

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Enrolled

Senate Bill 8

BY SENATORS GRADY, LINDSAY, JEFFRIES, AND PHILLIPS

[Passed January 24, 2022; in effect from passage]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to repeal §18-30-6a of the Code of West Virginia, 1931, as amended; to amend said
2 code by adding thereto a new article, designated §12-9-1, §12-9-2, and §12-9-3; to amend
3 and reenact §18-30-1, §18-30-2, §18-30-3, §18-30-4, §18-30-5, §18-30-6, §18-30-8, §18-
4 30-10, §18-30-11, and §18-30-13 of said code; to amend said code by adding thereto a
5 new section, designated §18-30-3a; and to amend and reenact §18-30A-2, §18-30A-3,
6 §18-30A-5, §18-30A-6, §18-30A-8, and §18-30A-9 of said code, all relating generally to
7 the state's savings and investment programs; continuing the Savings and Investment
8 Program Fulfillment Fund and relocating provisions authorizing said fund to a new article
9 of code; clarifying that moneys in the fund may be used for certain savings and investment
10 programs; updating the West Virginia College Prepaid Tuition and Savings Program Act
11 to reflect the termination of the Prepaid Higher Education Program, Plan, and Trust Fund;
12 eliminating obsolete language related to the Prepaid Tuition Program; providing a short
13 title; defining terms; setting forth legislative findings and rules of statutory construction;
14 continuing the West Virginia College Savings Program; continuing the Board of the
15 College Prepaid Tuition and Savings Program and redesignating the board as the Board
16 of Trustees of the West Virginia College and Jumpstart Savings Programs; clarifying that
17 the board is a public instrumentality of the state and the issuer of interests in the Savings
18 Plan Trust; increasing the number of board members; establishing qualifications of certain
19 board members; establishing the duties and powers of the board with regard to the College
20 Savings Program; authorizing the board to use financial organizations as program
21 depositories and managers and providing requirements therefor; continuing the College
22 Prepaid Tuition and Savings Program Administrative Account and redesignating said
23 account as the College and Jumpstart Savings Administrative Account; authorizing certain
24 expenditures from the administrative account; providing that the administrative account is
25 a nonappropriated special revenue account; authorizing the board to take action to satisfy
26 outstanding obligations of the Prepaid Tuition Trust Plan arising after the plan's closure;

27 continuing the Prepaid Tuition Plan escrow fund; continuing the board's authority to
28 maintain a certain amount in the escrow fund for up to 10 years; continuing the board's
29 authorization to expend moneys from the escrow fund in certain circumstances; requiring
30 the board to invest the moneys in the escrow fund; providing for closure of escrow fund;
31 setting forth legislative findings and rules of statutory construction related to the Jumpstart
32 Savings Program; defining terms; eliminating the West Virginia Jumpstart Savings Board;
33 requiring the Board of Trustees of the West Virginia College and Jumpstart Savings
34 Program to administer the Jumpstart Savings Program; establishing the powers of the
35 Board of Trustees of the West Virginia College and Jumpstart Savings Programs to
36 implement and administer the Jumpstart Savings Program; authorizing the board to enter
37 into agreements with agencies, subdivisions, or other states regarding programs that are
38 substantially similar to the Jumpstart Savings Program; providing that the Jumpstart
39 Savings Program Trust is a public instrumentality of the state and shall issue interests in
40 said trust to eligible members of the public; eliminating the Jumpstart Savings Expense
41 Fund; providing that fees, charges, and penalties collected by the board in administering
42 the Jumpstart Savings Program shall be deposited in the College and Jumpstart Savings
43 Administrative Account; making Jumpstart Savings Program expenses payable from the
44 administrative account; eliminating inapplicable language relating to selecting financial
45 institutions to provide services for the Jumpstart Savings Program based on existing state
46 purchasing exemption; specifying that the board may enter into a contract with financial
47 institutions to provide services to both the College Savings and Jumpstart Savings
48 programs; eliminating requirement that board take custody of Jumpstart Savings accounts
49 prior to transferring accounts to a new program manager; and making numerous technical
50 corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 9. SAVINGS AND INVESTMENT PROGRAM FULFILLMENT FUND.

§12-9-1. Special revenue account continued.

1 There is continued in the State Treasury the special revenue account, designated the
2 West Virginia Savings and Investment Program Fulfillment Fund, previously authorized by
3 §18-30-6a of this code. The fund shall be administered by the State Treasurer for the purposes
4 described in this article.

§12-9-2. Receipts and expenditures.

