

H. B. 2323

(By Delegate J. Miller)

[Introduced ; referred to the  
Committee on Education then Finance.]

**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §18-9G-1, §18-9G-2,  
§18-9G-3, §18-9G-4, §18-9G-5, §18-9G-6, §18-9G-7 and §18-9G-8,  
all relating to creating a tax credit program for individuals  
paying qualified educational expenses and for those  
individuals or corporations making donations to organizations  
granting scholarships for qualified educational expenses;  
defining terms; setting forth requirements.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended  
by adding thereto a new article, designated §18-9G-1, §18-9G-2,  
§18-9G-3, §18-9G-4, §18-9G-5, §18-9G-6, §18-9G-7 and §18-9G-8, all  
to read as follows:

**ARTICLE 9G. THE FAMILY EDUCATION TAX CREDIT ACT.**

**§18-9G-1. Title.**

1        This article may be cited as "The Family Education Tax Credit  
2 Act."

3 **§18-9G-2. Purpose.**

4        The purpose of this article is to create a family education  
5 tax credit for payment of tuition, fees and certain other  
6 educational expenses and a tax credit for individual and corporate  
7 contributions to organizations that provide educational  
8 scholarships to eligible students so they can attend the public and  
9 nonpublic schools of their parent's choice.

10 **§18-9G-3. Definitions.**

11        The following definitions apply in this article:

12        (1) "Department" means the State Department of Revenue.

13        (2) "Educational scholarship" means a grant to a student to  
14 cover all or part of the tuition and fees at either a qualifying  
15 nonpublic school or a qualifying public school, including  
16 transportation to a public school outside of a student's resident  
17 school district.

18        (3) "Eligible Student" means a student who was eligible to  
19 attend a public school in the state in a preceding semester or is  
20 starting school in this state for the first time and whose parent  
21 has a taxable income that meets the requirements of the program.

22        (4) "Parent" includes a guardian, custodian or other person  
23 with authority to act on behalf of the student.

24        (5) "Program" means the Family Education Tax Credit Program.

1       (6) "Qualifying school" means either a public elementary or  
2 secondary school outside of the district in which a student resides  
3 or a nonpublic elementary or secondary school in our state that  
4 complies with all of the requirements of the program.

5       (7) "Scholarship Granting Organization" means an organization  
6 that gives educational scholarships to students attending  
7 qualifying schools and complies with all of the requirements of the  
8 program.

9 **§18-9G-4. Provisions.**

10       (a) Under the provisions of this article, an individual shall  
11 be able to claim a family education tax credit against state income  
12 taxes if the individual directly pays all or part of the tuition,  
13 fees and other educational expenses of an eligible student.

14       (b) Parents may claim a separate family education tax credit  
15 for the tuition, fees and other educational expenses of each of  
16 their children. Parents may also claim a credit for certain home  
17 schooling expenses.

18       (c) The family education tax credit is refundable for the  
19 parents of a student in the program when the parent's income does  
20 not exceed an amount equal to the income standard used to qualify  
21 for a reduced price lunch under the national Free or Reduced Price  
22 Lunch Program established under 42 U.S.C. §1751 et. seq.

23       (d) Parents of a student participating in the program may

1 assign their family education tax credit to their student's  
2 qualifying school.

3 (e) Under the provisions of this article, individuals and  
4 corporations may claim a family education tax credit against state  
5 income taxes by making contributions to scholarship granting  
6 organizations.

7 (f) Scholarship granting organizations may solicit  
8 contributions from individuals and corporations and provide  
9 educational scholarships to eligible students who attend qualifying  
10 schools.

11 (g) A corporate taxpayer, an individual taxpayer or a married  
12 couple filing jointly may carry forward family education tax  
13 credits for three years.

14 (h) For corporations, the amount of the family education tax  
15 credit equals any contributions to scholarship granting  
16 organizations during the taxable year for which the credit is  
17 claimed up to fifty percent of the taxpayer's tax liability.

