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STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003

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**S E C O N D**  
**E N R O L L M E N T**

## House Bill No. 2953

(By Delegates Michael, Mezzatesta and Doyle)

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Amended and Again Passed March 16, 2003

In Effect from Passage

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SECRETARY OF STATE

## **S E C O N D E N R O L L M E N T**

### **H. B. 2953**

(BY DELEGATES MICHAEL, MEZZATESTA AND DOYLE)

[Amended and Again Passed March 16, 2003,  
as a Result of the Objections of the Governor; in Effect From Passage.]

AN ACT to amend and reenact section six, article thirty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article eight, chapter thirty-six of said code, all relating to the administration of the prepaid tuition plan of the West Virginia college prepaid tuition and savings program; clarifying how moneys in the prepaid tuition trust fund are processed when the plan is terminated; closing the prepaid tuition plan to new contracts until further legislative authorization; continuing the plan as to current contract owners; providing for accrual of investment earnings; continuing annual evaluation of actuarial soundness of the prepaid tuition trust fund; requiring annual reports by the chairman of the prepaid tuition trust fund; establishing a mechanism to eliminate any actuarially projected unfunded liability in the prepaid tuition trust fund over a fixed period with funds from the unclaimed property trust fund in an amount not to exceed five hundred thousand dollars annually;

creating the prepaid tuition trust escrow account and establishing purposes therefor; providing for the investment and use of the money in the prepaid tuition trust escrow account; providing for the transfer of funds in the unclaimed property trust fund to the prepaid tuition trust escrow account and to the general revenue fund; and providing for the disposition of funds in the prepaid tuition trust escrow account upon closure of the prepaid tuition trust fund.

*Be it enacted by the Legislature of West Virginia:*

That section six, 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 thirteen, article eight, chapter thirty-six 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.**

#### **§18-30-6. West Virginia prepaid tuition trust.**

1       (a) The “Prepaid Tuition Trust Fund” is continued within  
2 the accounts held by the state treasurer for administration by the  
3 board.

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

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

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

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

30 (f) The prepaid tuition plan and the prepaid tuition trust  
31 fund shall continue in existence until terminated by the Legisla-  
32 ture as it determines or by the board upon determining that  
33 continued operation is infeasible. Upon termination of the plan  
34 and after payment of all fees, charges, expenses and penalties,  
35 the assets of the prepaid tuition trust fund are paid to current  
36 account owners, to the extent possible, on a pro rata basis as  
37 their interests may appear, and any assets presumed abandoned  
38 are reported and remitted to the unclaimed property administra-  
39 tor in accordance with the uniform unclaimed property act in  
40 article eight, chapter thirty-six of this code. Any assets then  
41 remaining in the prepaid tuition trust fund shall revert to the  
42 state general revenue fund.

43 (g) Effective the eighth day of March, two thousand three,  
44 the prepaid tuition plan is closed to new contracts until the

45 Legislature authorizes the plan to reopen. Closing the plan to  
46 new contracts shall not mean the prepaid tuition plan is closed  
47 and shall not affect any prepaid tuition plan contracts in effect  
48 on the eighth day of March, two thousand three. All contract  
49 owners shall continue to pay any amounts due, including  
50 without limitation monthly installments, penalties and fees.  
51 Earnings derived from the investment of moneys in the prepaid  
52 tuition trust fund shall continue to accrue to the fund until the  
53 fund is closed in accordance with this article.

54 (h) The board shall continue to have the actuarial soundness  
55 of the prepaid tuition trust fund evaluated annually.

56 (i)(1) On or before the first day of December, two thousand  
57 three, and each year thereafter, the chairman of the board shall  
58 submit to the governor, the president of the Senate, the speaker  
59 of the House of Delegates, joint committee on government and  
60 finance and the unclaimed property administrator a report  
61 certified by an actuary of the actuarial status of the prepaid  
62 tuition trust fund at the end of the fiscal year immediately  
63 preceding the date of the report. In the event the report for fiscal  
64 year two thousand three states there is a projected unfunded  
65 liability in the prepaid tuition trust fund, the report shall also  
66 state the amount needed for the next fiscal year to eliminate the  
67 projected unfunded liability in equal payments over a period of  
68 ten fiscal years, concluding the thirtieth day of June, two  
69 thousand thirteen. In the event the projected unfunded liability  
70 of the prepaid tuition trust fund increases in subsequent reports,  
71 the actuary shall calculate the amount needed, less any amount  
72 in the prepaid tuition trust escrow account, to eliminate the  
73 projected unfunded liability over a period the actuary deter-  
74 mines is fiscally responsible.

75 (2) The prepaid tuition trust escrow account is hereby  
76 created in the state treasury to guarantee payment of prepaid  
77 tuition plan contracts. The board shall invest the prepaid tuition

78 trust escrow account in accordance with the provisions of this  
79 article in fixed income securities, and all earnings of the escrow  
80 account shall remain in the escrow account.

81 (3) In the event the actuary determines an unfunded liability  
82 exists in the prepaid tuition trust fund, the report shall certify  
83 the amount of money needed for the next fiscal year to elimi-  
84 nate the projected unfunded liability pursuant to the provisions  
85 of subdivision (1) of this subsection. The certified amount may  
86 not exceed five hundred thousand dollars each year. On or  
87 before the fifteenth day of December in which the chairman  
88 submitted a report stating the amount needed for the next fiscal  
89 year to eliminate a projected unfunded liability, the unclaimed  
90 property administrator shall transfer the amount requested, not  
91 to exceed five hundred thousand dollars each year, from the  
92 unclaimed property trust fund to the prepaid tuition trust escrow  
93 account.