1 (a) The West Virginia Savings and Investment Program Fulfillment Fund shall consist of
2 all moneys in the fund on the effective date of this section, any moneys that may be appropriated
3 to the fund by the Legislature, all interest or other return earned or received from investment of
4 the fund; any moneys which the fund is authorized to receive under any provision of this code for
5 the purposes of this article, and all gifts, grants, bequests, or transfers made to the fund from any
6 source.

7 (b) The State Treasurer may expend moneys in the West Virginia Savings and Investment
8 Program Fulfillment Fund for costs to implement or administer any savings or investment program
9 with an initial date of operation occurring on or after July 1, 2021, including, but not limited to, the
10 Hope Scholarship Program, established in §18-31-1 *et seq.* of this code, and Jumpstart Savings
11 Program, established in §18-30A-1 *et seq.* of this code. Any balance, including accrued interest
12 and other returns, remaining in the fund at the end of each fiscal year shall not revert to the
13 General Revenue Fund but shall remain in the fund to be expended as authorized by this article.

§12-9-3. Investment of fund.

1 The State Treasurer is authorized to invest and reinvest moneys in the fund, and all
2 interest and earnings of the fund shall accrue to the fund and be available for expenditure in
3 accordance with this article.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE SAVINGS PROGRAM ACT.

§18-30-1. Title.

1 This article is known and cited as the West Virginia College Savings Program Act.

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

1 The Legislature finds and determines that enhancing the accessibility and affordability of
2 education for all citizens of West Virginia will promote a well-educated and financially secure
3 population to the ultimate benefit of all citizens of West Virginia, and that assisting individuals and
4 families in planning for future educational expenses by making the tax incentives in 26 U.S.C. §
5 529 available to West Virginians is one of the proper governmental functions and purposes of the
6 state.

§18-30-3. Definitions.

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

3 “Account” means a savings plan account established in accordance with this article.

4 “Account owner” means the individual, corporation, association, partnership, trust, or other
5 legal entity who enters into a savings plan contract and invests money in a savings plan account.

6 “Beneficiary” means the individual designated as a beneficiary at the time an account is
7 established, the individual designated as the beneficiary when beneficiaries are changed, the
8 individual entitled to receive distributions from an account, and any individual designated by the
9 account owner, his or her agent, or his or her estate in the event the beneficiary is unable or
10 unwilling to receive distributions under the terms of the contract.

11 “Board” means the Board of Trustees of the West Virginia College and Jumpstart Savings
12 Programs as provided in §18-30-4 of this code.

13 “Distribution” means any disbursement from an account in accordance with 26 U.S.C.
14 §529.

15 “Eligible educational institution” means an institution of higher education or a private or
16 religious primary, middle, or secondary school that qualifies under 26 U.S.C. §529 as an eligible
17 educational institution.

18 “Jumpstart Savings Expense Fund”, for the purposes of this article, means the College
19 and Jumpstart Savings Administrative Account, established in §18-30-8 of this code.

20 “Outstanding obligations of the Prepaid Tuition Plan” means the outstanding contract
21 obligations of the board to persons owning Prepaid Tuition Plan accounts. The term also includes
22 any fees, charges, expenses, penalties, or any other obligation or liability of the Prepaid Tuition
23 Trust Fund or plan.

24 “Prepaid Tuition Program” means the Prepaid Higher Education Program and Plan, which
25 was previously established and authorized by this article as reflected in chapter 80, Acts of the
26 Legislature, Regular Session, 1997, and which was closed in 2021.

27 “Program” means the West Virginia College Savings Program established pursuant to this
28 article and as defined in §18-30-4(a) of this code.

29 “Qualified education expenses” means expenses treated as “qualified higher education
30 expenses” under 26 U.S.C. §529.

31 “Savings plan” means the plan that allows account distributions for qualified higher
32 educational expenses and tuition at private or religious primary, middle, and secondary schools.

33 “Savings plan account” means an account established by an account owner pursuant to
34 this article, in order for the beneficiary to apply distributions toward qualified higher education
35 expenses and tuition expenses at eligible educational institutions.

36 “Savings plan contract” means a contract entered into by the board or its agent, if any,
37 and an account owner establishing a savings plan account.

38 “Treasurer” means the West Virginia State Treasurer.

39 “Tuition” means the quarter, semester, or term charges imposed by an eligible educational
40 institution and all mandatory fees required as a condition of enrollment by all students for full-time
41 attendance.

§18-30-3a. 2022 Legislative findings; statutory construction.

