

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 804

An Act to amend and reenact §§ 23.1-700, 23.1-701, 23.1-704, 23.1-706, 23.1-707, and 23.1-711 of the Code of Virginia, relating to the Virginia College Savings Plan.

[S 1315]

Approved March 25, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 23.1-700, 23.1-701, 23.1-704, 23.1-706, 23.1-707, and 23.1-711 of the Code of Virginia are amended and reenacted as follows:

§ 23.1-700. Definitions.

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

"ABLE savings trust account" means an account established pursuant to this chapter to assist individuals and families to save private funds to support individuals with disabilities to maintain health, independence, and quality of life, with such account used to apply distributions for qualified disability expenses for an eligible individual, as both such terms are defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"Board" means the governing board of the Plan.

"College savings trust account" means an account established pursuant to this chapter to assist individuals and families to enhance the accessibility and affordability of higher education, with such account used to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, as both such terms are that term is defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"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.

"Non-Virginia public and accredited nonprofit independent or private institutions of higher education" means public and accredited nonprofit independent or private institutions of higher education that are located outside the Commonwealth.

"Plan" means the Virginia College Savings Plan.

"Prepaid tuition contract" means the contract *or account* entered into by the board and a purchaser pursuant to this chapter for the advance payment of tuition at a fixed, guaranteed level for a qualified beneficiary to attend any public institution of higher education to which the qualified beneficiary is admitted.

"Public institution of higher education" has the same meaning as provided in § 23.1-100.

"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 prepaid tuition contract and who may apply advance tuition payments to tuition as set forth in this chapter; (ii) a beneficiary of a prepaid tuition 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 ABLE savings trust account or a college savings trust account.

"Savings trust agreement" means the agreement entered into by the board and a contributor that establishes a savings trust account.

"Tuition" means the quarter, semester, or term charges imposed for undergraduate tuition by any public institution of higher education and all mandatory fees required as a condition of enrollment of all students. At the discretion of the board, a beneficiary may apply benefits under a prepaid tuition contract and distributions from a college savings trust account (i) toward graduate-level tuition and (ii) toward tuition costs at such eligible educational institutions qualified higher education expenses, 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.

§ 23.1-701. Plan established; moneys; governing board.

A. To enhance the accessibility and affordability of higher education for all citizens of the Commonwealth, and assist families and individuals to save for qualified disability expenses, the Virginia College Savings Plan is established as a body politic and corporate and an independent agency of the Commonwealth.

B. Moneys of the Plan that are contributions to savings trust accounts made pursuant to this chapter, except as otherwise authorized or provided in this chapter, shall be deposited as soon as practicable in a

separate account or separate accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or, to the extent permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. The savings program moneys in such accounts shall be paid out on checks, drafts payable on demand, electronic wire transfers, or other means authorized by officers or employees of the Plan.

C. All other moneys of the Plan, including payments received pursuant to prepaid tuition contracts, bequests, endowments, grants from the United States government or its agencies or instrumentalities, and any other available public or private sources of funds shall be first deposited in the state treasury in a special nonreverting fund (the Fund). Such moneys shall then be deposited as soon as practicable in a separate account or separate accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or, to the extent permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. Benefits relating to prepaid tuition contracts and Plan operating expenses shall be paid from the Fund. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income earned from the investment of such funds shall remain in the Fund and be credited to it.

D. *The Plan may maintain an independent disbursement system for the disbursement of prepaid tuition contract benefits and, in connection with such system, open and maintain a separate account or separate accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or, to the extent permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. Such independent disbursement system and any related procedures shall be subject to review and approval by the State Comptroller. Nothing in this subsection shall be construed to relieve the Plan of its duty to provide prepaid tuition contract benefit transactions to the Commonwealth's system of general accounting maintained by the State Comptroller pursuant to § 2.2-802.*

E. The Plan shall be administered by an 11-member board that consists of (i) the director of the Council or his designee, the Chancellor of the Virginia Community College System or his designee, the State Treasurer or his designee, and the State Comptroller or his designee, all of whom shall serve ex officio with voting privileges, and (ii) seven nonlegislative citizen members, four of whom shall be appointed by the Governor, one of whom shall be appointed by the Senate Committee on Rules, two of whom shall be appointed by the Speaker of the House of Delegates, and all of whom shall have significant experience in finance, accounting, law, or investment management, *higher education, or disability advocacy.*

~~E.~~ F. Members appointed to the board shall serve terms of four years. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. No member appointed to the board shall serve more than two consecutive four-year terms; however, a member appointed to serve an unexpired term is eligible to serve two consecutive four-year terms immediately succeeding such unexpired term.

