ENROLLED

House Bill No. 2527

(By Delegates Williams, Stemple, Carmichael, Shaver, Perry, Swartzmiller and Harrison)

Passed April 12, 2001

In Effect from Passage
AN ACT to amend and reenact article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article ten, chapter thirty-eight of said code, all relating to qualified state tuition programs; creating the West Virginia college prepaid tuition and savings program act to succeed the West Virginia college prepaid tuition trust act; legislative findings and purpose; defined terms; creating the West Virginia college prepaid tuition and savings program and board; board powers; continuing the prepaid tuition trust and fund; creating the savings plan trust and fund; renaming the prepaid tuition trust fund administrative account the college prepaid tuition and savings program administrative account and clarifying certain of its authorizations; reauthorizing the personal income tax modification; clarifying the reporting and audit requirements of the program; considerations for eligibility for state student financial aid; confidentiality requirements; authorization of rules; and adding savings plan fund payments to the list of property exempt from bankruptcy proceedings.
Be it enacted by the Legislature of West Virginia:

That article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-1. Title.

This article is known and cited as the "West Virginia College Prepaid Tuition and Savings Program Act".

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

The Legislature hereby finds and determines that enhancing the accessibility and affordability of higher education for all citizens of West Virginia will promote a well-educated and financially secure population to the ultimate benefit of all citizens of West Virginia, and that assisting individuals and families in planning for future educational expenses by making the tax incentives in 26 U.S.C. § 529 available to West Virginians are proper governmental functions and purposes of the state.

The Legislature also finds that continuation of the prepaid tuition plan and creation of a savings plan will further those governmental functions and purposes. It is, therefore, the legislative intent of this article to continue the prepaid tuition plan and to enhance the plan by authorizing the creation of a savings plan so that more students may attend eligible higher education institutions.
§18-30-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise or as otherwise provided in 26 U.S.C. § 529:

(a) "Account" means a prepaid tuition account or a savings plan account established in accordance with this article.

(b) "Account owner" means the individual, corporation, association, partnership, trust or other legal entity who enters into a prepaid tuition contract and is obligated to make payments in accordance with the prepaid tuition contract or who enters into a savings plan contract and invests money in a savings plan account.

(c) "Beneficiary" means the individual designated as a beneficiary at the time an account is established, the individual designated as the beneficiary when beneficiaries are changed, the individual entitled to receive distributions from an account, and any individual designated by the account owner, his or her agent or his or her estate in the event the beneficiary is unable or unwilling to receive distributions under the terms of the contract.

(d) "Board" means the board of trustees of the college prepaid tuition and savings program as provided in section four of this article.

(e) "Distribution" means any disbursement from an account in accordance with 26 U.S.C. § 529.

(f) "Eligible educational institution" means an institution of higher education that qualifies under 26 U.S.C. § 529 as an eligible educational institution.
(g) "Prepaid tuition account" means an account established by an account owner pursuant to this article in order for the beneficiary to apply distributions in accordance with the prepaid tuition plan.

(h) "Prepaid tuition contract" means a contract entered into by the board and an account owner establishing a prepaid tuition account.

(i) "Prepaid tuition plan" means the plan that contractually guarantees payment of tuition at a West Virginia public eligible educational institution.

(j) "Program" means the West Virginia college prepaid tuition and savings program established under this article.

(k) "Qualified higher education expenses" mean higher education expenses permitted under 26 U.S.C. § 529 for enrollment or attendance of a beneficiary at an eligible educational institution.

(l) "Savings plan" means the plan that allows account distributions for qualified higher educational expenses.

(m) "Savings plan account" means an account established by an account owner pursuant to this article in order for the beneficiary to apply distributions toward qualified higher education expenses at eligible educational institutions.

(n) "Savings plan contract" means a contract entered into by the board or its agent, if any, and an account owner establishing a savings plan account.

(o) "Treasurer" means the West Virginia state treasurer.

(p) "Tuition" means the quarter, semester or term undergraduate charges imposed by an eligible educational institution
§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.

