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HOUSE BILL NO. 2268

Offered January 20, 2015

A BILL to amend and reenact §§ 23-38.75 and 23-38.81 of the Code of Virginia, relating to prepaid tuition contracts; differential tuition.

Patron—Hugo

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-38.75 and 23-38.81 of the Code of Virginia are amended and reenacted as follows: § 23-38.75. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of the Virginia College Savings Plan.

"Contributor" means a person who contributes money to a savings trust account established pursuant to this chapter on behalf of a qualified beneficiary and who is listed as the owner of the savings trust account.

"Differential tuition" means the difference between the higher quarter, semester, or term charge imposed for undergraduate tuition in a particular academic program by any two-year or four-year public institution of higher education in the Commonwealth and the standard quarter, semester, or term charge imposed for undergraduate tuition by such institution.

"Plan" means the Virginia College Savings Plan.

"Prepaid tuition contract" means the contract entered into by the Board and a purchaser pursuant to this chapter for the advance payment of tuition at a fixed, guaranteed level by the purchaser for a qualified beneficiary to attend any two-year or four-year public institution of higher education in the Commonwealth to which the qualified beneficiary is admitted.

"Purchaser" means a person who makes or is obligated to make advance payments in accordance with a prepaid tuition contract and who is listed as the owner of the prepaid tuition contract.

"Qualified beneficiary" or "beneficiary" means (i) a resident of the Commonwealth, as determined by the Board, who is the beneficiary of a contract and who may apply advance tuition payments to tuition as set forth in this chapter; (ii) a beneficiary of a contract purchased by a resident of the Commonwealth, as determined by the Board, who may apply advance tuition payments to tuition as set forth in this chapter; or (iii) a beneficiary of a savings trust account established pursuant to this chapter.

"Savings trust account" means an account established by a contributor pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"Savings trust agreement" means the agreement entered into by the Board and a contributor establishing a savings trust account.

"Tuition" means the quarter, semester, or term charges imposed for undergraduate tuition by any two-year or four-year public institution of higher education in the Commonwealth and all mandatory fees required as a condition of enrollment of all students. A beneficiary may apply benefits under a prepaid tuition contract and distributions from a savings trust account toward graduate-level tuition and toward tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the Board in its sole discretion.

§ 23-38.81. Prepaid tuition contracts and savings trust agreements; terms; termination; etc.

A. Each prepaid tuition contract made pursuant to this chapter shall include the following terms and provisions:

1. The amount of payment or payments and the number of payments required from a purchaser on behalf of a qualified beneficiary;

2. The terms and conditions under which purchasers shall remit payments, including the dates of such payments;

3. Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties;

4. The name and date of birth of the qualified beneficiary on whose behalf the contract is made;

5. Terms and conditions for a substitution for the qualified beneficiary originally named;

6. Terms and conditions for termination of the contract, including any refunds, withdrawals, or transfers of tuition prepayments, and the name of the person or persons entitled to terminate the contract;

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- 59 7. The time period during which the qualified beneficiary must claim benefits from the Plan;
60 8. The number of credit hours or quarters, semesters, or terms contracted for by the purchaser;
61 9. All other rights and obligations of the purchaser and the trust; and
62 10. Any other terms and conditions which the Board deems necessary or appropriate, including those
63 necessary to conform the contract with the requirements of Internal Revenue Code § 529, as amended,
64 which specifies the requirements for qualified state tuition programs.

65 B. Each savings trust agreement made pursuant to this chapter shall include the following terms and
66 provisions:

67 1. The maximum and minimum contribution allowed on behalf of each qualified beneficiary for the
68 payment of qualified higher education expenses at eligible institutions, both as defined in § 529 of the
69 Internal Revenue Code of 1986, as amended, or other applicable federal law;

70 2. Provisions for withdrawals, refunds, transfers, and any penalties;

71 3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust
72 account is opened;

73 4. Terms and conditions for a substitution for the qualified beneficiary originally named;

74 5. Terms and conditions for termination of the account, including any refunds, withdrawals, or
75 transfers, and applicable penalties, and the name of the person or persons entitled to terminate the
76 account;

77 6. The time period during which the qualified beneficiary must use benefits from the savings trust
78 account;

79 7. All other rights and obligations of the contributor and the Plan; and

80 8. Any other terms and conditions which the Board deems necessary or appropriate, including those
81 necessary to conform the savings trust account with the requirements of § 529 of the Internal Revenue
82 Code of 1986, as amended, or other applicable federal law.

83 C. In addition to the provisions required by subsection A of this section, each prepaid tuition contract
84 shall include provisions for the application of tuition prepayments (i) at accredited, nonprofit,
85 independent institutions of higher education located in Virginia, including actual interest and income
86 earned on such prepayments and (ii) at public and at accredited, nonprofit, independent institutions of
87 higher education located in other states, including principal and reasonable return on such principal as
88 determined by the Board. Payments authorized for accredited, nonprofit, independent institutions located
89 in Virginia may not exceed the projected highest payment made for tuition at a public institution of
90 higher education in Virginia in the same academic year, less a fee to be determined by the Board.
91 Payments authorized for public and for accredited, nonprofit, independent institutions of higher education
92 located in other states may not exceed the projected average payment made for tuition at a public
93 institution of higher education in Virginia in the same academic year, less a fee to be determined by the
94 Board.

95 D. *The qualified beneficiary of a prepaid tuition contract shall not be obligated to pay differential*
96 *tuition at a public institution of higher education.*

97 E. All prepaid tuition contracts and savings trust agreements shall specifically provide that, if after a
98 specified period of time the contract or savings trust agreement has not been terminated nor the qualified
99 beneficiary's rights exercised, the Board, after making reasonable effort to contact the purchaser or
100 contributor and the qualified beneficiary or their agents, shall report such unclaimed moneys to the State
101 Treasurer pursuant to § 55-210.12.

102 ~~E. F.~~ Notwithstanding any provision of law to the contrary, money in the Plan shall be exempt from
103 creditor process and shall not be liable to attachment, garnishment, or other process, nor shall it be
104 seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any
105 debt or liability of any purchaser, contributor or beneficiary.

106 ~~F. G.~~ No contract or savings trust account shall be assigned for the benefit of creditors, used as
107 security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge,
108 encumbrance or charge.

109 ~~G. H.~~ The Board's decision on any dispute, claim, or action arising out of or related to a prepaid
110 tuition contract or savings trust agreement made or entered into pursuant to this chapter or benefits
111 thereunder shall be considered a case decision as defined in § 2.2-4001 and all proceedings related
112 thereto shall be conducted pursuant to Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.
113 Judicial review shall be exclusively provided pursuant to Article 5 (§ 2.2-4025 et seq.) of the
114 Administrative Process Act.