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HOUSE BILL NO. 1036

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.2, consisting of sections numbered 58.1-439.18 through 58.1-439.24, relating to the Children At Risk in Education (CARE) Scholarship tax credit.

Patrons—Saxman, Black, Cole, Lingamfelter, Louderback and Oder

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 13.2, consisting of sections numbered 58.1-439.18 through 58.1-439.24 as follows:

*Article 13.2.**The Children At Risk in Education (CARE) Scholarship Tax Credit.**§ 58.1-439.18. Definitions.*

As used in this article:

"Business entity" means a business that is subject to the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of this title.

"Eligible contribution" means a contribution of cash, stock, bonds, or other marketable securities to an eligible nonprofit scholarship-funding organization from any business that is subject to state taxation in Virginia, subject to the restrictions provided in this section.

"Eligible public school" means a public kindergarten, elementary school, or secondary school owned or exclusively controlled by the State or some political subdivision thereof, that charges tuition to an eligible student to attend.

"Eligible nonpublic school" means a nonpublic kindergarten, elementary, or secondary school, not owned or exclusively controlled by the State or some political subdivision thereof, located in Virginia that:

- 1. Charges tuition to an eligible student to attend;*
- 2. Offers an education to students in any grades kindergarten through 12th that meets the requirements described in § 58.1-439.20;*
- 3. Satisfies the requirements for compulsory school attendance as described in § 22.1-254; and*
- 4. (i) Complies with nonpublic school accreditation requirements as set forth in § 22.1-19 administered by the Virginia Council for Private Education, or (ii) maintains an assessment system for CARE scholarship students that measures scholarship students' progress annually in reading using a national norm-referenced achievement test that includes, but is not limited to, the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills.*

"Eligible nonprofit scholarship-funding organization" means a charitable organization exempt from federal income tax pursuant to § 501 (c) (3) of the Internal Revenue Code that, according to its Articles of Incorporation, may provide education scholarship funds and that complies with program evaluation provisions set forth in § 22.1-212.15.

"Eligible student" means a kindergarten through twelfth grade student of compulsory school attendance age who is a resident of Virginia, enrolled in a school and a member of a household with an annual gross income of not more than \$40,000 for a household consisting of four or fewer individuals and an additional \$5,000 for each individual exceeding four. To maintain "eligible student" status, students shall comply with evaluation provisions set forth in § 58.1-439.24.

"Household" means an individual living alone or with the following: a parent and his unemancipated minor children and other unemancipated minor children who are related by blood or marriage; or other adults or unemancipated minor children living in the household who are dependent upon the individual.

"Household income" means all moneys or property received of whatever nature and from whatever source derived. The term does not include the following:

- 1. Periodic payments for sickness and disability other than regular wages received during a period of sickness or disability.*
- 2. Disability, retirement, or other payments arising under workers' compensation acts, occupational disease acts, and similar legislation by any government.*
- 3. Payments commonly recognized as old-age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment.*

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59 4. Payments commonly known as public assistance or unemployment compensation payments by a
60 governmental agency.

61 5. Payments made by employers or labor unions for programs covering hospitalization, sickness,
62 disability or death, supplemental unemployment benefits, strike benefits, social security, and retirement.

63 6. Compensation received by United States service men serving in a combat zone.

64 "Tuition scholarship" means a scholarship for educational expenses, which shall include tuition,
65 textbook, and testing fees, incurred by an eligible student who is enrolled in an eligible public or
66 nonpublic school.

67 "Tutorial scholarship" means a scholarship for nonpublic after-school tutoring expenses incurred by
68 an eligible student who is enrolled in a non-tuition-charging public school.

69 § 58.1-439.19. Tax credit for donations to nonprofit scholarship-funding organizations.

70 A. For taxable years beginning on and after January 1, 2005, a business entity may receive a credit
71 against any tax due under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3,
72 Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2
73 (§ 58.1-2620 et seq.) of Chapter 26 of this title, subject to the provisions of this section.

74 B. Tax credits shall be awarded by the Department of Taxation on a first-come first-serve basis in
75 accordance with procedures established by the Department under the following conditions:

76 1. The total amount of tax credits that may be granted each fiscal year under this section is \$2
77 million.

78 2. Each allowable credit shall be an amount equal to 25 percent of an eligible contribution against
79 any tax due for a taxable year under this chapter. However, such a credit may not exceed 75 percent of
80 the tax due under this chapter for the taxable year, after the application of any other allowable credits
81 by the taxpayer.

82 3. Any tax credit that is not usable under this section may not be applied to future tax years. Such
83 credit may not be conveyed, assigned, or transferred unless all assets are simultaneously conveyed,
84 assigned, or transferred.

85 4. The business making the contribution may not designate a specific child as the beneficiary of the
86 contribution.

87 C. Business entities seeking a tax credit under this article shall apply to the Department, which shall
88 approve or deny the request. If approved, the Department shall notify the business entity that the tax
89 credit-approved donation must be made within 30 days to an approved organization. Tax credit
90 approval notices not acted upon within 30 days of issuance shall be void. Student scholarship-funding
91 organizations shall promptly notify the Department upon receipt of the tax credit-approved donation.