(a) The West Virginia college prepaid tuition and savings program is hereby created. The program consists of a prepaid tuition plan and a savings plan.

(b) The board of trustees of the prepaid tuition trust fund in existence immediately prior to the effective date of this section shall become the board of the college prepaid tuition and savings plan and all powers, rights and responsibilities of the board of trustees of the prepaid tuition trust fund are transferred to the board of the college prepaid tuition and savings program. With the exception of the members of the board appointed pursuant to the provisions of subdivision (3) of subsection (c) of this section, the members of the board of trustees of the prepaid tuition trust fund shall become the members of the board of the college prepaid tuition and savings program on the effective date of this section and shall, for all purposes, serve the same terms that they would have served had the board of trustees of the prepaid tuition trust fund continued.

(c) The board consists of nine members and includes the following:

(1) The secretary of education and the arts, or his or her designee;

(2) The state treasurer, or his or her designee;

(3) Two representatives of the higher education policy commission, who may or may not be members of the higher education policy commission, appointed by the commission who serve as voting members of the board, one of whom shall
represent the interests of the universities of West Virginia and one of whom shall represent the interests of the state colleges and community and technical colleges of West Virginia. The members appointed pursuant to the provisions of this subdivision shall assume the positions heretofore held by the representatives of the university system board of trustees and the state college system board of directors in existence prior to July 1, 2000;

(4) Five other members, appointed by the Governor, with knowledge, skill and experience in an academic, business or financial field, to be appointed as follows:

(A) 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;

(B) 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;

(C) One member representing the interests of private institutions of higher education located in this state appointed from one or more nominees of the West Virginia association of private colleges; and

(D) Two members representing the public.

d) The public members and the member representing the interests of private institutions of higher education are appointed by the governor with the advice and consent of the Senate.

e) Only state residents are eligible for appointment to the board.

f) Members appointed by the governor serve a term of five years and are eligible for reappointment at the expiration of their terms. In the event of a vacancy among appointed mem-
bers, the governor shall appoint a person representing the same interests to fill the unexpired term. Of the initial appointments to the board of trustees of the prepaid tuition trust fund in existence immediately prior to the effective date of this section, 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 are five years.

(g) Members of the board serve without compensation. The treasurer may pay all expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Expense payments are made from the college prepaid tuition and savings program administrative account, and are made at the same rate paid to state employees.

(h) The treasurer may provide support staff and office space for the board.

(i) The treasurer is the chairman and presiding officer of the board, and may appoint the employees 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 board.

§18-30-5. Powers of the board.

In addition to the powers granted by any other provision of this article, the board has the powers necessary or appropriate to carry out the provisions and objectives of this article, other methods of financing post-secondary education as relate to the program, and the powers delegated by any other law of the state or any executive order of the state. The board may also:

(a) Adopt and amend bylaws;

(b) Sue and be sued;
(c) Execute contracts and other instruments for necessary goods and services, employ necessary personnel and engage the services of private consultants, actuaries, auditors, counsel, managers, trustees; and any other contractor or professional needed. Selection of these services is not subject to the provisions of article three, chapter five-a of this code;

(d) Operate a prepaid tuition plan in accordance with this article and 26 U.S.C. § 529;

(e) Operate a savings plan in accordance with this article and 26 U.S.C. § 529;

(f) Develop and impose any requirements, policies, procedures and guidelines to implement and manage the program;

(g) Impose reasonable requirements for residency for beneficiaries at the time of purchase of a prepaid tuition contract. However, nothing in this subdivision establishes residency requirements for matriculation at state eligible educational institutions;

(h) Assess, collect and expend administrative fees, charges and penalties;

(i) Authorize the assessment, collection and retention of fees and charges against the amounts paid into and the earnings on the trust funds by a financial institution, investment manager, fund manager, West Virginia investment management board, or other professional managing or investing the trust funds and accounts;