1 (a) The Legislature makes the following findings regarding the amendments to this article
2 adopted during the 2022 Regular Session of the Legislature:

3 (1) Whereas the Prepaid Tuition Program and Plan, administered by the board from 1998
4 until 2021, was statutorily closed to new accounts in 2001;

5 (2) Whereas the board initiated a statutorily authorized buyout of all remaining accounts
6 in 2021 and terminated the Prepaid Tuition Program, Plan, and Trust Fund;

7 (3) Whereas the Jumpstart Savings Act, adopted during the 2021 Regular Session of the
8 Legislature, created a new savings and investment program to become operational on July 1,
9 2022;

10 (4) Whereas the Jumpstart Savings Program is structurally similar to the College Savings
11 Program, both programs share the objective of assisting West Virginians to obtain the education
12 and skills that they need for productive and successful livelihoods, and the Jumpstart Savings Act
13 allows state tax rollovers from a SMART529 account into a Jumpstart Savings Account;

14 (5) Whereas authorizing a single board to administer both the College Savings Program
15 and Jumpstart Savings Program, rather than requiring each program to have a separate board,
16 will significantly reduce management and administrative costs to the state;

17 (6) Therefore, the Board of Trustees of the College Prepaid Tuition and Savings Program
18 should be continued and re-designated as “the Board of Trustees of the West Virginia College
19 and Jumpstart Savings Programs” and said board should be tasked with administering the
20 College Savings Program, established by this article, and the Jumpstart Savings Program,
21 established by §18-30A-1 *et seq.* of this code.

22 (b) The Legislature further finds that, whenever possible, this article should be read in pari
23 materia and construed in harmony with the Jumpstart Savings Act, located in §18-30A-1 *et seq.*
24 of this code.

25 (c) The Legislature further finds that interests in the College Savings Program Trust are
26 intended:

27 (1) To qualify for relevant federal securities law exemptions for public instrumentalities of
28 a State; and

29 (2) To be exempt from registration under chapter 32 of the West Virginia Code, the Uniform
30 Securities Act.

**§18-30-4. The Board of Trustees of the West Virginia College and Jumpstart Savings
Programs; members; terms; compensation; proceedings generally.**

1 (a) The West Virginia College Savings Program is continued. The program consists of the
2 savings plan administered according to this article and the requirements of 26 U.S.C. §529.

3 (b) The Board of Trustees of the College Prepaid Tuition and Savings Program is
4 continued as a public instrumentality of the State of West Virginia: *Provided*, That the Board shall
5 hereafter be known as the Board of Trustees of the West Virginia College and Jumpstart Savings
6 Programs.

7 (c) The board consists of 11 members and includes the following:

8 (1) The State Treasurer, or his or her designee;

9 (2) The State Superintendent of Schools, or his or her designee;

10 (3) A representative of the Higher Education Policy Commission, who may or may not be
11 a member of the Higher Education Policy Commission, appointed by the commission who serves
12 as a voting member of the board;

13 (4) A representative of the Council for Community and Technical College Education, who
14 may or may not be a member of the Council for Community and Technical College Education,
15 appointed by the council who serves as a voting member of the board; and

16 (5) Seven other members, appointed by the Governor, with the advice and consent of the
17 Senate, as follows:

18 (A) Three private citizens with knowledge, skill, and experience in a financial field, who
19 are not employed by, or an officer of, the state or any political subdivision of the state: *Provided*,
20 That reasonable efforts shall be made to appoint one such citizen to the board who holds a
21 designation of Chartered Financial Analyst, offered by the CFA Institute;

22 (B) Two private citizens, appointed by the Governor, with knowledge, skill, and experience
23 in trade occupations or businesses, to be appointed as follows:

24 (i) A member representing a labor organization that represents tradespersons in this state;

25 and

26 (ii) A member representing a business or entity offering trade or skilled labor
27 apprenticeships in this state; and

28 (C) Two members representing the interests of private institutions of higher education
29 located in this state appointed from one or more nominees of the West Virginia Independent
30 Colleges and Universities.

31 (d) Only state residents are eligible for appointment to the board.

32 (e) Members appointed by the Governor serve a term of five years and are eligible for
33 reappointment at the expiration of their terms. If there is a vacancy among appointed members,
34 the Governor shall appoint a person representing the same interests to fill the unexpired term.

35 (f) Members of the board serve until the later of the expiration of the term for which the
36 member was appointed or the appointment of a successor. Members of the board serve without
37 compensation. The Treasurer may pay all expenses, including travel expenses, actually incurred
38 by board members in the conduct of their official duties. Expense payments are made from the
39 College and Jumpstart Savings Administrative Account and are made at the same rate paid to
40 state employees.

