

# HOUSE BILL 853

Q3  
HB 998/05 – W&M

71r2310

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By: **Delegates Boteler, Bates, George, Impallaria, Kach, Krebs, McConkey, McKee, Miller, Shewell, Sossi, Stifler, Stull, and Weir**

Introduced and read first time: February 9, 2007

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Family Education Tax Credit Program**

3 FOR the purpose of allowing an individual to claim a credit against the State income  
4 tax for the costs of paying certain tuition, fees, and other educational expenses  
5 of certain qualifying students; making the credit refundable under certain  
6 circumstances; allowing the parent of certain qualifying students to assign the  
7 tax credit to a qualifying school under certain circumstances; allowing an  
8 individual or a corporation a credit against the State income tax for certain  
9 contributions to certain scholarship granting organizations, subject to certain  
10 limitations; providing for the carryover of certain unused credit under certain  
11 circumstances; requiring certain scholarship granting organizations to take  
12 certain actions to be eligible for certain donations for which a tax credit may be  
13 claimed; requiring the Comptroller to administer the Family Education Tax  
14 Credit Program; requiring the Comptroller to adopt certain regulations;  
15 defining certain terms; providing for the application of this Act; and generally  
16 relating to the Family Education Tax Credit Program.

17 BY adding to

18 Article – Tax – General

19 Section 10–726

20 Annotated Code of Maryland

21 (2004 Replacement Volume and 2006 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
23 MARYLAND, That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article - Tax - General**

2 **10-726.**

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
4 MEANINGS INDICATED.

5 (2) "EDUCATIONAL SCHOLARSHIPS" MEANS GRANTS TO  
6 STUDENTS TO COVER ALL OR PART OF THE TUITION AND FEES AT A QUALIFYING  
7 NONPUBLIC SCHOOL OR A QUALIFYING PUBLIC SCHOOL, INCLUDING  
8 TRANSPORTATION TO A PUBLIC SCHOOL OUTSIDE OF A STUDENT'S RESIDENT  
9 SCHOOL DISTRICT.

10 (3) "ELIGIBLE STUDENT" MEANS A STUDENT WHO WAS ELIGIBLE  
11 TO ATTEND A PUBLIC SCHOOL IN THE STATE IN A PRECEDING SEMESTER OR IS  
12 STARTING SCHOOL IN THE STATE FOR THE FIRST TIME AND WHO MEETS THE  
13 REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION.

14 (4) "PARENT" INCLUDES A GUARDIAN, CUSTODIAN, OR OTHER  
15 PERSON WITH AUTHORITY TO ACT ON BEHALF OF THE STUDENT.

16 (5) "PROGRAM" MEANS THE FAMILY EDUCATION TAX CREDIT  
17 PROGRAM ESTABLISHED UNDER THIS SECTION.

18 (6) "QUALIFYING SCHOOL" MEANS:

19 (I) A PUBLIC ELEMENTARY OR SECONDARY SCHOOL  
20 OUTSIDE THE DISTRICT IN WHICH A STUDENT RESIDES; OR

21 (II) A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL IN  
22 THE STATE THAT COMPLIES WITH ALL OF THE REQUIREMENTS OF THE  
23 PROGRAM.

24 (7) "SCHOLARSHIP-GRANTING ORGANIZATION" MEANS AN  
25 ORGANIZATION THAT GIVES EDUCATIONAL SCHOLARSHIPS TO STUDENTS  
26 ATTENDING QUALIFYING SCHOOLS AND COMPLIES WITH ALL OF THE  
27 REQUIREMENTS OF THE PROGRAM.