(j) Invest and reinvest any of the funds and accounts under the board’s control with a financial institution, an investment manager, a fund manager, the West Virginia investment management board or other professional investing the funds and
accounts. Investments made under this article shall be made in accordance with the provisions of article six-c, chapter forty-four of this code, the West Virginia uniform prudent investor act. No board member, nor any person, financial institution, investment manager, fund manager or the West Virginia investment management board to whom the board delegates any of its investment authority who acts within the standard of care set forth in this section is personally liable for losses suffered by the program on investments made pursuant to this article;

(k) Solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans, aid, and property, real or personal of any nature and 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. The board shall use the property received to effectuate the desires of the donor, and shall convert the property received into cash within ninety days of receipt;

(l) Propose legislative rules for promulgation in accordance with the provisions of article three-a, chapter twenty-nine-a of this code;

(m) Make all necessary and appropriate arrangements with eligible educational institutions in order to fulfill its obligations under the prepaid tuition contracts and the savings plan contracts; and

(n) Establish a direct-support organization which is a West Virginia corporation, not for profit, organized and operated to receive, hold, invest and administer property and make expenditures to or for the benefit of the purposes of this article, if the board determines a need for the organization exists. The board may authorize the direct-support organization to use program facilities and property, except money. The board may invest funds of the direct-support organization.
§18-30-6. West Virginia prepaid tuition trust.

(a) The "Prepaid Tuition Trust Fund" is continued within the accounts held by the state treasurer for administration by the board.

(b) The prepaid tuition trust fund shall receive all payments from account owners on behalf of beneficiaries of prepaid tuition contracts or from any other source, public or private. Earnings derived from the investment of moneys in the prepaid tuition trust fund shall remain in the prepaid tuition trust fund held in trust in the same manner as payments, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the prepaid tuition plan.

(c) The corpus, assets and earnings of the prepaid tuition trust fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the board on behalf of and for the benefit of the prepaid tuition plan does not constitute a debt of the state, but is solely an obligation of the prepaid tuition trust fund. The state has no obligation to any designated beneficiary or any other person as a result of the prepaid tuition plan. All amounts payable from the prepaid tuition trust fund are limited to amounts available in the prepaid tuition trust fund.

(d) Nothing in this article or in any prepaid tuition contract is a promise or guarantee of admission to, continued enrollment in, or graduation from an eligible educational institution.

(e) The requirements of the provisions of chapter thirty-two of this code do not apply to the sale of a prepaid tuition contract by the board, its employees and agents.

(f) The prepaid tuition plan and the prepaid tuition trust fund shall continue in existence until terminated by the Legisla-
ture as it determines or by the board upon determining that
continued operation is infeasible. Upon termination of the plan
and after payment of all fees, charges, expenses and penalties,
the assets of the prepaid tuition trust fund are paid to current
account owners, to the extent possible, on a pro rata basis as
their interests may appear, and any unclaimed assets in the
program shall revert to the state in accordance with the uniform
unclaimed property act in article eight, chapter thirty-six of this
code.

(g) The board shall have the actuarial soundness of the
prepaid tuition trust fund evaluated annually to ensure that
sufficient funds are deposited in the prepaid tuition trust fund
to meet obligations. If the board finds that additional contribu-
tions are needed to preserve the actuarial soundness of the
prepaid tuition trust fund, it may adjust the terms of preexisting
and subsequent prepaid tuition contracts to ensure the prepaid
tuition trust fund’s soundness: Provided, That any necessary
adjustment to preexisting contracts are only assessed on future
payments and not retroactively upon previous payments made
by the account owners or donors to the prepaid tuition trust
fund.

(h) The board shall build and maintain in the prepaid
tuition trust fund an actuarial surplus, at a level recommended
by the actuaries, to ensure appropriate funding for the trust
fund.