41 (g) The Treasurer may provide support staff and office space for the board.

42 (h) The Treasurer is the chairperson and presiding officer of the board and may appoint
43 the employees the board considers advisable or necessary. A majority of the members of the
44 board constitutes a quorum for the transaction of the business of the board.

§18-30-5. Powers of the board to administer the College Savings Program.

1 (a) The board shall administer the College Savings Program in accordance with this article
2 and 26 U.S.C. §529.

3 (b) The board shall offer and issue interests in the Savings Plan Trust to eligible members
4 of the public.

5 (c) The board is authorized to take any lawful action necessary to effectuate the provisions
6 of this article and successfully administer the program, subject to applicable state and federal law,
7 including, but not limited to, the following:

8 (1) Adopt and amend bylaws;

9 (2) Execute contracts and other instruments for necessary goods and services, employ
10 necessary personnel, and engage the services of private consultants, auditors, counsel,
11 managers, trustees, and any other contractor or professional needed for rendering professional
12 and technical assistance and advice: *Provided*, That selection of these services is not subject to
13 the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That all expenditures and
14 monetary and financial transactions may be subject to periodic audits by the Legislative Auditor;

15 (3) Implement the program through use of financial organizations as account depositories
16 and managers, as provided in §18-30-6 of this code;

17 (4) Develop and impose requirements, policies, procedures, and guidelines to implement
18 and manage the program;

19 (5) Establish the method by which funds shall be allocated to pay for administrative costs
20 and assess, collect, and expend administrative fees, charges, and penalties;

21 (6) Authorize the assessment, collection, and retention of fees and charges against the
22 amounts paid into and the earnings on the trust funds by a financial institution, investment

23 manager, fund manager, West Virginia Investment Management Board, the Board of Treasury
24 Investments, or other professional managing or investing the trust funds and accounts;

25 (7) Invest and reinvest any of the funds and accounts under the board's control with a
26 financial institution, an investment manager, a fund manager, the West Virginia Investment
27 Management Board, the Board of Treasury Investments, or other professional investing the funds
28 and accounts: *Provided*, That investments made under this article shall be made in accordance
29 with the provisions of §44-6C-1 *et seq.* of this code;

30 (8) Solicit and accept gifts, including bequests or other testamentary gifts made by will,
31 trust, or other disposition; grants; loans; aid; and property, real or personal of any nature and from
32 any source, or to participate in any other way in any federal, state, or local governmental programs
33 in carrying out the purposes of this article: *Provided*, That the board shall use the property
34 received to effectuate the desires of the donor, and shall convert the property received into cash
35 within 90 days of receipt;

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

38 (10) Propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this
39 code, including emergency rules when necessary.

40 (d) The power and duties of the board provided in this article are in addition to the powers
41 and duties of the board provided in §18-30A-1 *et seq.* of this code.

§18-30-6. Use of financial organizations as program depositories and managers.

1 (a) The board may implement the program through use of financial organizations as
2 account depositories and managers. The board may solicit proposals from financial organizations
3 to act as depositories and managers of the program. Financial organizations submitting proposals
4 shall describe the investment instruments which will be held in accounts. The board may select
5 more than one financial organization and investment instrument for the program. The board shall

6 select financial organizations to act as program depositories and managers, based on the
7 following criteria:

8 (1) The financial stability and integrity of the financial organization;

9 (2) The safety of the investment instrument being offered;

10 (3) The ability of the financial organization to satisfy recordkeeping and reporting
11 requirements;

12 (4) The financial organization's plan for promoting the program and the investment the
13 organization is willing to make to promote the program;

14 (5) The fees, if any, proposed to be charged to the account owners;

15 (6) The minimum initial deposit and minimum contributions that the financial organization
16 will require;

17 (7) The ability of the financial organization to accept electronic deposits and withdrawals,
18 including payroll deduction plans; and

19 (8) Other benefits to the state or its residents included in the proposal, including fees
20 payable to the state to cover expenses of operation of the program.