94 (4) In the event the money in the prepaid tuition trust fund  
95 is insufficient to cover the amount of money needed to meet the  
96 current obligations of the prepaid tuition trust fund, the board  
97 may withdraw from the prepaid tuition trust escrow account the  
98 amount of money needed to meet current obligations of the  
99 prepaid tuition trust fund.

100 (5) Notwithstanding any provision of this code to the  
101 contrary, the governor, after consultation with the budget  
102 section of the finance division of the department of administra-  
103 tion, may request an appropriation to the board in the amount  
104 of the deficiency to meet the current obligations of the prepaid  
105 tuition trust fund, in the budget presented to the next session of  
106 the Legislature for its consideration. The Legislature is not  
107 required to make any appropriation pursuant to this subsection,  
108 and the amount of the deficiency is not a debt or a liability of  
109 the state.

110 (6) As used in this section, “current obligations of the  
111 prepaid tuition trust fund” means amounts required for the  
112 payment of contract distributions or other obligations of the  
113 prepaid tuition trust fund, the maintenance of the fund, and  
114 operating expenses for the current fiscal year.

115 (7) Nothing in this subsection creates an obligation of state  
116 general revenue funds or requires any level of funding by the  
117 Legislature.

118 (8) After the prepaid tuition trust fund has been closed and  
119 all moneys paid in accordance with this section, any moneys  
120 remaining in the prepaid tuition trust escrow account shall be  
121 transferred to the general revenue fund and the account closed.

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

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

135 (1) No provision of this section may be construed to  
136 interfere with the operation of the savings plan authorized under  
137 this article.

## **CHAPTER 36. ESTATES AND PROPERTY.**

### **ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.**

**§36-8-13. Deposit of funds.**

1 (a) The administrator shall record the name and last known  
2 address of each person appearing from the holders reports to be  
3 entitled to the property and the name and last known address of  
4 each insured person or annuitant and beneficiary and with  
5 respect to each policy or annuity listed in the report of an  
6 insurance company, its number, the name of the company and  
7 the amount due.

8 (b) The unclaimed property fund is continued. The adminis-  
9 trator shall deposit all funds received pursuant to this article in  
10 the unclaimed property fund, including the proceeds from the  
11 sale of abandoned property under section twelve of this article.  
12 In addition to paying claims of unclaimed property duly  
13 allowed, the administrator may deduct the following expenses  
14 from the unclaimed property fund:

15 (1) Expenses of the sale of abandoned property;

16 (2) Expenses incurred in returning the property to owners,  
17 including without limitation the costs of mailing and publica-  
18 tion to locate owners;

19 (3) Reasonable service charge; and

20 (4) Expenses incurred in examining records of holders of  
21 property and in collecting the property from those holders.

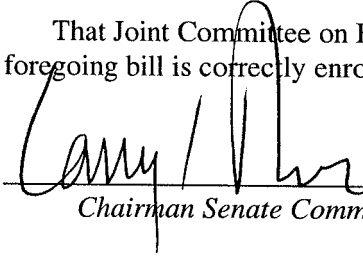
22 (c) The unclaimed property trust fund is continued within  
23 the state treasury. After deducting the expenses specified in  
24 subsection (b) of this section and maintaining a sum of money  
25 from which to pay claims duly allowed, the administrator shall  
26 transfer the remaining moneys in the unclaimed property fund  
27 to the unclaimed property trust fund.



28 (d) On or before the fifteenth day of December of each year  
29 and after receipt of a report from the chairman of the board of  
30 trustees of the West Virginia college prepaid tuition and savings  
31 program stating the amount certified by an actuary in accor-  
32 dance with the provisions of section six, article thirty, chapter  
33 eighteen of this code, notwithstanding any provision of this  
34 code to the contrary, the administrator shall transfer the sum of  
35 money certified by the actuary from the unclaimed property  
36 trust fund to the prepaid tuition trust escrow account, the  
37 amount transferred not to exceed five hundred thousand dollars  
38 annually.

39 (e) After transferring any money required by subsection (d)  
40 of this section, the administrator shall transfer moneys remain-  
41 ing in the unclaimed property trust fund to the general revenue  
42 fund.

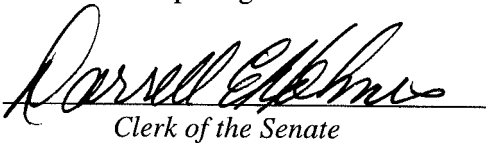
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

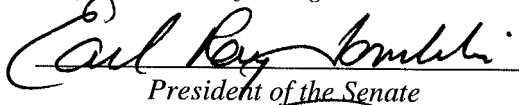
  
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Chairman House Committee

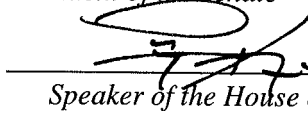
Originating in the House.

In effect from passage

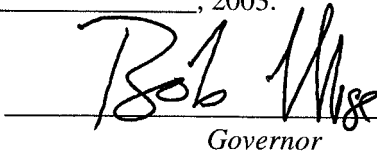
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
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 April, 2003.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/26/03

Time 4:10 p