(i) On or before the first day of December of each year, the
chairman of the board shall submit to the governor the amount
of any deficiency certified by an actuary as needed to meet the
current obligations of the prepaid tuition trust fund for the next
fiscal year. Notwithstanding any provision of this code to the
contrary, the governor, after consultation with the budget
section of the finance division of the department of administra-
tion, may request an appropriation to the board in the amount
of the deficiency, to meet the current obligations of the prepaid
tuition trust fund, in the budget presented to the next session of
the Legislature for its consideration. The Legislature is not
required to make any appropriation pursuant to this subsection,
and the amount of the deficiency is not a debt or a liability of
the state. As used in this section, “current obligations of the
prepaid tuition trust fund” means amounts required for the
payment of contract distributions or other obligations of the
prepaid tuition trust fund, the maintenance of the fund, and
operating expenses for the current fiscal year. Nothing in this
subsection creates an obligation of state general revenue funds
or requires any level of funding by the Legislature.

(j) To fulfill the charitable and public purposes of this
article, neither the earnings nor the corpus of the prepaid tuition
trust fund is subject to taxation by the state or any of its
political subdivisions.

(k) Notwithstanding any provision of this code to the
contrary, money in the prepaid tuition trust fund is exempt from
creditor process and not subject to attachment, garnishment or
other process; is not available as security or collateral for any
loan, or otherwise subject to alienation, sale, transfer, assign-
ment, pledge, encumbrance or charge; and is not subject to
seizure, taking, appropriation or application by any legal or
equitable process or operation of law to pay any debt or liability
of any account owner, beneficiary or successor in interest.

§18-30-7. West Virginia savings plan trust.

(a) The board may establish a savings plan trust, and may
establish a savings plan trust fund account, titled the “Savings
Plan Trust Fund”, within the accounts held by the treasurer or
with a financial institution, an investment manager, a fund
manager, the West Virginia investment management board or
any other person for the purpose of managing and investing the
trust fund. Assets of the savings plan trust are held in trust for account owners and beneficiaries.

(b) The savings plan trust fund shall receive all moneys from account owners on behalf of beneficiaries of savings plan contracts or from any other source, public or private. Earnings derived from the investment of the moneys in the college savings trust fund shall remain in the fund, held in trust in the same manner as contributions, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the savings plan.

(c) The corpus, assets and earnings of the savings plan trust fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the board on behalf of and for the benefit of the savings plan does not constitute a debt or obligation of the state, but is solely an obligation of the savings plan trust fund. The state has no obligation to any designated beneficiary or any other person as a result of the savings plan. All amounts payable from the savings plan trust fund are limited to amounts available in the fund.

(d) Nothing in this article or in any savings plan contract is a promise or guarantee that the distributions available for a beneficiary will cover the cost of qualified higher education expenses at an eligible educational institution, or as a promise or guarantee of admission to, continued enrollment in, or graduation from an eligible higher education institution.

(e) The requirements of the provisions of chapter thirty-two of this code do not apply to the sale of a savings plan contract by the board, its employees and agents.

(f) The savings plan and any savings plan trust fund shall continue in existence until terminated by the Legislature as it determines or by the board upon determining that continued
operation is infeasible. Upon termination of the plan, the balances of savings plan accounts, less any distributions, refunds, fees, charges and penalties, are sent to account owners, to the extent possible, and any unclaimed assets in the program shall revert to the state in accordance with the uniform unclaimed property act in article eight, chapter thirty-six of this code.

(g) The state pledges to account owners and beneficiaries of the savings plans that the state will not limit or alter the rights under this article which are vested until the obligations are met and discharged. However, nothing in this subsection prohibits the Legislature from discontinuing or terminating a savings plan.

(h) In order to fulfill the charitable and public purposes of this article, neither the earnings nor the corpus of the savings plan trust fund is subject to taxation by the state or any of its political subdivisions.

(i) Notwithstanding any provision of this code to the contrary, money in the savings plan trust fund is exempt from creditor process and not subject to attachment, garnishment, or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance or charge; and is not subject to seizure, taking, appropriation or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary or successor in interest.

§18-30-8. College prepaid tuition and savings program administrative account.