1           **(B) (1) (I) AN INDIVIDUAL MAY CLAIM A FAMILY EDUCATION TAX**  
2 **CREDIT AGAINST THE STATE INCOME TAXES FOR THE COSTS OF PAYING ALL OR**  
3 **PART OF THE TUITION, FEES, AND OTHER EDUCATIONAL EXPENSES OF A**  
4 **DEPENDENT WHO IS AN ELIGIBLE STUDENT.**

5                           **(II) AN INDIVIDUAL MAY CLAIM A SEPARATE FAMILY**  
6 **EDUCATION TAX CREDIT FOR THE TUITION, FEES, AND OTHER EDUCATIONAL**  
7 **EXPENSES OF EACH OF THE INDIVIDUAL'S CHILDREN WHO IS AN ELIGIBLE**  
8 **STUDENT.**

9                           **(III) AN INDIVIDUAL MAY CLAIM A CREDIT FOR HOME**  
10 **SCHOOLING EXPENSES OF AN ELIGIBLE STUDENT, SUBJECT TO THE PROVISIONS**  
11 **OF THIS SECTION.**

12                           **(IV) FOR AN INDIVIDUAL WHOSE INCOME DOES NOT EXCEED**  
13 **AN AMOUNT EQUAL TO THE INCOME STANDARD USED TO QUALIFY FOR A**  
14 **REDUCED PRICE LUNCH UNDER THE NATIONAL FREE OR REDUCED PRICE**  
15 **LUNCH PROGRAM ESTABLISHED UNDER 42 U.S.C. § 1751, IF THE TAX CREDIT**  
16 **ALLOWED UNDER THIS PARAGRAPH EXCEEDS THE INDIVIDUAL'S STATE INCOME**  
17 **TAX LIABILITY, THE EXCESS MAY BE CLAIMED AS A REFUND.**

18                           **(V) A PARENT OF AN ELIGIBLE STUDENT MAY ASSIGN THE**  
19 **FAMILY EDUCATION TAX CREDIT TO THE STUDENT'S QUALIFYING SCHOOL.**

20           **(2) (I) AN INDIVIDUAL OR A CORPORATION MAY CLAIM A**  
21 **FAMILY EDUCATION TAX CREDIT AGAINST THE STATE INCOME TAX FOR**  
22 **CONTRIBUTIONS TO SCHOLARSHIP GRANTING ORGANIZATIONS.**

23                           **(II) SCHOLARSHIP GRANTING ORGANIZATIONS MAY SOLICIT**  
24 **CONTRIBUTIONS FROM INDIVIDUALS AND CORPORATIONS AND PROVIDE**  
25 **EDUCATIONAL SCHOLARSHIPS TO ELIGIBLE STUDENTS WHO ATTEND**  
26 **QUALIFYING SCHOOLS.**

27           **(3) (I) EXCEPT AS PROVIDED IN PARAGRAPH (1)(IV) OF THIS**  
28 **SUBSECTION, THE TOTAL TAX CREDIT UNDER THIS SECTION FOR ANY TAXABLE**  
29 **YEAR MAY NOT EXCEED 50% OF THE TAXPAYER'S STATE INCOME TAX LIABILITY,**  
30 **DETERMINED BEFORE THE APPLICATION OF THE CREDITS UNDER THIS SECTION**  
31 **AND §§ 10-701 AND 10-701.1 OF THIS SUBTITLE, BUT AFTER THE APPLICATION**  
32 **OF ANY OTHER CREDITS UNDER THIS SUBTITLE.**

1                   **(II) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY**  
2 **TAXABLE YEAR EXCEEDS THE STATE INCOME TAX FOR THAT TAXABLE YEAR, A**  
3 **TAXPAYER MAY APPLY THE EXCESS AS A CREDIT AGAINST THE STATE INCOME**  
4 **TAX FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:**

5                   **1. THE FULL AMOUNT OF THE EXCESS IS USED; OR**

6                   **2. THE EXPIRATION OF THE THIRD TAXABLE YEAR**  
7 **AFTER THE TAXABLE YEARS IN WHICH THE TAXPAYER PAID THE TUITION, FEES,**  
8 **OR OTHER EDUCATIONAL EXPENSES OR MADE THE DONATION.**

9                   **(C) (1) TO QUALIFY AS AN ELIGIBLE STUDENT FOR PURPOSES OF THE**  
10 **FAMILY EDUCATION TAX CREDIT PROGRAM, A STUDENT SHALL MEET THE**  
11 **REQUIREMENTS OF THIS SUBSECTION.**

