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SENATE BILL NO. 1365

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact §§ 58.1-439.25 and 58.1-439.28 of the Code of Virginia, relating to Education Improvement Scholarships tax credits; benefits and eligibility requirements; eligible student with a disability.*

Patrons—DeSteph, Barker, Black, Carrico, Chafin, Chase, Cosgrove, Edwards, Hanger, Marsden, McDougle, Norment, Obenshain, Peake, Reeves, Ruff, Saslaw, Stanley, Stuart, Sturtevant, Vogel and Wagner

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.25 and 58.1-439.28 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.25. Definitions.

As used in this article, unless the context requires a different meaning:

"Eligible student with a disability" means a ~~student~~ (i) *child who is a resident of Virginia* for whom an ~~individualized educational program~~ *Individualized Education Plan (IEP)* has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education; (ii) ~~whose family's annual household income is not in excess of 400 percent of the current poverty guidelines; and (iii) who otherwise is a student as defined in this section.~~ *For purposes of this article, an eligible student with a disability need not qualify as a student as defined in this section.*

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"Qualified educational expenses" means school-related tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school-related work.

"Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by the Department of Education in accordance with the provisions of § 58.1-439.27; and (iii) established to provide financial aid for the education of students *or eligible students with a disability* residing in the Commonwealth.

"Student" means a child who is a resident of Virginia and (i) in the current school year has enrolled and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and attended a public school in the Commonwealth for at least one-half of the year, (iii) is a prior recipient of a scholarship foundation scholarship, (iv) is eligible to enter kindergarten or first grade, or (v) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic school in the Commonwealth for more than one-half of the school year.

§ 58.1-439.28. Guidelines for scholarship foundations.

A. As a condition for qualification by the Department of Education, a scholarship foundation, as defined in § 58.1-439.25 and included on the list published annually by the Department of Education pursuant to this section, shall disburse an amount at least equal to 90 percent of the value of the donations it receives (for which tax credits were issued under this article) during each 12-month period ending on June 30 by the immediately following June 30 for qualified educational expenses through scholarships to ~~eligible~~ *students or eligible students with a disability*. Tax-credit-derived funds not used for such scholarships may only be used for the administrative expenses of the scholarship foundation. Any scholarship foundation that fails to meet such disbursement requirement shall, for the first offense, be required to pay a civil penalty equal to 200 percent of the difference between 90 percent of the value of the tax-credit-derived donations it received in the applicable 12-month period and the amount that was actually disbursed. Such civil penalty shall be remitted by the scholarship foundation to the Department of Education within 30 days after the end of the one-year period and deposited to the general fund. For a second offense within a five-year period, the scholarship foundation shall be removed from the annual list published pursuant to this section and shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds for two

57 years. After two years, the scholarship foundation shall be eligible to reapply to be included on the
58 annual list to receive and administer tax-credit derived funds. If a scholarship foundation is authorized to
59 be added to the annual list after such reapplication, the scholarship foundation shall not be considered to
60 have any previous offenses for purposes of this subsection. The required disbursement under this section
61 shall begin with donations received for the period January 1, 2013, through June 30, 2014.

62 B. By September 30 of each year beginning in 2016, the scholarship foundation shall provide the
63 following information to the Department of Education: (i) the total number and value of donations
64 received by the foundation during the 12-month period ending on June 30 of the prior calendar year for
65 which tax credits were issued by the Superintendent of Public Instruction, (ii) the dates when such
66 donations were received, and (iii) the total number and dollar amount of qualified educational expenses
67 scholarships awarded from tax-credit-derived donations and disbursed by the scholarship foundation
68 during the 24-month period ending on June 30 of the current calendar year. Any scholarship foundation
69 that fails to provide this report by September 30 shall, for the first offense, be required to pay a \$1,000
70 civil penalty. Such civil penalty shall be remitted by the scholarship foundation to the Department of
71 Education by November 1 of the same year and deposited to the general fund. For a second offense
72 within a five-year period, the scholarship foundation shall be removed from the annual list published
73 pursuant to this section and shall not be entitled to request preauthorization for additional tax credits,
74 nor shall it be entitled to receive and administer additional tax-credit-derived funds. After two years, the
75 scholarship foundation shall be eligible to reapply to be included on the annual list to receive and
76 administer tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual
77 list after such reapplication, the scholarship foundation shall not be considered to have any previous
78 offenses for purposes of this subsection.

