

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 478

BY SENATORS GRADY AND PLYMALE

[Passed March 10, 2023; in effect from passage]

FILED

2023 MAR 29 P 5: 29

**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

SB 478

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1 AN ACT to amend and reenact §11-21-12m and §11-21-25 of the Code of West Virginia, 1931,
2 as amended; to amend and reenact §11-24-10a of said code, to amend and reenact §18-
3 30-3 of said code; and to amend and reenact §18-30A-3, §18-30A-10, §18-30A-11, and
4 §18-30A-13 of said code, all relating generally to the Jumpstart Savings Program;
5 clarifying that the entire amount of an account distribution used for certain qualified
6 expenses is subject to reducing personal income tax modification; clarifying that the
7 amount of an account distribution is only subject to reducing personal income tax
8 modification to the extent that the amount is not allowable as certain federal deductions;
9 establishing an increasing personal income tax modification for account distributions used
10 for nonqualified expenses and previously applied toward the reducing personal income
11 tax modification for account contributions; defining terms; providing that an employer may
12 not claim a tax credit for matching contributions to an account if the employer is the
13 account owner or account beneficiary; providing that an employer may not claim both the
14 reducing personal income tax modification and the matching credit for an amount
15 contributed to an employee's account; permitting employers to claim matching credit for
16 certain amounts allowable as federal tax deductions; eliminating a definition related to an
17 obsolete account; defining terms; expanding the occupations and professions in which an
18 individual may incur qualified expenses; eliminating the minimum deposit required to open
19 an account and for certain opening incentive deposits; authorizing the board to establish
20 a minimum deposit to open an account or for certain opening incentive deposits;
21 establishing retroactive internal effective date of January 1, 2023, for certain provisions;
22 and making technical and clarifying corrections to reporting requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12m. Additional modifications related to a Jumpstart Savings Account.

1 (a) *Modification for contributions.* —

2 (1) For taxable years beginning on or after January 1, 2022, a modification reducing
3 federal adjusted gross income is hereby authorized in an amount equal to a West Virginia
4 taxpayer's contribution to a Jumpstart Savings Account for the taxable year in which the payment
5 is made, in accordance with §18-30A-1 *et seq.* of this code, but only to the extent the amount is
6 not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for
7 the taxable year.

8 (2) The decreasing modification allowed pursuant to this subsection may not exceed
9 \$25,000 in a single taxable year: *Provided*, That the taxpayer may also elect to carry forward the
10 modification over a period not to exceed five taxable years, beginning in the taxable year in which
11 the contribution was made.

12 (b) *Decreasing modification for qualified distributions not deductible from federal adjusted*
13 *gross income.* —

14 (1) For taxable years beginning on or after January 1, 2022, a modification reducing
15 federal adjusted gross income is hereby authorized in an amount equal to the entire amount of a
16 distribution from a Jumpstart Savings Account received by a distributee that is used to pay for
17 qualified expenses described in §18-30A-3(a)(11)(D) of this code. Such decreasing modification
18 is authorized for the taxable year the distribution is made to the distributee, but only to the extent
19 the distribution amount is not allowable as a deduction when arriving at the distributee's federal
20 adjusted gross income for the taxable year when the distribution was made. Any decreasing
21 modification applied by a distributee shall be subject to disallowance to the extent that the
22 distributed moneys are not used to pay for qualified expenses, as defined in §18-30A-3(a)(11)(D)
23 of this code in the taxable year of receipt of the distribution or the next succeeding taxable year.

24 (2) The decreasing modification allowed pursuant to this subsection may not exceed
25 \$25,000 for the taxable year.

26 (c) *Increasing modification for distributions not used for qualified expenses.* — For taxable
27 years beginning on or after January 1, 2023, there shall be added to the federal adjusted gross
28 income of a distributee, unless already included in federal adjusted gross income for the taxable
29 year, any amount previously applied to a decreasing modification of federal adjusted gross
30 income pursuant to subsection (a) of this section for any amount contributed to a Jumpstart
31 Savings Account, that is subsequently withdrawn from said account and not used for qualified
32 expenses in the taxable year of receipt of the distribution or the next succeeding taxable year.

33 (d) *Modification for rollover of certain distributions.* — A modification reducing federal
34 adjusted gross income is hereby authorized for the account owner, to the extent that the amount
35 is not allowable as a deduction when arriving at the account owner's federal adjusted gross
36 income, in the amount as follows:

37 (1) An amount equal to a distribution from a Jumpstart Savings Account received in the
38 taxable year, if the account owner deposits such amount into a West Virginia ABLE Account within
39 30 days of receiving the distribution, according to the requirements of §18-30A-1 *et seq.* of this
40 code; and

41 (2) An amount equal to the portion of a distribution received in the taxable year from a
42 college savings account, established pursuant to §18-30-1 *et seq.* of this code, if the taxpayer
43 deposits the amount into a Jumpstart Savings Account within 30 days of receiving the distribution
44 according to the requirements of §18-30A-1 *et seq.* of this code.