12                   **(2) THE STUDENT'S FAMILY MUST HAVE A TAXABLE INCOME FOR**  
13 **THE PRECEDING TAX YEAR THAT DOES NOT EXCEED AN AMOUNT EQUAL TO 2.5**  
14 **TIMES THE INCOME STANDARD USED TO QUALIFY FOR A REDUCED PRICE LUNCH**  
15 **UNDER THE NATIONAL FREE OR REDUCED PRICE LUNCH PROGRAM**  
16 **ESTABLISHED UNDER 42 U.S.C. § 1751.**

17                   **(3) THE STUDENT MUST BE ENROLLED FULL TIME IN A**  
18 **QUALIFYING SCHOOL OR IN A HOME SCHOOLING PROGRAM COMPLYING WITH**  
19 **STATE LAW.**

20                   **(4) THE STUDENT MUST BE A RESIDENT OF THIS STATE WHO HAS**  
21 **NOT GRADUATED FROM HIGH SCHOOL OR REACHED THE AGE OF 21.**

22                   **(D) (1) THE CREDIT UNDER SUBSECTION (B)(1) OF THIS SECTION**  
23 **MAY BE CLAIMED FOR TUITION AND ANY FEES NECESSARY TO ATTEND A**  
24 **SCHOOL, INCLUDING FEES FOR ADMINISTRATIVE EXPENSES, TRANSPORTATION**  
25 **COSTS, AND ACADEMIC PROGRAMS, BUT NOT INCLUDING ATHLETIC FEES OR**  
26 **EXPENSES.**

27                   **(2) FOR STUDENTS TAUGHT IN A NONPUBLIC HOME-BASED**  
28 **PROGRAM, THE CREDIT UNDER SUBSECTION (B)(1) OF THIS SECTION MAY BE**  
29 **CLAIMED FOR EDUCATIONAL EXPENSES INCLUDING TUTORING, TEXTBOOKS,**  
30 **SCHOOL SUPPLIES, ACADEMIC LESSONS, AND MEMBERSHIP FEES IN AN**

1 ASSOCIATION THAT SETS ACADEMIC STANDARDS OR PROVIDES EDUCATIONAL  
2 CURRICULA FOR HOME SCHOOLING STUDENTS, BUT NOT INCLUDING TUTORING  
3 OR ACADEMIC LESSONS IF THE PARENT CONDUCTS THEM.

4 (3) TO CLAIM THE TAX CREDIT UNDER THIS SECTION FOR  
5 TUITION, FEES, AND OTHER EDUCATIONAL EXPENSES, AN INDIVIDUAL SHALL  
6 PROVIDE THE COMPTROLLER:

7 (I) A DETAILED LISTING OF THE EDUCATIONAL EXPENSES  
8 FOR EACH CHILD FOR WHICH THE TAX CREDIT IS SOUGHT ON A FORM  
9 PRESCRIBED BY THE COMPTROLLER; AND

10 (II) ALL RECEIPTS NECESSARY TO DOCUMENT THESE  
11 EXPENSES.

12 (4) AN INDIVIDUAL MAY ONLY CLAIM THE FAMILY EDUCATION  
13 TAX CREDIT FOR EXPENSES THAT THEY ACTUALLY PAID AND WERE NOT  
14 REIMBURSED BY SCHOLARSHIPS, GRANTS, OR OTHERWISE.

15 (E) (1) EACH SCHOLARSHIP GRANTING ORGANIZATION SHALL:

16 (I) NOTIFY THE COMPTROLLER OF ITS INTENT TO PROVIDE  
17 EDUCATIONAL SCHOLARSHIPS TO STUDENTS ATTENDING QUALIFIED SCHOOLS;

18 (II) DEMONSTRATE TO THE COMPTROLLER THAT IT HAS  
19 BEEN GRANTED EXEMPTION FROM THE FEDERAL INCOME TAX AS AN  
20 ORGANIZATION DESCRIBED IN SECTION 501(C)(3) OF THE INTERNAL REVENUE  
21 CODE;