~~F.~~ G. Ex officio members of the board shall serve terms coincident with their terms of office.

~~G.~~ H. Members of the board shall receive no compensation but shall be reimbursed for actual expenses incurred in the performance of their duties.

~~H.~~ I. The board shall elect from its membership a chairman and a vice-chairman annually.

~~I.~~ J. A majority of the members of the board shall constitute a quorum.

§ 23.1-704. Powers and duties of the board.

The board shall:

1. Administer the Plan established by this chapter;
2. Develop and implement programs for (i) the prepayment of undergraduate tuition, as defined in § 23.1-700, at a fixed, guaranteed level for application at a public institution of higher education; (ii) contributions to college savings trust accounts established 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~~, as ~~both such terms are~~ *that term is* defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law; and (iii) contributions to ABLE savings trust accounts established pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified disability expenses for an eligible individual, as both such terms are defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law;
3. Invest moneys in the Plan in any instruments, obligations, securities, or property deemed appropriate by the board;
4. Develop requirements, procedures, and guidelines regarding prepaid tuition contracts and savings trust accounts, including residency and other eligibility requirements; the number of participants in the Plan; the termination, withdrawal, or transfer of payments under a prepaid tuition contract or savings trust account; time limitations for the use of tuition benefits or savings trust account distributions; and payment schedules;
5. Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services and contracts with other states to provide savings trust accounts for residents of contracting

states;

6. Procure insurance as determined appropriate by the board (i) against any loss in connection with the Plan's property, assets, or activities and (ii) indemnifying board members from personal loss or accountability from liability arising from any action or inaction as a board member;

7. Make arrangements with public institutions of higher education to fulfill obligations under prepaid tuition contracts and apply college savings trust account distributions, including (i) payment from the Plan of the ~~then actual in-state undergraduate~~ *appropriate amount of tuition cost* on behalf of a qualified beneficiary of a prepaid tuition contract to the institution to which the beneficiary is admitted and at which the beneficiary is enrolled and (ii) application of such benefits ~~towards~~ *toward* graduate-level tuition and toward ~~tuition costs at such eligible educational institutions~~ *qualified higher education expenses*, 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~~ *board* in its sole discretion;

8. Develop and implement scholarship or matching grant programs, or both, as the board may deem appropriate, to further its goal of making higher education more affordable and accessible to all citizens of the Commonwealth;

9. Apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives;

10. Adopt regulations and procedures and perform any act or function consistent with the purposes of this chapter; and

11. Reimburse, at its option, all or part of the cost of employing legal counsel and such other costs as are demonstrated to have been reasonably necessary for the defense of any board member, officer, or employee of the Plan upon the acquittal, dismissal of charges, nolle prosequi, or any other final disposition concluding the innocence of such member, officer, or employee who is brought before any regulatory body, summoned before any grand jury, investigated by any law-enforcement agency, arrested, indicted, or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties that alleges a violation of state or federal securities laws. The board shall provide for the payment of such legal fees and expenses out of funds appropriated or otherwise available to the board.

§ 23.1-706. Standard of care; investment and administration of the Plan.

A. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of the Plan, the board, and any person, investment manager, or committee to whom the board delegates any of its investment authority, shall act as trustee and shall exercise the judgment of care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but to the permanent disposition of funds, considering the probable income and the probable safety of their capital.

If the annual accounting and audit required by § 23.1-710 reveal that there are insufficient funds to ensure the actuarial soundness of the Plan, the board may adjust the terms of subsequent prepaid tuition contracts, arrange refunds for current purchasers to ensure actuarial soundness, or take such other action the board deems appropriate.

