed to
30 fill a vacancy shall be appointed only for the remainder of
31 that term and is eligible for reappointment. Unless a
32 vacancy occurs due to death, resignation or removal
33 pursuant to subsection (e) of this section, an appointed
34 member of the board shall continue to serve until a
35 successor has been appointed and qualified as provided for
36 in subsection (a) of this section. Of the initial appoint-
37 ments, the governor shall appoint one member to a one-
38 year term, one member to a two-year term, one member to
39 a three-year term and one member to a four-year term.
40 Thereafter, all terms shall be for four years.

41 (c) Members of the board shall serve without compensa-
42 tion, but shall be reimbursed by the office of the secretary
43 of education and the arts for expenses, including travel
44 expenses, actually incurred by a member in the official
45 conduct of the business of the board at the same rate as is
46 paid the employees of the state.

46 (d) The secretary of education and the arts is the chair-
47 man and presiding officer of the board. A majority of the
48 members of the board constitute a quorum for the transac-
49 tion of the board's business.

50 (e) The members appointed by the governor may be
51 removed by the governor for official misconduct, incompe-
52 tence, neglect of duty or gross immorality, and then only
53 in the manner prescribed by law for the removal by the
54 governor of the state elective officers in accordance with
55 section five, article six, chapter six of this code.

§18C-6-5. 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 and the powers delegated by any other law of the
5 state or any executive order of the state including, but not
6 limited to, the following express powers:

7 (a) To adopt and amend bylaws;

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

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

25 (d) To execute contracts and other necessary instru-
26 ments;

27 (e) To impose reasonable requirements for residency for
28 students applying for the PROMISE scholarship. How-
29 ever, nothing in this subdivision may be construed to
30 establish residency requirements for matriculation or fee
31 payment purposes at state institutions of higher education;

32 (f) To contract for necessary goods and services, to
33 employ necessary personnel and to engage the services of
34 private persons for administrative and technical assistance
35 in carrying out the responsibilities of the scholarship
36 program;

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

43 (h) To define the terms and conditions under which
44 scholarships shall be awarded with the minimum require-
45 ments being set forth in section six of this article; and

46 (i) To establish other policies, procedures and criteria
47 necessary to implement and administer the provisions of
48 this article.

§18C-6-6. Requirements for rules promulgated by the board.

1 (a) The board shall propose rules which shall include at
2 least the following:

3 (1) A requirement that a scholarship will not pay an
4 amount that exceeds the cost of tuition at state institutions
5 of higher education and may include an allowance for
6 books and supplies;

7 (2) A requirement that a scholarship in combination with
8 aid from all other sources shall not exceed the cost of
9 education at the institution the recipient is attending;

10 (3) Minimum requirements for eligibility for the scholar-
11 ship which include:

12 (A) A provision that a student is only eligible to apply for
13 a scholarship within two years of the time he or she

14 graduates from high school: *Provided*, That if a student
15 has entered the United States armed services within two
16 years after he or she graduates from high school, the
17 student is eligible to apply for a scholarship within seven
18 years of the time he or she enters military service: *Pro-*
19 *vided, however*, That once discharged from the military,
20 the student is only eligible to apply for one year from the
21 date of discharge;

22 (B) For individuals with zero to fifteen credits from an
23 institution of higher education, that the individual attain
24 at least a "B" average at the secondary level as defined by
25 the board;

26 (C) For individuals with more than fifteen credits from
27 an institution of higher education, that the individual
28 attain and maintain at least a "B" average at the under-
29 graduate education level as defined by the board; and

30 (D) For all individuals, additional objective standards as
31 the board considers necessary to promote academic
32 excellence and to maintain the financial stability of the
33 fund;

34 (4) A provision requiring the student to be enrolled in or
35 in the process of enrolling in an eligible institution as
36 defined in section three of this article;

37 (5) Provisions for making the highest and best use of the
38 PROMISE scholarship program in conjunction with the
39 West Virginia prepaid tuition trust act set forth in article
40 thirty, chapter eighteen of this code;

41 (6) A determination of whether to require scholarship
42 recipients to repay the amount of their scholarship, in
43 whole or in part, if they choose to work outside the state
44 after graduation;

45 (7) A determination of whether to set aside a portion of
46 the scholarship funds for targeted scholarships for appli-
47 cants accepted or enrolled in an engineering program,
48 science program, technology program or other designated
49 programs;

50 (8) A determination whether to require persons to file
51 federal financial aid forms before they may receive a
52 PROMISE scholarship; and

53 (9) A determination of what other sources of funding for
54 higher education, if any, should be deducted from the
55 PROMISE scholarship award.

56 (b) The board shall use the services of the senior admin-
57 istrator and any employees of the senior administrator in
58 drafting the rules. The rules shall be submitted to the
59 legislative oversight commission on education account-
60 ability on or before the first day of December, one thou-
61 sand nine hundred ninety-nine.

§18C-6-7. West Virginia PROMISE scholarship fund created.

1 (a) There is hereby created a special revenue fund in the
2 state treasury which shall be designated and known as the
3 "PROMISE Scholarship Fund". The fund shall consist of
4 all appropriations to the fund from the West Virginia
5 lottery, video lottery, taxes on amusement devices, and any
6 other legislative appropriations, and all interest earned
7 from investment of the fund and any gifts, grants or
8 contributions received by the fund.

9 (b) The board may expend the moneys in the fund to
10 implement the provisions of this article.

**§18C-6-8. PROMISE scholarship supplemental fund created;
promulgation of rules.**

1 (a) The Legislature recognizes that the PROMISE
2 scholarship program may lead to an increased number of
3 individuals attending the state institutions of higher
4 education, and therefore, it may contribute to increases in
5 expenses greater than the additional tuition income
6 generated by increased enrollment. Therefore, there is
7 hereby created a special revenue fund in the state treasury
8 which shall be designated and known as the "PROMISE
9 scholarship supplemental fund". The fund shall consist of
10 all appropriations to the fund and all interest earned from
11 the investment of the fund and any gifts, grants or contri-
12 butions received by the fund. The board shall expend the
13 moneys in this fund to implement the provisions of this

14 article and may only expend the moneys for state institu-
15 tions of higher educations.

16 (b) The board shall promulgate rules for administering
17 the fund in accordance with article three-a, chapter
18 twenty-nine-a of this code: *Provided*, That the board shall
19 not promulgate emergency rules. The rules shall include
20 the following:

21 (1) Provisions for distributing the moneys from the fund
22 to state institutions of higher education: *Provided*, That
23 the distribution of the moneys from the fund shall be
24 completely independent of the distributions in accordance
25 with the resource allocation model and the resource
26 allocation policies: *Provided, however*, that the funds shall
27 be divided among the state institutions of higher education
28 in a reasonable manner to reflect the actual distribution of
29 PROMISE scholarship students among the institutions;
30 and

31 (2) A procedure for submitting a budget request to the
32 governor: *Provided*, That nothing in this article shall
33 require any appropriation by the Legislature.

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

Barry Scheraga
.....
Chairman Senate Committee

Joe F. Smith
.....
Chairman House Committee

Originating in the Senate.

To take effect July 1, 1999.

Darrell Holmes
.....
Clerk of the Senate

Debra M. Boy
.....
Clerk of the House of Delegates

Carl By Tomlin
.....
President of the Senate

John
.....
Speaker House of Delegates

The within *approved* this the *2nd*
April
Day of 1999

Jefferson
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

9/1/99

Time

10:28 am