22 (III) DISTRIBUTE PERIODIC SCHOLARSHIP PAYMENTS AS  
23 CHECKS MADE OUT TO A STUDENT'S PARENT OR GUARDIAN, ENDORSED BY THE  
24 PARENT OR GUARDIAN, AND MAILED TO THE QUALIFIED SCHOOL WHERE THE  
25 STUDENT IS ENROLLED;

26 (IV) PROVIDE A COMPTROLLER-APPROVED RECEIPT TO  
27 TAXPAYERS FOR CONTRIBUTIONS MADE TO THE ORGANIZATION;

28 (V) ENSURE THAT AT LEAST 90% OF ITS REVENUE FROM  
29 DONATIONS IS SPENT ON EDUCATIONAL SCHOLARSHIPS, AND THAT ALL

1 REVENUE FROM INTEREST OR INVESTMENTS IS SPENT ON EDUCATIONAL  
2 SCHOLARSHIPS;

3 (VI) SPEND EACH YEAR A PORTION OF ITS EXPENDITURES  
4 ON GRANTS FOR LOW-INCOME ELIGIBLE STUDENTS EQUAL TO THE  
5 PERCENTAGE OF LOW-INCOME ELIGIBLE STUDENTS IN THE COUNTY WHERE  
6 THE SCHOLARSHIP GRANTING ORGANIZATION EXPENDS THE MAJORITY OF ITS  
7 GRANTS;

8 (VII) VERIFY ANNUALLY THAT NO STUDENT RECEIVING A  
9 SCHOLARSHIP RESIDES IN A HOUSEHOLD WHOSE INCOME IN THE PRECEDING  
10 TAX YEAR EXCEEDS AN AMOUNT EQUAL TO 2.5 TIMES THE INCOME STANDARD  
11 USED TO QUALIFY FOR A REDUCED PRICE LUNCH UNDER THE NATIONAL FREE  
12 OR REDUCED PRICE LUNCH PROGRAM ESTABLISHED UNDER 42 U.S.C. § 1751;

13 (VIII) ENSURE THAT AT LEAST 20% OF FIRST TIME  
14 RECIPIENTS OF EDUCATIONAL SCHOLARSHIPS WERE NOT CONTINUOUSLY  
15 ENROLLED IN A NONPUBLIC SCHOOL DURING THE PREVIOUS YEAR;

16 (IX) COOPERATE WITH THE COMPTROLLER TO CONDUCT  
17 CRIMINAL BACKGROUND CHECKS ON ALL OF ITS EMPLOYEES AND BOARD  
18 MEMBERS AND EXCLUDE FROM EMPLOYMENT OR GOVERNANCE ANY PEOPLE  
19 THAT MIGHT REASONABLY POSE A RISK TO THE APPROPRIATE USE OF  
20 CONTRIBUTED FUNDS;

21 (X) ENSURE THAT SCHOLARSHIPS ARE PORTABLE DURING  
22 THE SCHOOL YEAR AND CAN BE USED AT ANY QUALIFIED SCHOOL THAT  
23 ACCEPTS THE ELIGIBLE STUDENT ACCORDING TO A PARENT'S WISHES, OR  
24 PRORATED IF A STUDENT MOVES TO A NEW QUALIFIED SCHOOL DURING A  
25 SCHOOL YEAR;

26 (XI) DEMONSTRATE ITS FINANCIAL ACCOUNTABILITY BY:

27 1. SUBMITTING A FINANCIAL INFORMATION REPORT  
28 FOR THE ORGANIZATION THAT COMPLIES WITH UNIFORM FINANCIAL  
29 ACCOUNTING STANDARDS ESTABLISHED BY THE COMPTROLLER AND  
30 CONDUCTED BY A CERTIFIED PUBLIC ACCOUNTANT; AND

1                   **2. HAVING THE AUDITOR CERTIFY THAT THE**  
2 **REPORT IS FREE OF MATERIAL MISSTATEMENTS; AND**

3                   **(XII) DEMONSTRATE ITS FINANCIAL VIABILITY, IF IT IS TO**  
4 **RECEIVE DONATIONS OF \$50,000 OR MORE DURING THE SCHOOL YEAR, BY:**