92 D. The Department shall approve eligibility of student scholarship-funding organizations. Nonprofit
93 organizations seeking to receive and administer tax credit-approved funds shall apply by letter to the
94 Department, which shall determine whether an applicant is a nonprofit scholarship-funding organization
95 as defined in § 58.1-439.18. Notice of approval or denial, including reasons for denial, shall be issued
96 by the Department to the applicant within 60 days. Once approved, nonprofit scholarship-funding
97 organizations shall reapply for approval by sending a letter to the Department every three years. The
98 Department shall prescribe through regulations what information shall be submitted by such
99 organizations initially and when reapplying.

100 § 58.1-439.20. School eligibility and requirements.

101 A nonpublic school may be designated as an "eligible nonpublic school" for purposes of this article
102 if:

103 1. It demonstrates fiscal soundness by being in operation for at least one school year or provides the
104 Department of Taxation with a statement by a certified public accountant confirming that the nonpublic
105 school desiring to participate is insured and the owner or owners have sufficient capital or credit to
106 operate the school for the upcoming year serving the number of students anticipated with expected
107 revenues from tuition and other sources that may be reasonably expected. In lieu of such a statement, a
108 surety bond or letter of credit for the amount equal to the scholarship funds for any quarter may be
109 filed with the Department;

110 2. It complies with the antidiscrimination provisions of 42 U.S.C. § 2000d;

111 3. It does not discriminate on the basis of race or national origin; and

112 4. It meets Commonwealth and local health and safety laws and codes.

113 § 58.1-439.21. Tutorial scholarships.

114 A. Tutorial scholarships shall be awarded solely to students who are enrolled in the public schools
115 of a division in a grade level covered by this article and who satisfy the definition of eligible student as
116 set forth in § 58.1-439.18. Tutorial scholarships may be used solely to obtain tutorial assistance from a
117 provider approved by the scholarship organization.

118 B. All students wishing to obtain tutorial assistance grants shall make application to a nonprofit
119 scholarship-funding organization by the thirtieth day of the school year in which the scholarship will be
120 used.

C. The tutorial scholarship amount shall not exceed the lesser of the provider's actual charges for such assistance or \$500 for the school year.

§ 58.1-439.22. Eligible nonprofit scholarship-funding organization.

A nonprofit organization shall be considered an "eligible nonprofit scholarship-funding organization" if:

1. It is exempt from federal taxation under section 501 (c) (3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.);

2. It disburses at least 90 percent of its annual scholarship-designated receipts in student scholarships;

3. It does not limit scholarships to students of one school; and

4. It submits to the Commissioner of Agriculture and Consumer Services an annual audit of tax credit-approved receipts and disbursements performed by an independent certified public accountant in accordance with generally accepted principles of accounting.

§ 58.1-439.23. Scholarship disbursements.

A. Subject to the limitation set forth in this article, an eligible nonprofit scholarship-funding organization shall provide scholarships from eligible contributions to qualified students for:

1. Tuition and textbook fees, as well as fees and expenses for testing services as required by this article to facilitate compliance with § 58.1-439.24, incurred by an eligible student for the purpose of attending an eligible nonpublic or non-tuition-charging public school; or

2. Tutorial services for eligible public school students.

B. An eligible nonprofit scholarship-funding organization shall give priority consideration for scholarship awards to eligible students:

1. Who are at risk of educational failure; which for purposes of this article includes any student:

a. Assigned to a public school not rated "Fully Accredited";

b. Classified as "learning disabled"; or

c. Who has failed one or more Standards of Learning tests; and

2. Who received a scholarship from an eligible nonprofit scholarship-funding organization during the previous year.

C. The amount of a scholarship provided to any child for any single school year by all eligible nonprofit scholarship-funding organizations from eligible contributions shall not exceed the lesser of:

1. The actual tuition, textbook and testing expenses incurred or \$5,000 for a student tuition scholarship awarded to a student enrolled in an eligible public or nonpublic school; or

2. The actual tutorial expenses incurred or \$500 for a student tutorial scholarship awarded to a student enrolled in a Virginia non-tuition-charging public school.

D. An eligible nonprofit scholarship-funding organization that receives eligible contributions must provide to the Commissioner of Agriculture and Consumer Services an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant in accordance with generally accepted accounting practices.

E. Payment of the scholarship by the eligible nonprofit scholarship-funding organization shall be by individual warrant or check made payable to the student's parent or legal guardian. If the parent chooses for his child to attend an eligible nonpublic school, the warrant or check must be mailed by the eligible nonprofit scholarship-funding organization to the eligible nonpublic school of the parent's choice, and the parent shall restrictively endorse the warrant or check to the nonpublic school. An eligible nonprofit scholarship-funding organization shall ensure that, upon receipt of a scholarship warrant or check, the parent to whom the warrant or check is made restrictively endorses the warrant or check to the eligible nonpublic school of the parent's choice for deposit into the account of the nonpublic school.

§ 58.1-439.24. Evaluation.

To ensure parents and guardians are adequately informed of educational progress of students in the CARE scholarship program and to provide public evaluation, eligible scholarship-funding organizations shall require, as a condition of subsequent year tuition scholarship eligibility evidence of the student's reading achievement as measured by either (i) an annual national norm-referenced achievement assessment that may include but is not limited to the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills; or (ii) a Virginia Standards of Learning reading assessment for grades three, five, and eight.