There is hereby created a separate account within the state treasurer's office titled the “college prepaid tuition and savings program administrative account” for the purposes of implementing, operating and maintaining the trust funds and program
created by this article. On the effective date of this section, all moneys in the prepaid tuition trust fund administrative account are hereby transferred to the college prepaid tuition and savings program administrative account.

The administrative account shall receive all fees, charges and penalties collected by the board. Expenditures from the fund are authorized from collections subject to appropriations made by the Legislature.


As provided in section twelve-a, article twenty-one, chapter eleven of this code, any payment made under a prepaid tuition contract or other college savings plan administered by the board, pursuant to the provisions of this article, is eligible for a tax deduction.

§18-30-10. Reports 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 prepaid tuition trust fund and statements on the savings plan accounts to the respective account owners;

(2) Prepare, or have prepared, a quarterly report on the status of the program, including the trust funds and the administrative account, and provide a copy of the report to the joint committee on government and finance and the legislative oversight commission on education accountability; and

(3) Prepare, or have prepared, an annual actuarial report of the prepaid tuition trust fund and transmit a copy of the report to the governor, the president of the Senate, the speaker of the House of Delegates and the legislative oversight commission on education accountability.
(b) All accounts of the board, including the trust funds, are subject to an annual external audit by an accounting firm, selected by the board, of which all members or partners assigned to head the audit are members of the American institute of certified public accountants. The audit shall comply with the requirements of section thirty-three, article two, chapter five-a of this code.


The calculations of a beneficiary’s eligibility for state student financial aid for higher education may not include or consider the value of distributions available in a prepaid tuition account or the value of distributions available in a savings plan account.

§18-30-12. Confidentiality.

Any information that would tend to disclose the identity of a beneficiary, account owner or donor is exempt from the provisions of chapter twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information in a statistical or other form which does not identify the individuals involved or provide personal information. Account owners are permitted access to their own personal information.


The legislative rules filed in the state register on the thirtieth day of September, one thousand nine hundred ninety-seven, modified by the board of trustees of the West Virginia prepaid tuition trust fund to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the thirtieth day of January, one thousand nine hundred ninety-eight, relating to the West Virginia prepaid tuition trust fund (rules for the West Virginia prepaid tuition trust fund), are authorized.
CHAPTER 38. LIENS.

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

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

1 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).

2 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:

3 (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.

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

5 (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 may not exceed eight thousand dollars.

6 (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.
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28 (e) The debtor's interest, not to exceed in value eight
ev 29 hundred dollars plus any unused amount of the exemption
p 30 provided under subsection (a) of this section in any property.

31 (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.

35 (g) Any unmeasured life insurance contract owned by the
de 36 debtor, other than a credit life insurance contract.

37 (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
unmeasured life insurance contract owned by the debtor under
which the insured is the debtor or an individual of whom the
de 43 debtor is a dependent.

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

46 (j) The debtor's right to receive:

47 (1) A social security benefit, unemployment compensation
or a local public assistance benefit;

49 (2) A veterans' benefit;

50 (3) A disability, illness or unemployment benefit;

51 (4) Alimony, support or separate maintenance, to the extent
reasonably necessary for the support of the debtor and any
dependent of the debtor;

54 (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 reason-
ably necessary for the support of the debtor and any dependent
of the debtor, and funds on deposit in an individual retirement
account (IRA), including a simplified employee pension (SEP)
regardless of the amount of funds, unless:

(A) The 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 the plan or contract arose;

(B) The payment is on account of age or length of service;

(C) The plan or contract does not qualify under Section
401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code
of 1986; and

(D) With respect to an individual retirement account,
including a simplified employee pension, the amount is subject
to the excise tax on excess contributions under section 4973
and/or section 4979 of the Internal Revenue Code of 1986, or
any successor provisions, regardless of whether the tax is paid.

(k) The debtor’s right to receive, or property that is trace-
able 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 the 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 or to the savings plan trust fund, including earnings, in accordance with article thirty, chapter eighteen of this code on behalf of any beneficiary.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 2nd day of May, 2001.

Governor