45 (e) Nothing in this section shall be construed to decrease or otherwise impact any person's
46 federal tax obligations or to authorize any act which violates federal law.

47 (f) *Definitions.* — For the purposes of this section:

48 "Distributee" means the person who is authorized to receive distributions from a Jumpstart
49 Savings Account, according to §18-30A-1 *et seq.* of this code and the legislative rules and
50 procedures adopted by the Board of Trustees of the West Virginia College and Jumpstart Savings
51 Programs.

52 "Qualified expense" has the meaning provided in §18-30A-3 of this code.

53 (g) The modifications authorized in this section are authorized in addition to amounts
54 authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12 of this
55 code.

56 (h) The amendments to this section adopted during the regular session of the Legislature,
57 2023, are effective January 1, 2023.

§11-21-25. Nonrefundable credit for matching contribution to employee's Jumpstart Savings Account.

1 (a) A nonrefundable credit against the tax imposed by the provisions of this article is
2 allowed against the tax liability imposed under this article of a qualified employer, for a matching
3 contribution made to a Jumpstart Savings Account in the taxable year, if the account owner is an
4 employee of the taxpayer and a West Virginia resident, subject to the requirements of §18-30A-1
5 *et seq.* of this code and the following:

6 (1) The employer must directly contribute an amount to a Jumpstart Savings Account that
7 is equal to a contribution made by the employee to such account in the same taxable year.

8 (2) The credit allowed by this section may not exceed \$5,000 per employee per taxable
9 year.

10 (3) The amount of the credit may not exceed the portion of the contribution that is
11 attributable to the employer and that would otherwise be derived by the employer as income from
12 his or her business for the taxable year.

13 (4) The employer may not claim the credit if the employer himself or herself is the account
14 owner or beneficiary of the account to which the matching contribution was made.

15 (5) The employer may not claim a credit against more than one type of tax for a single
16 contribution to a Jumpstart Savings Account.

17 (6) The employer may not claim both the credit and a decreasing modification authorized
18 by §11-21-12m of this code for an amount contributed to an employee's account.

19 (b) In order to qualify for the credit provided by this section, an employer must submit any
20 forms or other information, as required by the West Virginia Jumpstart Savings Board or the State
21 Treasurer, and the Tax Commissioner, upon making the contribution.

22 (c) *Conduit Entities and Proprietorships Personal Income Taxes.* —

23 (1) If the employer directly contributing an amount to a Jumpstart Savings Account is an
24 electing small business corporation (as defined in Section 1361 of the United States Internal
25 Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as
26 a partnership for federal income tax purposes, the credit authorized pursuant to this section is
27 allowed as a credit against the taxes imposed by this article on the flow through income of S
28 corporation shareholders, partners, owners, and limited liability company members derived from
29 such electing small business corporation, partnership, or limited liability company attributable to
30 business or other activity.

31 (2) If the employer directly contributing an amount to a Jumpstart Savings Account is a
32 sole proprietor, the credit authorized pursuant to this section is allowed as a credit against the
33 taxes imposed by this article on the income of the sole proprietor attributable to the business.

34 (3) Electing small business corporations, limited liability companies, partnerships, and
35 other unincorporated organizations shall allocate the credit allowed by this article among its
36 partners, owners, shareholders, or members in the same manner as profits and losses are
37 allocated for the taxable year.

38 (4) No credit is allowed under this section against any employer withholding taxes imposed
39 by this article.

40 (5) The credit allowed under this section must be used in the tax year in which the
41 contribution is made. The credit may not be carried back to a prior tax year nor carried forward to
42 a subsequent tax year. Any unused amount of the credit is forfeited.

43 (d) The amendments to this section adopted during the regular session of the Legislature,
44 2023, are effective January 1, 2023.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-10a. Nonrefundable credit for matching contribution to employee's Jumpstart Savings Account.

1 (a) A nonrefundable credit against the tax imposed by the provisions of this article is
2 allowed for a matching contribution to a Jumpstart Savings Account made in the taxable year if
3 the account owner is an employee of the taxpayer and a West Virginia resident, subject to the
4 requirements of §18-30A-1 *et seq.* of this code and the following:

5 (1) The employer must directly contribute an amount to a Jumpstart Savings Account that
6 is equal to a contribution made by the employee to such account in the same taxable year.

7 (2) The credit allowed by this section may not exceed \$5,000 per employee per taxable
8 year.

9 (3) The employer may not claim the credit against more than one type of tax for a single
10 contribution to a Jumpstart Savings Account.