21 (b) The board may enter into any contracts with a financial organization necessary to
22 effectuate the provisions of this article. Any management contract shall include, at a minimum,
23 terms requiring the financial organization to:

24 (1) Take any action required to keep the program in compliance with requirements of this
25 article and any other applicable state or federal law;

26 (2) Keep adequate records of each account, keep each account segregated from each
27 other account, and provide the board with the information necessary to prepare the statements
28 required by this article and other applicable state and federal laws;

29 (3) Compile, summarize, and total information contained in statements required to be
30 prepared under this article and applicable state and federal laws and provide such compilations
31 to the board;

32 (4) Provide the board with access to the books and records of the program manager and
33 with any other information needed to determine compliance with the contract, this article, and any
34 other applicable state or federal law;

35 (5) Hold all accounts for the benefit of the account owner or owners;

36 (6) Be audited at least annually by a firm of certified public accountants selected by the
37 program manager and provide the results of such audit to the board;

38 (7) Provide the board with copies of all regulatory filings and reports made by the financial
39 organization during the term of the management contract or while the financial organization is
40 holding any accounts, other than confidential filings or reports that will not become part of the
41 program. The program manager shall make available for review by the board and the Treasurer
42 the results of any periodic examination of such manager by any state or federal banking,
43 insurance, or securities commission, except to the extent that such report or reports may not be
44 disclosed under law; and

45 (8) Ensure that any description of the program, whether in writing or through the use of
46 any medium, is consistent with the marketing plan developed pursuant to the provisions of this
47 article.

48 (c) The board may:

49 (1) Enter into contracts it deems necessary for the implementation of the program,
50 including but not limited to a contract with a financial institution, manager, consultant or other
51 professional to provide services to both the College Savings Program and the Jumpstart Savings
52 Program, established in §18-30A-1 *et seq.* of this code;

53 (2) Require that an audit be conducted of the operations and financial position of the
54 program depository and manager at any time if the board has any reason to be concerned about
55 the financial position, the record-keeping practices, or the status of accounts of such program
56 depository and manager; and

57 (3) Terminate or decline to renew a management agreement: *Provided*, That if the board
58 terminates or does not renew a management agreement, the board shall seek to promptly transfer
59 such accounts to another financial organization that is selected as a program manager or
60 depository and into investment instruments as similar to the original instruments as possible.

§18-30-6a. Special revenue account created for fulfillment of savings and investment programs.

1 [Repealed].

§18-30-8. The College and Jumpstart Savings Administrative Account.

1 (a) There is hereby continued a separate special revenue account within the State
2 Treasury titled the “college prepaid tuition and savings program administrating account”, which
3 shall hereafter be known as the College and Jumpstart Savings Administrative Account. The
4 board shall administer and make expenditures from the account for the purposes of implementing,
5 operating, and maintaining the trust funds, the program created by this article, and the program
6 created by §18-30A-1 *et seq* of this code.

7 (b) The administrative account shall receive all fees, charges, and penalties collected by
8 the board. Expenditures from the fund are authorized from collections. Any balance, including
9 accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not
10 revert to the General Revenue Fund but shall remain in the fund to be expended as authorized
11 by this section.

§18-30-10. Reports and account; annual audit.

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

2 (1) Provide annual statements on the savings plan accounts to the respective account
3 owners; and

4 (2) Prepare, or have prepared, a quarterly report on the status of the program, including
5 the trust funds and the administrative account, and provide a copy of the report to the Joint

6 Committee on Government and Finance and the Legislative Oversight commission on education
7 accountability.

8 (b) All accounts of the board, including the trust funds, are subject to an annual external
9 audit by an accounting firm, selected by the board, of which all members or partners assigned to
10 head the audit are members of the American institute of certified public accountants. The audit
11 shall comply with the requirements of §5A-2-33 of this code.

§18-30-11. Financial aid eligibility.

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

§18-30-13. Remaining obligations of the Prepaid Tuition Program and Escrow Fund.

1 (a) The Prepaid Tuition Trust Escrow Fund, which was previously authorized by §18-30-6
2 of this code, is continued in the State Treasury to guarantee payment of outstanding obligations
3 of the Prepaid Tuition Plan arising after the plan's closure. The board is authorized to take any
4 action necessary to satisfy obligations of the Prepaid Tuition Plan arising after the plan's closure.

5 (b) The Prepaid Tuition Trust Escrow Fund shall consist of any moneys in the fund on the
6 effective date of this section. Up to \$1,000,000 may be maintained in the Prepaid Tuition Trust
7 Escrow Fund for a period not to exceed 10 years following the closure of the Prepaid Tuition Fund
8 for the purpose of satisfying any claims against the Prepaid Tuition Trust Plan arising after the
9 plan's closure: *Provided*, That upon the expiration of 10 years following the date of closure of the
10 Prepaid Tuition Trust Fund or when the balance of the Prepaid Tuition Trust Escrow Fund is zero,
11 whichever occurs first, the account shall be closed and any moneys remaining in the Prepaid
12 Tuition Trust Escrow Fund upon said fund's closure shall revert to the state's General Revenue
13 Fund.

