

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2339**

BY DELEGATE FLUHARTY AND MILEY

[Introduced January 11, 2019; Referred  
to the Committee on Education then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §11-21-25; to amend said code by adding thereto a new section, designated  
 3 §18-2-42; and to amend said code by adding thereto a new section, designated §18B-2A-  
 4 9, all relating to establishing the “Stay in State” tax credit against personal income for  
 5 higher education tuition for certain state residents; creating credit for student loan  
 6 payments for all in-state community college, college or university undergraduates and their  
 7 in-state employers against personal income tax; establishing conditions and qualifications  
 8 for the tax credit; providing methodology for calculating credit; providing for graduate and  
 9 employer eligibility for payments against student loans for employees; defining terms; and  
 10 providing that the board of education, State Board of Education and governing boards of  
 11 colleges promotion of the program.

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

## **CHAPTER 11. TAXATION.**

### **ARTICLE 21. PERSONAL INCOME TAX.**

#### **§11-21-25. Stay in State Tax Credit.**

1 (a) Credit allowed.-- To promote the retention of recent in-state college graduates, there  
 2 is hereby created a tax credit for repayment of student loans against West Virginia personal  
 3 income tax, available to those individuals that remain in West Virginia following graduation from  
 4 an accredited West Virginia community college, college or university. A qualified individual or an  
 5 employer of a qualified individual is allowed a credit against the tax imposed by this article in  
 6 accordance with the provisions of this section.

7 (b) A taxpayer entitled to the credit for any taxable year may carry over and apply to the  
 8 tax liability for any one or more of the next succeeding 10 years the portion, as reduced from year  
 9 to year, of any unused credits.

10 (c) A taxpayer may claim a credit based on loan payments actually made to a relevant

11 lender or lenders under this section only with respect to loans that are part of the qualified  
12 individual's financial aid package and, for tax years beginning on or after January 1, 2018, only  
13 with respect to loan payment amounts paid by the taxpayer during that part of the taxable year  
14 that the qualified individual worked in this state. Payment of loan amounts in excess of the  
15 amounts due during the taxable year does not qualify for the credit. Refinanced loans that are  
16 part of the qualified individual's financial aid package are eligible for the credit under this section  
17 if the refinanced loans remain separate from other debt, including debt incurred in an educational  
18 program other than the degree program for which a credit is claimed under this section.  
19 Forbearance or deferment of loan payments does not affect eligibility for the credit under this  
20 section.

21 (d) Except as provided in subsection (g) of this section, the credit under this section may  
22 not reduce the tax otherwise due under this part to less than zero.

23 (e) Calculation of the credit. The credit with respect to a qualified individual is equal to the  
24 amount determined under subdivision (1) or subdivision (2) of this section, whichever is less,  
25 multiplied by the proration factor:

26 (1) The benchmark loan payment multiplied by the number of months during the taxable  
27 year in which the taxpayer made loan payments; or

28 (2) The monthly loan payment amount multiplied by the number of months during the  
29 taxable year in which the taxpayer made loan payments.

30 (f) The credit under subsection (e) of this section for an individual who transferred to an  
31 accredited West Virginia community college, college or university from an accredited non West  
32 Virginia community college, college or university on or after January 1, 2018, and who earned no  
33 more than 30 credit hours of course work toward the degree at an accredited non West Virginia  
34 community college, college or university is equal to 50 percent of the amount otherwise  
35 determined under this section in the case of an associate degree and equal to 75 percent of the  
36 amount otherwise determined under this section in the case of a bachelor's degree.

37 (g) Notwithstanding subsection (d) of this section, the credit under this subsection is  
38 refundable to the extent the credit is based on loans included in the financial aid package acquired  
39 to obtain a bachelor's degree or associate degree in science, technology, engineering or  
40 mathematics. For purposes of this subsection, the proration factor is the amount derived by  
41 dividing the total number of academic credit hours earned for a bachelor's or associate degree on  
42 or after January 1, 2016, by the total number of academic credit hours earned for the bachelor's  
43 or associate degree.

44 (h) Employer eligible to the credit.-- An employer may qualify for the credit for a qualified  
45 employee. A taxpayer constituting an employer making loan payments directly to a lender during  
46 the taxable year on loans included in a qualified employee's financial aid package may claim a  
47 credit equal to the benchmark loan payment or the actual monthly loan payment made by the  
48 employer on the loans, whichever is less, multiplied by the number of months during the taxable  
49 year the employer made loan payments on behalf of the qualified employee during the term of  
50 employment. The credit under this subsection may not be claimed with respect to months of the  
51 taxable year during which the employee was not a qualified employee. If the qualified employee  
52 is employed on a part-time basis during the taxable year, the credit with respect to that employee  
53 is limited to 50 percent of the credit otherwise determined under this subsection.

54 (i) The department shall assist the Governing Boards of West Virginia community colleges,  
55 colleges and universities with their participation in the "Stay in State Tax Credit" as provided in  
56 §18B-2A-9 of this code. The department shall provide to the boards appropriate materials and  
57 assistance needed to educate students on how to qualify and retain eligibility for the credit.