11 (4) The employer may not claim both the credit and a decreasing modification authorized
12 by §11-21-12m of this code for an amount contributed to an employee's account.

13 (b) In order to qualify for the credit provided by this section, an employer must submit any
14 forms or other information, as required by the West Virginia Jumpstart Savings Board or the State
15 Treasurer, or the Tax Commissioner, upon making the contribution.

16 (c) *Conduit Entities Corporation Net Income Tax.* —

17 (1) If the employer directly contributing an amount to a Jumpstart Savings Account is an
18 electing small business corporation (as defined in Section 1361 of the United States Internal
19 Revenue Code of 1986, as amended), a partnership, or a limited liability company that is treated
20 as a partnership for federal income tax purposes, the credit authorized pursuant to this section is
21 allowed as a credit against the taxes imposed by this article on the flow through income of S
22 corporation shareholders, partners, owners, and limited liability company members derived from

23 such electing small business corporation, partnership, or limited liability company attributable to
24 business or other activity.

25 (2) Electing small business corporations, limited liability companies, partnerships, and
26 other unincorporated organizations shall allocate the credit allowed by this article among its
27 corporate partners, owners, shareholders, or members in the same manner as profits and losses
28 are allocated for the taxable year.

29 (3) No credit is allowed under this section against any employer withholding taxes imposed
30 by this article.

31 (4) The credit allowed under this section must be used in the tax year in which the
32 contribution is made. The credit may not be carried back to a prior tax year nor carried forward to
33 a subsequent tax year. Any unused amount of the credit is forfeited.

34 (d) The amendments to this section adopted during the regular session of the Legislature,
35 2023, are effective January 1, 2023.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE SAVINGS PROGRAM ACT.

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

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

25 "Program" means the West Virginia College Savings Program established pursuant to this
26 article and as defined in §18-30-4(a) of this code.

27 "Qualified education expenses" means expenses treated as "qualified higher education
28 expenses" under 26 U.S.C. § 529.

29 "Savings plan" means the plan that allows account distributions for qualified higher
30 educational expenses and tuition at private or religious primary, middle, and secondary schools.

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

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

36 "Treasurer" means the West Virginia State Treasurer.

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

ARTICLE 30A. WEST VIRGINIA JUMPSTART SAVINGS ACT.

§18-30A-3. Definitions.

1 (a) 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 "Advanced Career Education" or ACE, shall mean the same as that term is used in §18-
5 25-11 of this code.

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

8 (3) The "board" means the Board of Trustees of the West Virginia College and Jumpstart
9 Savings Programs created in §18-30-4 of this code.

10 (4) "Contribution" means any amount of money deposited into a Jumpstart Savings
11 Account according to the procedures established and required by the board or the Treasurer.

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

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

18 (7) "Distribution" means any disbursement from an account.

19 (8) The term "family member", as used to describe a person's relationship to a designated
20 beneficiary, includes any of the following:

21 (A) The spouse of the beneficiary;

22 (B) A child of the beneficiary or a descendant of the beneficiary's child;

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

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

25 (E) A first cousin of the beneficiary;

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

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

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

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

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

32 (K) Any term set forth in this subdivision means and includes such term as established
33 through a lawful adoption, including, but not limited to, adoptions of a child or children, or other
34 natural person, by a natural person or natural persons who are not the father, mother, or
35 stepparent of the child or person.

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

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

41 (11) "Qualified expense" means an account distribution, or any amount thereof, expended
42 by an account beneficiary in the taxable year of receipt of the distribution or the next succeeding
43 taxable year that:

44 (A) Is allowable as a federal personal income tax deduction pursuant to 26 U.S.C. § 162,
45 as an ordinary and necessary business expense, and is incurred in carrying on a qualifying
46 profession;

47 (B) Is allowable as a federal personal income tax deduction pursuant to 26 U.S.C. §
48 195(b), as a business start-up expenditure, and is incurred in carrying on a qualifying profession;
49 or

50 (C) Is expended for goods, services, or other expenses that qualify for a federal personal
51 income tax deduction for depreciation or amortization over time, pursuant to a provision of 26
52 U.S.C. § 161-199a and that are used to carry on a qualifying profession; or

53 (D) Is not allowable as any one of the federal personal income tax deductions described
54 in paragraphs (A) through (C) of this subdivision and is expended for:

55 (i) The purchase of tools, equipment, or supplies used exclusively in a qualifying
56 profession;

57 (ii) Costs to establish a business in this state to practice a qualifying profession; or

58 (iii) Fees for required certification or licensure in a qualifying profession: *Provided*, That in
59 no event shall any dues, fees, subscriptions, or any other payments to a labor organization
60 constitute qualified expenses for the purposes of this article; and

61 (iv) Is not reimbursed by the taxpayer's employer.