14 (c) The board shall invest the Prepaid Tuition Trust Escrow Fund, in accordance with the
15 provisions of this article, in fixed income securities, and all earnings of the fund shall accrue to
16 the fund and be available for expenditure in accordance with this section.

ARTICLE 30A. WEST VIRGINIA JUMPSTART SAVINGS ACT.

§18-30A-2. Findings.

1 (a) The Legislature recognizes the importance of cultivating an environment in West
2 Virginia where our tradespersons and entrepreneurs can be successful in their careers and
3 remain in their home state. The Legislature finds that a savings and investment program to assist
4 our citizens who wish to embark on a new trade or establish a new business within this state, is
5 an investment in the future of West Virginia and its hardworking citizens.

6 (b) The Legislature further finds that, whenever possible, this article should be read in *pari*
7 *materia* and construed in harmony with the West Virginia College Savings Program Act, §18-30-1
8 *et seq.* of this code.

9 (c) The Legislature further finds that interests in the Jumpstart Savings Program Trust are
10 intended:

11 (1) To qualify for relevant federal securities law exemptions for public instrumentalities of
12 a state; and

13 (2) To be exempt from registration under Chapter 32 of the West Virginia Code, titled the
14 "Uniform Securities Act."

§18-30A-3. Definitions.

1 For the purposes of this article, the following terms shall have the following meanings:

2 (1) "Account owner" means the person who opens and invests money into a Jumpstart
3 Savings Account, as provided in this article.

4 (2) "Beneficiary" means the person designated as a beneficiary at the time an account is
5 established, or the individual designated as the beneficiary when the beneficiary is changed.

6 (3) The “board” means the Board of Trustees of the West Virginia College and Jumpstart
7 Savings Programs created in §18-30-4 of this code.

8 (4) “Contribution” means any amount of money deposited into a Jumpstart Savings
9 Account according to the procedures established and required by the board or the Treasurer.

10 (5) “Deduction” as used in this article has the same meaning as when used in a
11 comparable context in the laws of the United States relating to income taxes, unless a different
12 meaning is clearly required. Deduction means and refers to a deduction allowable under the
13 federal income tax code for the purpose of determining federal taxable income or federal adjusted
14 gross income, unless text clearly indicates otherwise.

15 (6) “Distributee” has the same meaning provided in §11-21-12m of this code.

16 (7) “Distribution” means any disbursement from an account.

17 (8) The term “family member”, as used to describe a person’s relationship to a designated
18 beneficiary, includes any of the following:

19 (A) The spouse of the beneficiary;

20 (B) A child of the beneficiary or a descendant of the beneficiary’s child;

21 (C) A brother, sister, stepbrother, or stepsister of the beneficiary;

22 (D) The father or mother of the beneficiary, or an ancestor of either;

23 (E) A first cousin of the beneficiary;

24 (F) A stepfather or stepmother of the beneficiary;

25 (G) A son or daughter of a brother or sister of the beneficiary;

26 (H) A brother or sister of the father or mother of the beneficiary;

27 (I) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or
28 sister-in-law of the beneficiary; or

29 (J) The spouse of any person described in paragraphs (B) through (I) of this subdivision.

30 (K) Any term set forth in this subdivision means and includes such term as established
31 through a lawful adoption, including, but not limited to, adoptions of a child or children, or other

32 natural person, by a natural person or natural persons who are not the father, mother, or
33 stepparent of the child or person.

34 (9) "Labor organization" means any organization, agency, association, union, or employee
35 representation committee of any kind that exists, in whole or in part, to assist employees in
36 negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other
37 terms or conditions of employment.

38 (10) The "program" refers to the Jumpstart Savings Program established by this article.

39 (11) The "Treasurer" refers to the West Virginia State Treasurer or his or her designee.

§18-30A-5. The Board of Trustees of the West Virginia College and Jumpstart Savings Programs.

1 The West Virginia Jumpstart Savings Program shall be administered by the Board of
2 Trustees of the West Virginia College and Jumpstart Savings Programs. The board is created in
3 §18-30-4 of this code and is a public instrumentality of the State of West Virginia.

§18-30A-6. Powers of the board to implement and administer the Jumpstart Savings Program.

1 (a) The board shall implement and administer the Jumpstart Savings Program in
2 accordance with this article and all applicable laws and regulations.

