

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 315

An Act to amend and reenact §§ 23-38.81, 23-38.82, and 23-38.84, as they will become effective, of the Code of Virginia and to amend and reenact the third enactment of Chapter 661 of the 1994 Acts of Assembly, relating to the Virginia Higher Education Tuition Trust Fund.

[H 1986]

Approved March 16, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-38.81, 23-38.82, and 23-38.84, as they will become effective, of the Code of Virginia are amended and reenacted as follows:

§ 23-38.81. (Effective July 1, 1996) Prepaid tuition contracts; 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;

7. The time period during which the qualified beneficiary must claim benefits from the Fund;

8. The number of credit hours or quarters, semesters, or terms contracted for by the purchaser;

9. ~~Provisions for the application of tuition prepayments, (i) at accredited, nonprofit, independent institutions of higher education located in Virginia, including actual interest and income earned on such prepayments and (ii) at public and accredited, nonprofit, independent institutions of higher education located in other states, including principal and reasonable return on such principal as determined by the Board;~~

~~10. All other rights and obligations of the purchaser and the trust; and~~

~~11. 10. Any other terms and conditions which the Board deems necessary or appropriate.~~

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

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

§ 23-38.82. (Effective July 1, 1996) Federal securities opinions required.

No prepaid tuition contract shall be made until the Internal Revenue Service has issued a favorable ruling or opinion that (i) the purchaser will not be deemed to be actually or constructively in receipt of income until tuition payments are made by the Board pursuant to a tuition payment contract and (ii) assets of the Fund, including earnings accrued, are exempt from federal income taxation. If an unfavorable ruling or opinion is issued, the Secretary of Finance shall present a report to the Governor and the General Assembly outlining recommendations for the modification and continuance of the Fund. The Secretary shall also solicit responses to ruling requests from the Securities and Exchange Commission regarding the application of federal laws to the Fund prior to making any prepaid tuition contract. ~~Secretary of Finance obtains either (i) a no-action letter or an opinion from the Securities and Exchange Commission in connection with the application of federal securities laws to the Fund or (ii)~~

an opinion of independent legal counsel substantially to the effect that the proposed method of structuring and offering the Fund is in compliance with federal securities laws.

§ 23-38.84. (Effective July 1, 1996) Annual report.

The Board shall submit an annual statement of the receipts, disbursements, and current investments of the Fund for the preceding year to the Governor ~~and the General Assembly, the Senate Committee on Finance, and the House Committees on Appropriations and Finance.~~ The report shall set forth a complete operating and financial statement covering the operation of the Fund during the year *and shall include a statement of projected receipts, disbursements, investments, and costs for the further operation of the Fund.*

2. That the third enactment of Chapter 661 of the 1994 Acts of Assembly is amended and reenacted as follows:

3. That the Secretary of Finance and the Director of the State Council of Higher Education shall, upon final passage of this act, seek the approvals and responses required by ~~§ 23-38.82~~, as added to the Code of Virginia by this act. If a favorable ruling or opinion from the Internal Revenue Service is received prior to July 1, 1996, *on and after July 1, 1995*, the Board of the Virginia Higher Education Tuition Trust Fund shall be constituted as provided in § 23-38.76, as added to the Code of Virginia by this act, ~~at that time~~ *to make such preparations and to take such actions as may be necessary to administer the Fund and to implement the tuition prepayment program established by this act on July 1, 1996.*