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
ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 431

(SENATORS JACKSON, TOMBLIN, MR. PRESIDENT, CRAIGO, WOOTON, CHAPIN, 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.

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. This modification is available regardless of the type of return form filed. The taxpayer may also elect to carry forward the modification over a period not to exceed five taxable years, beginning in the taxable year 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;
The West Virginia higher education grant program is a vitally important source of financial assistance for needy residents of the state and should continue to receive strong financial support; and

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

§18C-6-3. Definitions.

(a) "Eligible institution" means:

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

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

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

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

(c) "Tuition" means the quarter, semester or term charges imposed by a state institution of higher education and all mandatory fees required as a condition of enrollment by all students.

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

(a) The board of the PROMISE scholarship program consists of thirteen members and shall include the chancellor of the university of West Virginia board of trustees; the chancellor of the board of directors of the state college system; the state superintendent of schools or his or her designee; the secretary of education and the arts; the state
treasurer or his or her designee; the chair of the Senate
committee on finance or his or her designee who is a
member of the committee; the chair of the House of
Delegates committee on finance or his or her designee who
is a member of the committee; the chair of the Senate
committee on education or his or her designee who is a
member of the committee; the chair of the House of
Delegates committee on education or his or her designee
who is a member of the committee; and four other ap-
pointed members with knowledge, skill and experience in
an academic, business or financial field. At least three of
the four appointed members shall be residents of the state.
The four appointed members shall be appointed by the
governor with the advice and consent of the Senate. No
more than two of the four appointed members may be
from the same party. No more than two of the four
appointed members may be from the same congressional
district.

(b) Appointed members shall serve a term of four 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. A person appointed to
fill a vacancy shall be appointed only for the remainder of
that term and is eligible for reappointment. Unless a
vacancy occurs due to death, resignation or removal
pursuant to subsection (e) of this section, an appointed
member of the board shall continue to serve until a
successor has been appointed and qualified as provided for
in subsection (a) of this section. Of the initial appoint-
ments, 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 and one member to a four-year term.
Thereafter, all terms shall be for four years.

(c) Members of the board shall serve without compensa-
tion, but shall be reimbursed by the office of the secretary
of education and the arts 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.
(d) The secretary of education and the arts is the chairman and presiding officer of the board. A majority of the members of the board constitute a quorum for the transaction of the board's business.

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

§18C-6-5. Powers of the board.

In addition to the powers granted by any other provision of this article, the board has the powers necessary or convenient to carry out the purposes and provisions of this article 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 shall not promulgate emergency rules;

(c) To invest any of its funds at the board's discretion, with the West Virginia investment management board in accordance with 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 impose reasonable requirements for residency for students applying for the PROMISE scholarship. However, nothing in this subdivision may be construed to establish residency requirements for matriculation or fee payment purposes at state institutions of higher education;

(f) 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 scholarship program;

(g) 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;

(h) To define the terms and conditions under which scholarships shall be awarded with the minimum requirements being set forth in section six of this article; and

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

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

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

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

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

(3) Minimum requirements for eligibility for the scholarship which include:

(A) A provision that a student is only eligible to apply for a scholarship within two years of the time he or she
graduates from high school: Provided, That if a student has entered the United States armed services within two years after he or she graduates from high school, the student is eligible to apply for a scholarship within seven years of the time he or she enters military service: Provided, however, That once discharged from the military, the student is only eligible to apply for one year from the date of discharge;

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

(C) For individuals with more than fifteen credits from an institution of higher education, that the individual attain and maintain at least a “B” average at the undergraduate education level as defined by the board; and

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

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

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

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

(7) A determination of whether to set aside a portion of the scholarship funds for targeted scholarships for applicants accepted or enrolled in an engineering program, science program, technology program or other designated programs;
(8) A determination whether to require persons to file federal financial aid forms before they may receive a PROMISE scholarship; and

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

(b) The board shall use the services of the senior administrator and any employees of the senior administrator in drafting the rules. The rules shall be submitted to the legislative oversight commission on education accountability on or before the first day of December, one thousand nine hundred ninety-nine.

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

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

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

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

(a) The Legislature recognizes that the PROMISE scholarship program may lead to an increased number of individuals attending the state institutions of higher education, and therefore, it may contribute to increases in expenses greater than the additional tuition income generated by increased enrollment. Therefore, there is hereby created a special revenue fund in the state treasury which shall be designated and known as the “PROMISE scholarship supplemental fund”. The fund shall consist of all appropriations to the fund and all interest earned from the investment of the fund and any gifts, grants or contributions received by the fund. The board shall expend the moneys in this fund to implement the provisions of this
article and may only expend the moneys for state institutions of higher educations.

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

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

(2) A procedure for submitting a budget request to the governor: Provided, That nothing in this article shall require any appropriation by the Legislature.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.
To take effect July 1, 1999.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within this the Day of

Governor