18 (i) For an individual taxpayer or a married couple filing  
19 jointly who does not qualify under subsection (c) of this section,  
20 the amount of the family education tax credit equals its total  
21 direct payments for tuition, fees and other educational expenses of  
22 eligible students plus any contributions to scholarship granting  
23 organizations during the taxable year for which the credit is

1 claimed up to fifty percent of the taxpayer's tax liability.

2 **§18-9G-5. Eligibility.**

3 (a) The eligible student's parents must have a taxable income  
4 for the preceding tax year that does not exceed an amount equal to  
5 two and one-half times the income standard used to qualify for a  
6 reduced price lunch under the national Free or Reduced Price Lunch  
7 Program established under 42 U.S.C. §1751 et. seq.

8 (b) The eligible student must be enrolled full-time in a  
9 qualifying school or in a home schooling program complying with  
10 state law.

11 (c) The eligible student is a resident of this state who has  
12 not graduated from high school or reached the age of twenty-one.

13 **§18-9G-6. Qualified expenses.**

14 (a) Parents of eligible students attending a qualifying school  
15 may claim a family education tax credit for tuition and any fees  
16 necessary to attend the school including fees for administrative  
17 expenses, transportation costs and academic programs. They may not  
18 claim a tax credit for athletic fees or expenses.

19 (b) For students taught in a nonpublic home-based program,  
20 parents may claim a family education tax credit for educational  
21 expenses including tutoring, textbooks, school supplies, academic  
22 lessons, and membership fees in an association that sets academic  
23 standards or provides educational curricula for home schooling

1 students. They may not claim expenses for tutoring or academic  
2 lessons if the parent conducts them.

3 (c) Parents will provide the department with a detailed  
4 listing of the educational expenses for each child for which they  
5 seek a tax credit on a form prescribed by the department. They  
6 will attach to the form all receipts necessary to document these  
7 expenses.

8 (d) Parents may only claim the family education tax credit for  
9 expenses they actually paid.

10 **§18-9G-7. Scholarship granting organizations.**

11 (a) Each scholarship granting organization shall:

12 (1) Notify the department of its intent to provide educational  
13 scholarships to students attending qualified schools;

14 (2) Demonstrate to the department that it has been granted  
15 exemption from the federal income tax as an organization described  
16 in Section 501(c)(3) of the Internal Revenue Code;

17 (3) Distribute periodic scholarship payments as checks made  
18 out to a student's parent or guardian and mailed to the qualified  
19 school where the student is enrolled. The parent or guardian must  
20 endorse the check before it can be deposited;

21 (4) Provide a department-approved receipt to taxpayers for  
22 contributions made to the organization;

1       (5) Ensure that at least ninety percent of its revenue from  
2 donations is spent on educational scholarships and all revenue from  
3 interest or investments are spent on educational scholarships;

4       (6) Spend each year a portion of its expenditures on grants  
5 for low-income eligible students equal to the percentage of low-  
6 income eligible students in the county where the scholarship  
7 granting organization expends the majority of its grants;

8       (7) Verify annually that no student receiving a scholarship  
9 resides in a household whose income in the preceding tax year  
10 exceeds an amount equal to twice the income standard used to  
11 qualify for a reduced price lunch under the national Free or  
12 Reduced Price Lunch Program established under 42 U.S.C. §1751 et.  
13 seq;

14       (8) Ensure that at least fifty percent of first time  
15 recipients of educational scholarships were not continuously  
16 enrolled in a nonpublic school during the previous year;

17       (9) Cooperate with the department to conduct criminal  
18 background checks on all of its employees and board members and  
19 exclude from employment or governance any people that might  
20 reasonably pose a risk to the appropriate use of contributed funds;

21       (10) Ensure that scholarships are portable during the school  
22 year and can be used at any qualified school that accepts the

1 eligible student according to a parent's wishes. If a student moves  
2 to a new qualified school during a school year, the scholarship  
3 amount may be prorated;

4 (11) Demonstrate their financial accountability by:

5 (A) Submitting a financial information report for the  
6 organization that complies with uniform financial accounting  
7 standards established by the department and conducted by a  
8 certified public accountant; and

9 (B) Having the Auditor certify that the report is free of  
10 material misstatements; and

11 (12) Demonstrate their financial viability, if they are to  
12 receive donations of \$50,000 or more during the school year, by:

13 (A) Filing with the department prior to the start of the  
14 school year a surety bond payable to the state in an amount equal  
15 to the aggregate amount of contributions expected to be received  
16 during the school year; or

17 (B) Filing with the department prior to the start of the  
18 school year financial information that demonstrates the financial  
19 viability of the scholarship granting organization.