62 (12) "Qualifying profession" means an occupation, profession, or trade for which the
63 designated beneficiary is required to:

64 (A) Complete an apprenticeship program registered and certified with the United States
65 Department of Labor, as provided in 29 U.S.C. § 50;

66 (B) Complete an apprenticeship program required by any provision of this code or a
67 legislative rule promulgated pursuant to this code;

68 (C) Earn a license or certification from an Advanced Career Education (ACE) career
69 center; or

70 (D) Earn an associate degree or certification from a community and technical college or
71 from a school or program, authorized by the West Virginia Council for Community or Technical
72 College Education or a similar agency in another state, to award associates degrees or technical
73 certifications;

74 (E) Earn a license or certification from a career and technical education or vocational
75 training program at a public secondary school; or

76 (F) Complete any other apprenticeship or educational program consistent with the
77 purposes of this article, as approved by the board.

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

79 (b) The amendments to this section adopted during the regular session of the Legislature,
80 2023, are effective January 1, 2023.

§18-30A-10. Opening a Jumpstart Savings Account; deposits.

1 (a) Beginning on July 1, 2022, a person may open a Jumpstart Savings Account.

2 (b) To open a Jumpstart Savings Account, the account owner must:

3 (1) Provide all information required by the Treasurer;

4 (2) Make a minimum opening deposit, if required by the board; and

5 (3) Name a single person as the designated beneficiary: *Provided*, That the designated
6 beneficiary may be the account owner himself or herself, or another person: *Provided, however*,
7 That the beneficiary may not be a business, corporation, or enterprise.

8 (c) The Treasurer will deposit \$100 from the College and Jumpstart Savings Administrative
9 Account into a newly opened Jumpstart Savings Account if the following criteria are met:

10 (1) The designated beneficiary is a resident of West Virginia;

11 (2) Any minimum deposit required by the board is made to the account within 30 days of
12 the account's opening; and

13 (3) The account is opened when the designated beneficiary is under 18 years of age; or

14 (4) The account is opened within the 180 days following the date of the designated
15 beneficiary's enrollment in an apprenticeship, training, or educational program described in §18-
16 30A-3(a)(12) of this code.

17 (d) Any person may make a contribution to a Jumpstart Savings Account after the account
18 is opened, subject to applicable state and federal laws.

19 (e) The Treasurer shall prescribe all forms required to open and make deposits to a
20 Jumpstart Savings Account and make the forms available in a prominent location on the
21 Treasurer's website.

22 (f) The board may establish minimum deposits or amounts for accounts to be considered
23 active and may establish procedures to close inactive accounts.

§18-30A-11. Distributions.

1 (a) A distribution from a Jumpstart Savings Account that was used to pay for qualified
2 expenses is not subject to the increasing income tax modification provided in §11-21-12m(c) of
3 this code.

4 (b) A change in the designated beneficiary of a Jumpstart Savings Account is not a
5 distribution for the purposes of this article or §11-21-1 *et seq.* of this code if the new beneficiary
6 is a family member of the prior beneficiary.

7 (c) Pursuant to the rule-making authority provided in this article, the board shall
8 promulgate rules specifying the expenditures that constitute qualified expenses, according to §18-
9 30A-3(a)(11)(D) of this code.

§18-30A-13. Reports and account; annual audit.

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

2 (1) Prepare and provide an annual summary of information on the financial condition of
3 the Jumpstart Savings Trust Fund and statements on the savings program accounts to the
4 respective account owners; and

5 (2) Prepare, or have prepared, a quarterly report on the status of the program, including
6 the Jumpstart Savings Trust Fund and the College and Jumpstart Savings Administrative
7 Account, and provide a copy of the report to the Joint Committee on Government and Finance:
8 *Provided*, That the report submitted pursuant to §18-30-10 of this code fulfills this subdivision's
9 requirement concerning the College and Jumpstart Savings Administrative Account.

10 (b) All accounts administered under the program, including the Jumpstart Savings Trust
11 Fund, are subject to an annual external audit by an accounting firm, selected by the board, of
12 which all members or partners assigned to head the audit are members of the American Institute
13 of Certified Public Accountants. The audit shall comply with the requirements and standards in
14 §5A-2-33 of this code.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

Joe Lavin
.....
Clerk of the Senate

Steve Morris
.....
Clerk of the House of Delegates

FILED
2023 MAR 29 P 5:29
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Originated in the Senate.

In effect from passage.

Cy P. Bell
.....
President of the Senate

Logan Hankins
.....
Speaker of the House of Delegates

The within is *approved* this the *29th*
Day of *March*, 2023.

James O. Eastman
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 16 2023

Time 10:18 am