B. The assets of the Plan shall be preserved, invested, and expended solely pursuant to and for the purposes of this chapter and shall not be loaned or otherwise transferred or used by the Commonwealth for any other purpose. Within the standard of care set forth in subsection A, the board and any person, investment manager, or committee to whom the board delegates any of its investment authority, may acquire and retain any kind of property and any kind of investment, including (i) debentures and other corporate obligations of foreign or domestic corporations; (ii) common or preferred stocks traded on foreign or domestic stock exchanges; (iii) not less than all of the stock or 100 percent ownership of a corporation or other entity organized by the board under the laws of the Commonwealth for the purposes of acquiring and retaining real property that the board may acquire and retain under this chapter; and (iv) securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, as amended, including investment companies or investment trusts that, in turn, invest in the securities of such investment companies or investment trusts that persons of prudence, discretion, and intelligence acquire or retain for their own account. The board may retain property properly acquired without time limitation and without regard to its suitability for original purchase.

All provisions of this subsection shall *also* apply to the portion of the Plan assets attributable to savings trust account contributions and the earnings on such contributions.

C. The selection of services relating to the operation and administration of the Plan, including contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, recordkeeping, or consulting services, are governed by the standard of care set forth in subsection A and are not subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

D. No board member or person, investment manager, or committee to whom the board delegates any of its investment authority who acts in accordance with the standard of care set forth in subsection A shall be held personally liable for losses suffered by the Plan on investments made pursuant to this chapter.

E. To the extent necessary to lawfully administer the Plan and in order to comply with federal, state, and local tax reporting requirements, the Plan may obtain all necessary social security account or tax identification numbers and such other data as the Plan deems necessary for such purposes, whether from a contributor, a purchaser, or another state agency.

F. This section shall not be construed to prohibit the Plan's investment, by purchase or otherwise, in bonds, notes, or other obligations of the Commonwealth or its agencies and instrumentalities.

§ 23.1-707. Prepaid tuition contracts and college and ABLE savings trust agreements.

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 entitled to terminate the contract;
7. The time period during which the qualified beneficiary is required to claim benefits from the Plan;
8. The number of credit hours or quarters, semesters, ~~or~~ terms, *or units* contracted for by the purchaser, *as applicable*;
9. All other rights and obligations of the purchaser and the trust; and
10. Any other terms and conditions that the board deems necessary or appropriate, including those necessary to conform the contract with the requirements of § 529 of the Internal Revenue Code of 1986, as amended, which specifies the requirements for qualified state tuition programs.

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

1. The maximum and minimum contribution allowed on behalf of each qualified beneficiary for the payment of qualified higher education expenses ~~at eligible institutions~~, as ~~both such terms are that term~~ *is* defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law;
2. Provisions for withdrawals, refunds, transfers, and any penalties;
3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;
4. Terms and conditions for a substitution for the qualified beneficiary originally named;
5. Terms and conditions for termination of the account, including any refunds, withdrawals, or transfers, and applicable penalties, and the name of the person entitled to terminate the account;
6. The time period during which the qualified beneficiary is required to use benefits from the savings trust account;
7. All other rights and obligations of the contributor and the Plan; and
8. Any other terms and conditions that the board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

C. Each ABLE savings trust agreement made pursuant to this chapter shall include the following terms and provisions:

1. The maximum and minimum annual contribution and maximum account balance allowed on behalf of each qualified beneficiary for the payment of qualified disability expenses, as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law;
2. Provisions for withdrawals, refunds, transfers, return of excess contributions, and any penalties;
3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;
4. Terms and conditions for a substitution for the qualified beneficiary originally named;
5. Terms and conditions for termination of the account, including any transfers to the state upon the death of the qualified beneficiary, refunds, withdrawals, transfers, applicable penalties, and the name of the person entitled to terminate the account;
6. The time period during which the qualified beneficiary is required to use benefits from the savings trust account;
7. All other rights and obligations of the contributor and the Plan; and
8. Any other terms and conditions that the board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

