

# VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

## CHAPTER 61

*An Act to amend and reenact §§ 23-38.75 and 23-38.77 of the Code of Virginia, relating to the Virginia Higher Education Tuition Trust Fund.*

[S 267]

Approved March 13, 1998

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 23-38.75 and 23-38.77 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 Higher Education Tuition Trust Fund.

"Fund" means the Virginia Higher Education Tuition Trust Fund.

"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.

"Qualified beneficiary" or "beneficiary" means (i) a resident of the Commonwealth, as determined by the Board or (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.

"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 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.*

§ 23-38.77. Powers and duties of Board.

The Board shall administer the Fund established by this chapter and shall develop and implement a program for the prepayment of undergraduate tuition, as defined in § 23-38.75, at a fixed, guaranteed level for application at a two-year or four-year public institution of higher education in the Commonwealth. In addition, the Board shall have the power and duty to:

1. Invest moneys in the Fund in any instruments, obligations, securities, or property deemed appropriate by the Board;

2. Develop requirements, procedures, and guidelines regarding prepaid tuition contracts, including, but not limited to, residency requirements; the number of participants in the Fund; the termination, withdrawal, or transfer of payments under a prepaid tuition contract; time limitations for the use of tuition benefits; and payment schedules;

3. Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services;

4. Procure insurance against any loss in connection with the Fund's property, assets, or activities and indemnifying Board members from personal loss or accountability from liability arising from any action or inaction as a Board member;

5. Make arrangements with two-year and four-year public institutions in the Commonwealth to fulfill obligations under prepaid tuition contracts, including, but not limited to, payment from the Fund of the then actual in-state undergraduate tuition cost on behalf of a qualified beneficiary to the institution in which the beneficiary is admitted and enrolled and application of such benefits towards graduate-level tuition *and towards 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;*

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

7. Promulgate regulations and procedures and to perform any act or function consistent with the purposes of this chapter; and

8. 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 Fund 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 which 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.