3 (b) The board is authorized to take any lawful action necessary to effectuate the provisions
4 of this article and successfully administer the program, subject to applicable state and federal law,
5 including, but not limited to, the following:

6 (1) Adopt and amend bylaws;

7 (2) Execute contracts and other instruments for necessary goods and services, employ
8 necessary personnel, and engage the services of private consultants, auditors, counsel,
9 managers, trustees, and any other contractor or professional needed for rendering professional
10 and technical assistance and advice: *Provided*, That selection of these services is not subject to

11 the provisions of §5A-3-1 *et seq.* of this code: *Provided, however,* That all expenditures and
12 monetary and financial transactions may be subject to periodic audits by the Legislative Auditor;

13 (3) Implement the program through use of financial organizations as account depositories
14 and managers, as provided in §18-30A-9 of this code;

15 (4) Develop and impose requirements, policies, procedures, and guidelines to implement
16 and manage the program;

17 (5) Establish the method by which funds shall be allocated to pay for administrative costs
18 and assess, collect, and expend administrative fees, charges, and penalties;

19 (6) Authorize the assessment, collection, and retention of fees and charges against the
20 amounts paid into and the earnings on the trust funds by a financial institution, investment
21 manager, fund manager, West Virginia Investment Management Board, the Board of Treasury
22 Investments, or other professional managing or investing the trust funds and accounts;

23 (7) Invest and reinvest any of the funds and accounts under the board's control with a
24 financial institution, an investment manager, a fund manager, the West Virginia Investment
25 Management Board, the Board of Treasury Investments, or other professional investing the funds
26 and accounts: *Provided,* That investments made under this article shall be made in accordance
27 with the provisions of §44-6C-1 *et seq.* of this code;

28 (8) Solicit and accept gifts, including bequests or other testamentary gifts made by will,
29 trust, or other disposition; grants; loans; aid; and property, real or personal of any nature and from
30 any source, or to participate in any other way in any federal, state, or local governmental programs
31 in carrying out the purposes of this article: *Provided,* That the board shall use the property
32 received to effectuate the desires of the donor, and shall convert the property received into cash
33 within 90 days of receipt; and

34 (9) Propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this
35 code, including emergency rules when necessary.

36 (c) The board may enter into agreements with other states or agencies of, subdivisions of,
37 or residents of those states related to the program or a program that is substantially similar to the
38 Jumpstart Savings Program established by another state.

39 (d) The power and duties of the board provided in this article are in addition to the powers
40 and duties of the board provided in §18-30-1 *et seq.* of this code.

**§18-30A-8. West Virginia Jumpstart Savings Program Trust and Trust Fund created;
administrative account.**

1 (a) There is hereby established the Jumpstart Savings Program Trust, a public
2 instrumentality of the State of West Virginia. The Jumpstart Savings Program Trust shall offer and
3 issue interests in the trust to eligible members of the public.

4 (b) There is hereby also established a Jumpstart Savings Program Trust Fund Account,
5 titled the Jumpstart Savings Trust Fund, within the accounts held by the Treasurer or with a
6 financial institution, an investment manager, a fund manager, the West Virginia Investment
7 Management Board, the Board of Treasury Investments, or any other person for the purpose of
8 managing and investing the trust fund. Assets of the Jumpstart Savings Program Trust are held
9 in trust for account owners and beneficiaries.

10 (c) The Jumpstart Savings Trust Fund shall receive all moneys from account owners on
11 behalf of beneficiaries or from any other source, public or private. Earnings derived from the
12 investment of the moneys in the Jumpstart Savings Trust Fund shall remain in the fund, held in
13 trust in the same manner as contributions, except as refunded, applied for purposes of the
14 beneficiaries, and applied for purposes of maintaining and administering the program.

15 (d) The corpus, assets, and earnings of the Jumpstart Savings Trust Fund do not
16 constitute public funds of the state and are available solely for carrying out the purposes of this
17 article. Any contract entered into by, or any obligation of the board on behalf of and for the benefit
18 of the program, does not constitute a debt or obligation of the state but is solely an obligation of
19 the Jumpstart Savings Trust Fund.

20 (e) All interest derived from the deposit and investment of moneys in the Jumpstart
21 Savings Trust Fund shall be credited to the fund. At the end of any fiscal year, all unexpended
22 and unencumbered moneys in the trust fund may not be credited or transferred to the State
23 General Fund or to any other fund.

24 (f) In order to fulfill the charitable and public purposes of this article, neither the earnings
25 nor the corpus of the Jumpstart Savings Trust Fund is subject to taxation by the state or any of
26 its political subdivisions.

27 (g) Notwithstanding any provision of this code to the contrary, money in the Jumpstart
28 Savings Trust Fund is exempt from creditor process and not subject to attachment, garnishment,
29 or other process; is not available as security or collateral for any loan, or otherwise subject to
30 alienation, sale, transfer, assignment, pledge, encumbrance, or charge; and is not subject to
31 seizure, taking, appropriation, or application by any legal or equitable process or operation of law
32 to pay any debt or liability of any account owner, beneficiary, or successor in interest.