D. In addition to the provisions required by subsection A, each prepaid tuition contract *entered into prior to July 1, 2019*, shall include provisions for the application of tuition prepayments (i) at accredited nonprofit independent or private institutions of higher education, including actual interest and income earned on such prepayments, and (ii) at non-Virginia public and accredited nonprofit independent or

private institutions of higher education, including principal and reasonable return on such principal as determined by the board. Payments authorized for accredited nonprofit independent or private institutions of higher education shall not exceed the projected highest payment made for tuition at a public institution of higher education in the same academic year, less a fee to be determined by the board. Payments authorized for non-Virginia public and accredited nonprofit independent or private institutions of higher education shall not exceed the projected average payment made for tuition at a public institution of higher education in the same academic year, less a fee to be determined by the board. *In no event, however, shall the benefit paid on any prepaid tuition contract entered into prior to July 1, 2019, be less than the sum of tuition prepayments made and a reasonable return on such prepayments to be determined by the board, less any fees determined by the board.*

E. In addition to the provisions required by subsection A, each prepaid tuition contract entered into on or after July 1, 2019, shall include provisions for the application of tuition prepayments, at a rate equal to the percentage of enrollment-weighted average tuition at public institutions of higher education to be determined by the board, at (i) public institutions of higher education, (ii) accredited nonprofit independent or private institutions of higher education, and (iii) non-Virginia public and accredited nonprofit independent or private institutions of higher education. In no event, however, shall the benefit paid on any prepaid tuition contract entered into on or after July 1, 2019, be less than tuition prepayments made, less any fees as determined by the board.

F. All prepaid tuition contracts and savings trust agreements shall specifically provide that if after a specified period of time the contract or savings trust agreement has not been terminated and the qualified beneficiary's rights have not been exercised, the board, after making a reasonable effort to contact the purchaser or contributor and the qualified beneficiary or their agents, shall report such unclaimed moneys to the State Treasurer pursuant to § 55-210.12.

G. Notwithstanding any provision of law to the contrary, money in the Plan is exempt from creditor process, is not liable to attachment, garnishment, or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of any purchaser, contributor, or beneficiary, except that the state of residence of the beneficiary of an ABLE savings trust account shall be a creditor of such account in the event of the death of the beneficiary.

H. Notwithstanding any other provision of state law that requires consideration of one or more financial circumstances of an individual for the purpose of determining (i) the individual's eligibility to receive any assistance or benefit pursuant to such provision of state law or (ii) the amount of any such assistance or benefit that such individual is eligible to receive pursuant to such provision of state law, any (a) moneys in an ABLE savings trust account for which such individual is the beneficiary, including any interest on such moneys, (b) contributions to an ABLE savings trust account for which such individual is the beneficiary, and (c) distribution for qualified disability expenses for such individual from an ABLE savings trust account for which such individual is the beneficiary shall be disregarded for such purpose with respect to any period during which such individual remains the beneficiary of, makes contributions to, or receives distributions for qualified disability expenses from such ABLE savings trust account.

I. No prepaid tuition contract or savings trust account shall be assigned for the benefit of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge.

J. The board's decision on any dispute, claim, or action arising out of or relating to a prepaid tuition contract or savings trust agreement made or entered into pursuant to this chapter or benefits under such prepaid tuition contract or savings trust agreement shall be considered a case decision as defined in § 2.2-4001 and all proceedings related to such dispute, claim, or action shall be conducted pursuant to Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. Judicial review shall be provided exclusively pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

§ 23.1-711. Admission to institutions not guaranteed; coverage limitations.

Nothing in this chapter or in any prepaid tuition contract or savings trust agreement entered into pursuant to this chapter shall be construed as a promise or guarantee:

1. By the board or the Commonwealth of any admission to, continued enrollment at, or graduation from any public institution of higher education;

2. That the beneficiary's cost of tuition at an institution of higher education ~~other than a public institution of higher education~~ will be covered in full by the proceeds of the beneficiary's ~~tuition credits~~ *prepaid tuition contract, provided, however, that a prepaid tuition contract will cover that portion of tuition that is required under the terms of any such contract based on the tuition prepayments made; or*

3. That any qualified higher education expense will be covered in full by contributions to or earnings on any savings trust account.