20 (b) Each scholarship granting organization shall ensure that  
21 participating schools that accept its scholarship students:

22 (1) Comply with all health and safety laws or codes that apply



1 to nonpublic schools;

2 (2) Hold a valid occupancy permit if required by its  
3 municipality;

4 (3) Certify that it will not discriminate in admissions on the  
5 basis of race, color, national origin, religion or disability; and

6 (4) Provide academic accountability to parents of the students  
7 in the program by regularly reporting to the parent on the  
8 student's progress;

9 (c) Scholarship granting organizations may grant scholarships  
10 to eligible students to cover part or all of the costs associated  
11 with attending a qualifying school or the allowable expenses  
12 incurred by a student in a home school.

13 (d) Scholarship granting organizations may not award an  
14 educational scholarship to a family member of the organization's  
15 board of directors or its paid staff.

16 **§18-9G-8. Department of Revenue.**

17 (a) The department shall develop a standardized form for  
18 qualifying schools to document the amount of tuition and fees paid  
19 by a parent.

20 (b) The department shall ensure that parents are aware of the  
21 family education tax credit and that all procedures for claiming  
22 the credit are easy to follow.

1       (c) The department shall establish guidelines for parents to  
2 easily assign their tax credit to their student's qualifying  
3 school.

4       (d) The department shall require all scholarship granting  
5 organizations to register and annually report the information the  
6 department needs to carry out its responsibilities.

7       (e) The department shall adopt rules and procedures consistent  
8 with this act as necessary to implement the Family Education Tax  
9 Credit Program.

10       (f) The department shall annually report to the Legislature on  
11 the number of parents claiming the tax credit, the dollar amount of  
12 the credits claimed by parents, the number of schools accepting  
13 eligible students who received a tax credit or educational  
14 scholarship, the number of scholarship granting organizations, the  
15 number and dollar amount of contributions to a scholarship granting  
16 organization and the number and dollar amount of educational  
17 scholarships given to eligible students.

18       (g) The department may conduct either a financial review or  
19 audit of a scholarship granting organization if possessing evidence  
20 of fraud.

21       (h) The department may bar a scholarship granting organization  
22 from participating in the program if the department establishes  
23 that the organization has intentionally and substantially failed to

1 comply with the requirements in section seven of this article.

2 (i) If the department decides to bar a scholarship granting  
3 organization from the program, it shall notify affected scholarship  
4 students and their parents of this decision as quickly as possible.

5 (j) The department shall allow a taxpayer to divert a prorated  
6 amount of state income tax withholdings to a scholarship granting  
7 organization of the taxpayer's choice up to the maximum credit  
8 allowed by law, including carry-over credits. The department may  
9 develop a procedure to facilitate this process.

10 (k) A qualifying school is autonomous and not an agent of the  
11 state or federal government. The department or any other state  
12 agency may not regulate the educational program of a qualifying  
13 school that admits eligible students under this program. The  
14 creation of the Family Education Tax Credit Program does not expand  
15 the regulatory authority of the state, its officers or any local  
16 school district to impose any additional regulation of nonpublic  
17 schools beyond those reasonably necessary to enforce the  
18 requirements of the program.

NOTE: The purpose of this bill is to create a tax credit program for individuals paying qualified educational expenses and for those individuals or corporations making donations to organizations granting scholarships for qualified educational expenses. The bill defines terms and sets forth requirements.

This article is new; therefore, it has been completely

underscored.