33 (h) The College and Jumpstart Savings Administrative Account, established in §18-30-8
34 of this code, shall receive all fees, charges, and penalties collected by the board. All expenses
35 incurred by the board or the Treasurer in developing and administering the program shall be
36 payable from the College and Jumpstart Savings Administrative Account.

§18-30A-9. Use of financial organizations as program depositories and managers.

1 (a) The board may implement the program through use of financial organizations as
2 account depositories and managers. The board may solicit proposals from financial organizations
3 to act as depositories and managers of the program. Financial organizations submitting proposals
4 shall describe the investment instruments which will be held in accounts. The board may select
5 more than one financial organization and investment instrument for the program. The board shall
6 select financial organizations to act as program depositories and managers based on the following
7 criteria:

8 (1) The financial stability and integrity of the financial organization;

9 (2) The safety of the investment instrument being offered;

10 (3) The ability of the financial organization to satisfy recordkeeping and reporting
11 requirements;

12 (4) The financial organization's plan for promoting the program and the investment the
13 organization is willing to make to promote the program;

14 (5) The fees, if any, proposed to be charged to the account owners;

15 (6) The minimum initial deposit and minimum contributions that the financial organization
16 will require;

17 (7) The ability of the financial organization to accept electronic deposits and withdrawals,
18 including payroll deduction plans; and

19 (8) Other benefits to the state or its residents included in the proposal, including fees
20 payable to the state to cover expenses of operation of the program.

21 (b) The board may enter into any contracts with a financial organization necessary to
22 effectuate the provisions of this article. Any management contract shall include, at a minimum,
23 terms requiring the financial organization to:

24 (1) Take any action required to keep the program in compliance with requirements of this
25 article and any other applicable state or federal law;

26 (2) Keep adequate records of each account, keep each account segregated from each
27 other account, and provide the board with the information necessary to prepare the statements
28 required by this article and other applicable state and federal laws;

29 (3) Compile, summarize, and total information contained in statements required to be
30 prepared under this article and applicable state and federal laws and provide such compilations
31 to the board;

32 (4) Provide the board with access to the books and records of the program manager and
33 with any other information needed to determine compliance with the contract, this article, and any
34 other applicable state or federal law;

35 (5) Hold all accounts for the benefit of the account owner or owners;

36 (6) Be audited at least annually by a firm of certified public accountants selected by the
37 program manager and provide the results of such audit to the board;

38 (7) Provide the board with copies of all regulatory filings and reports made by the financial
39 organization during the term of the management contract or while the financial organization is
40 holding any accounts, other than confidential filings or reports that will not become part of the
41 program. The program manager shall make available for review by the board and the Treasurer
42 the results of any periodic examination of such manager by any state or federal banking,
43 insurance, or securities commission, except to the extent that such report or reports may not be
44 disclosed under law; and

45 (8) Ensure that any description of the program, whether in writing or through the use of
46 any medium, is consistent with the marketing plan developed pursuant to the provisions of this
47 article.

48 (c) The board may:

49 (1) Enter into contracts it deems necessary for the implementation of the program,
50 including, but not limited to, a contract with a financial institution, manager, consultant or other
51 professional to provide services to both the Jumpstart Savings Program, and the College Savings
52 Program, established in §18-30-1 *et seq.* of this code;

53 (2) Require that an audit be conducted of the operations and financial position of the
54 program depository and manager at any time if the board has any reason to be concerned about
55 the financial position, the record-keeping practices, or the status of accounts of such program
56 depository and manager; and

57 (3) Terminate or decline to renew a management agreement. If the board terminates or
58 does not renew a management agreement, the board shall seek to promptly transfer such
59 accounts to another financial organization that is selected as a program manager or depository
60 and into investment instruments as similar to the original instruments as possible.

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

Mark Raymond
.....
Chairman, Senate Committee

Dean Jeffries
.....
Chairman, House Committee

Originated in the Senate.

In effect from passage.

Joe Linn
.....
Clerk of the Senate

Steve Harris
.....
Clerk of the House of Delegates

G.P.B.
.....
President of the Senate

Barry Hankins
.....
Speaker of the House of Delegates

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2022 FEB - 2 P 1:50

FILED

The within *is* approved this the *2nd*
Day of *February*, 2022.

James Justice
.....
Governor

PRESENTED TO THE GOVERNOR

JAN 28 2022

Time 9:54am