5                   **1. FILING WITH THE COMPTROLLER PRIOR TO THE**  
6 **START OF THE SCHOOL YEAR A SURETY BOND PAYABLE TO THE STATE IN AN**  
7 **AMOUNT EQUAL TO THE AGGREGATE AMOUNT OF CONTRIBUTIONS EXPECTED**  
8 **TO BE RECEIVED DURING THE SCHOOL YEAR; OR**

9                   **2. FILING WITH THE COMPTROLLER PRIOR TO THE**  
10 **START OF THE SCHOOL YEAR FINANCIAL INFORMATION THAT DEMONSTRATES**  
11 **THE FINANCIAL VIABILITY OF THE SCHOLARSHIP GRANTING ORGANIZATION.**

12                   **(2) EACH SCHOLARSHIP GRANTING ORGANIZATION SHALL**  
13 **ENSURE THAT PARTICIPATING SCHOOLS THAT ACCEPT ITS SCHOLARSHIP**  
14 **STUDENTS WILL:**

15                   **(I) COMPLY WITH ALL HEALTH AND SAFETY LAWS OR**  
16 **CODES THAT APPLY TO NONPUBLIC SCHOOLS;**

17                   **(II) HOLD A VALID OCCUPANCY PERMIT IF REQUIRED BY**  
18 **THE COUNTY OR MUNICIPAL CORPORATION WHERE THE SCHOOL IS LOCATED;**

19                   **(III) CERTIFY THAT THEY WILL NOT DISCRIMINATE IN**  
20 **ADMISSIONS ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, OR**  
21 **DISABILITY; AND**

22                   **(IV) PROVIDE ACADEMIC ACCOUNTABILITY TO PARENTS OF**  
23 **THE STUDENTS IN THE PROGRAM BY REGULARLY REPORTING TO THE PARENT**  
24 **ON THE STUDENT'S PROGRESS.**

25                   **(3) SCHOLARSHIP GRANTING ORGANIZATIONS MAY GRANT**  
26 **SCHOLARSHIPS TO ELIGIBLE STUDENTS TO COVER PART OR ALL OF THE COSTS**  
27 **ASSOCIATED WITH ATTENDING A QUALIFYING SCHOOL OR THE ALLOWABLE**  
28 **EXPENSES INCURRED BY A STUDENT IN A HOME SCHOOL.**

1           **(4) SCHOLARSHIP GRANTING ORGANIZATIONS MAY NOT AWARD**  
2 **AN EDUCATIONAL SCHOLARSHIP TO A FAMILY MEMBER OF THE**  
3 **ORGANIZATION'S BOARD OF DIRECTORS OR ITS PAID STAFF.**

4           **(F) (1) THE COMPTROLLER SHALL:**

5                   **(I) DEVELOP A STANDARDIZED FORM FOR QUALIFYING**  
6 **SCHOOLS TO DOCUMENT THE AMOUNT OF TUITION AND FEES PAID BY A**  
7 **PARENT;**

8                   **(II) ENSURE THAT PARENTS ARE AWARE OF THE FAMILY**  
9 **EDUCATION TAX CREDIT AND THAT ALL PROCEDURES FOR CLAIMING THE**  
10 **CREDIT ARE EASY TO FOLLOW;**

11                   **(III) ESTABLISH GUIDELINES FOR PARENTS TO EASILY**  
12 **ASSIGN THEIR TAX CREDIT TO THEIR STUDENT'S QUALIFYING SCHOOL;**

13                   **(IV) REQUIRE ALL SCHOLARSHIP GRANTING**  
14 **ORGANIZATIONS TO REGISTER AND ANNUALLY REPORT THE INFORMATION THE**  
15 **COMPTROLLER NEEDS TO CARRY OUT ITS RESPONSIBILITIES;**

16                   **(V) ADOPT RULES AND PROCEDURES CONSISTENT WITH**  
17 **THIS SECTION AS NECESSARY TO IMPLEMENT THE FAMILY EDUCATION TAX**  
18 **CREDIT PROGRAM; AND**