58 (j) The following definitions apply to this section:

59 (1) "Accredited non West Virginia community college, college or university" means an  
60 institution located outside the state that is accredited by a regional accrediting association or  
61 approved by the United States Secretary of Education;

62 (2) "Accredited West Virginia community college, college or university" means an

63 institution located in West Virginia that awards baccalaureate degrees and which holds  
64 accreditation by an accrediting agency or association approved by the United States Secretary of  
65 Education;

66 (3) "Benchmark loan payment" means the monthly loan payment for the amount of the  
67 principal cap paid over 10 years at the interest rate for federally subsidized Stafford loans under  
68 20 U. S. C. § 1077 (a) applicable during the individual's last year of enrollment at an accredited  
69 West Virginia community college, college or university;

70 (4) "Full time" employment means employment with a normal workweek of 32 hours or  
71 more.

72 (5) "Principal cap" means:

73 (A) For an individual obtaining a bachelor's degree and graduating from an accredited  
74 West Virginia community college, college or university, the average in-state tuition and mandatory  
75 fees for attendance for the academic year ending during the calendar year prior to the year of  
76 graduation multiplied by four; and

77 (B) For an individual obtaining an associate degree and graduating from an accredited  
78 West Virginia community college, college or university, the average in-state tuition and mandatory  
79 fees for attendance for the academic year ending during the calendar year prior to the year of  
80 graduation multiplied by two.

81 (6) "Qualified person" means:

82 (A) A West Virginia resident that attended, and obtained an associate or a bachelor's  
83 degree from, a West Virginia community college, college or university on or after January 1, 2018.  
84 The person need not obtain the degree from the institution in which that person originally enrolled,  
85 as long as all course work toward the degree is performed at the West Virginia community college,  
86 college or university, except that an individual who transfers to a West Virginia community college,  
87 college or university on or after January 1, 2018, from outside the state and earned no more than  
88 30 credit hours of course work toward the degree at an accredited non West Virginia community

89 college, college or university on or after January 1, 2018, and prior to the transfer is eligible for  
90 the credit if all other eligibility criteria are met. Program eligibility for such a person must be  
91 determined as if the commencement of course work at the relevant accredited community college,  
92 college or university was the commencement of course work for the degree program as a whole;

93 (B) Was a West Virginia resident while in attendance at the West Virginia community  
94 college, college or university. For purposes of this paragraph:

95 (i) Lived in West Virginia while pursuing the degree, excepting periods when it was  
96 reasonably necessary for the individual to live elsewhere as part of the relevant institution's  
97 academic programs or while pursuing course work at an accredited community college, college  
98 or university;

99 (ii) During the taxable year, was a resident individual; and

100 (iii) Worked during the taxable year for tax years at least part time for an employer or self-  
101 employed and was, during the taxable year, deployed for military service in the United States  
102 Armed Forces, including the National Guard and the Reserves of the United States Armed Forces;  
103 and

104 (7) "Qualified student loan" means a loan taken out in the name of the taxpayer claiming  
105 the credit authorized by this section, and used solely to pay qualified education expenses for  
106 education resulting in the award of a baccalaureate degree at an accredited West Virginia  
107 community college, college or university.

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 2. STATE BOARD OF EDUCATION.**

#### **§18-2-42. Promoting student awareness of "Stay in State Tax Credit."**

1 The State Board of Education shall notify superintendents about the program annually and  
2 encourage the superintendents to publicize the availability of the program among students,  
3 parents and school staff, and may provide summary and documentary materials explaining the

4 program to students and encouraging student participation.

**CHAPTER 18B. HIGHER EDUCATION.**

**ARTICLE 1. GOVERNANCE.**

**§18B-2A-9. Governing Boards to provide notification of Stay in State Tax Credit eligibility.**

1 (a) Each Governing Board of a West Virginia community college, college or university shall  
2 provide information about the “Stay in State Tax Credit” as provided in §11-21-25 of this code,  
3 promoting the program in financial aid award materials, entrance interviews, exit interviews, and  
4 materials listing financial aid resources.

5 (b) Each board shall document for students information relating to the Stay in State tax  
6 credit, including, once an eligible student has earned the degree, the total principal of eligible  
7 loans the student received as part of that student's financial aid package related to course work  
8 completed at an accredited West Virginia community college, college or university. Each board  
9 shall provide an original or certified copy to the student and shall retain a copy of the  
10 documentation in its files for at least 10 years after the student graduates.

NOTE: The purpose of this bill is to establish the “Stay in the State Act” tax credit that allows residents of this state who remain in state after graduating with an undergraduate or associate degree from a state institution to be granted a tax credit for the total cost of tuition and interest for student loans used to obtain their degree; this tax credit is against personal property tax in West Virginia and is awarded over a 10-year period; employers are also allowed to claim the credit for employees that qualify for the credit; and in-state high schools, colleges and universities are required to inform and assist students with obtaining the tax credit.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.