19                   **(VI) ANNUALLY REPORT TO THE GENERAL ASSEMBLY ON:**

20                           **1. THE NUMBER OF PARENTS OF ELIGIBLE**  
21 **STUDENTS CLAIMING THE TAX CREDIT;**

22                           **2. THE DOLLAR AMOUNT OF THE CREDITS CLAIMED**  
23 **BY PARENTS;**

24                           **3. THE NUMBER OF SCHOOLS ACCEPTING ELIGIBLE**  
25 **STUDENTS WHO RECEIVED A TAX CREDIT OR EDUCATIONAL SCHOLARSHIP;**

26                           **4. THE NUMBER OF SCHOLARSHIP GRANTING**  
27 **ORGANIZATIONS;**

1                   **5. THE NUMBER AND DOLLAR AMOUNT OF**  
2 **CONTRIBUTIONS TO A SCHOLARSHIP GRANTING ORGANIZATION; AND**

3                   **6. THE NUMBER AND DOLLAR AMOUNT OF**  
4 **EDUCATIONAL SCHOLARSHIPS GIVEN TO ELIGIBLE STUDENTS.**

5                   **(2) THE COMPTROLLER MAY CONDUCT EITHER A FINANCIAL**  
6 **REVIEW OR AUDIT OF A SCHOLARSHIP GRANTING ORGANIZATION IF**  
7 **POSSESSING EVIDENCE OF FRAUD.**

8                   **(3) (I) THE COMPTROLLER MAY BAR A SCHOLARSHIP**  
9 **GRANTING ORGANIZATION FROM PARTICIPATING IN THE PROGRAM IF THE**  
10 **COMPTROLLER ESTABLISHES THAT THE ORGANIZATION HAS INTENTIONALLY**  
11 **AND SUBSTANTIALLY FAILED TO COMPLY WITH THE REQUIREMENTS OF**  
12 **SUBSECTION (E) OF THIS SECTION.**

13                   **(II) IF THE COMPTROLLER BARS A SCHOLARSHIP**  
14 **GRANTING ORGANIZATION FROM THE PROGRAM, THE COMPTROLLER SHALL**  
15 **PROMPTLY NOTIFY AFFECTED SCHOLARSHIP STUDENTS AND THEIR PARENTS**  
16 **OF THIS DECISION.**

17                   **(4) THE COMPTROLLER SHALL ADOPT REGULATIONS TO**  
18 **DEVELOP A PROCESS TO ALLOW A TAXPAYER TO DIVERT A PRORATED AMOUNT**  
19 **OF STATE INCOME TAX WITHHOLDINGS TO A SCHOLARSHIP GRANTING**  
20 **ORGANIZATION OF THE TAXPAYER'S CHOICE UP TO THE MAXIMUM CREDIT**  
21 **ALLOWED BY LAW, INCLUDING CARRYOVER CREDITS.**

22                   **(5) (I) A QUALIFYING SCHOOL IS AUTONOMOUS AND IS NOT AN**  
23 **AGENT OF THE STATE OR FEDERAL GOVERNMENT.**

24                   **(II) THE COMPTROLLER OR ANY OTHER STATE AGENCY**  
25 **MAY NOT REGULATE THE EDUCATIONAL PROGRAM OF A QUALIFYING SCHOOL**  
26 **THAT ADMITS ELIGIBLE STUDENTS UNDER THIS PROGRAM.**

27                   **(III) THE CREATION OF THE FAMILY EDUCATION TAX**  
28 **CREDIT PROGRAM DOES NOT EXPAND THE REGULATORY AUTHORITY OF THE**  
29 **STATE, ITS OFFICERS, OR ANY LOCAL SCHOOL DISTRICT TO IMPOSE ANY**  
30 **ADDITIONAL REGULATION OF NONPUBLIC SCHOOLS BEYOND THOSE**  
31 **REASONABLY NECESSARY TO ENFORCE THE REQUIREMENTS OF THE PROGRAM.**

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   July 1, 2007, and shall be applicable to all taxable years beginning after December 31,  
3   2006.