79 C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i)
80 provide scholarships for qualified educational expenses only to students whose family's annual household
81 income is not in excess of 300 percent of the current poverty guidelines or eligible students with a
82 disability *whose family's annual household income is not in excess of 400 percent of the current poverty*
83 *guidelines*, (ii) not limit scholarships to students *or eligible students with a disability* of one school, and
84 (iii) comply with Title VI of the Civil Rights Act of 1964, as amended. Payment of scholarships from
85 tax-credit-derived funds by the eligible scholarship foundation shall be by individual warrant or check
86 made payable to and mailed to the eligible school that the ~~student's~~ parent or legal guardian *of the*
87 *student or eligible student with a disability* indicates. In mailing such scholarship payments, the eligible
88 scholarship foundation shall include a written notice to the eligible school that the source of the
89 scholarship was donations made by persons receiving tax credits for the same pursuant to this article.

90 D. Scholarship foundations shall ensure that schools selected by students *or eligible students with a*
91 *disability* to which tax-credit-derived funds may be paid (i) are in compliance with the Commonwealth's
92 and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as required by the
93 locality; (iii) comply with Title VI of the Civil Rights Act of 1964, as amended; and (iv) are nonpublic
94 schools that comply with nonpublic school accreditation requirements as set forth in § 22.1-19 and
95 administered by the Virginia Council for Private Education or nonpublic schools that maintain an
96 assessment system that annually measures ~~scholarship students'~~ *the progress of scholarship students or*
97 *eligible students with a disability* in reading and math using a national norm-referenced achievement
98 test, including but not limited to the Stanford Achievement Test, California Achievement Test, and Iowa
99 Test of Basic Skills.

100 Eligible schools shall compile the results of any national norm-referenced achievement test for each
101 of its students *or eligible students with a disability* receiving tax-credit-derived scholarships and shall
102 provide the respective parents or legal guardians of such students *or eligible students with a disability*
103 with a copy of the results on an annual basis, beginning with the first year of testing of the student *or*
104 *eligible student with a disability*. Such schools also shall annually provide to the Department of
105 Education for each such student *or eligible student with a disability* the achievement test results,
106 beginning with the first year of testing of the student *or eligible student with a disability*, and ~~student~~
107 information that would allow the Department to aggregate the achievement test results by grade level,
108 gender, family income level, number of years of participation in the scholarship program, and race.
109 Beginning with the third year of testing ~~of each such student~~ and test-related data collection, the
110 Department of Education shall ensure that the achievement test results and associated learning gains are
111 published on the Department of Education's website in accordance with such classifications and in an
112 aggregate form as to prevent the identification of any student *or eligible student with a disability*.
113 Eligible schools shall annually provide to the Superintendent of Public Instruction graduation rates of its
114 students *or eligible students with a disability* participating in the scholarship program in a manner
115 consistent with nationally recognized standards. In publishing and disseminating achievement test results
116 and other information, the Superintendent of Public Instruction and the Department of Education shall
117 ensure compliance with all student privacy laws.

118 E. 1. The aggregate amount of scholarships provided to each student *or eligible student with a*

disability who does not meet the requirements of subdivision 2 for any single school year by all eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual qualified educational expenses of the student or (ii) 100 percent of the per-pupil amount distributed to the local school division (in which the student resides) as the state's share of the standards of quality costs using the composite index of ability to pay as defined in the general appropriation act.

2. a. Except as provided in subdivision 1, the aggregate amount of scholarships provided to each eligible student with a disability for any single school year by all eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual qualified educational expenses of the student or (ii) 300 percent of the per pupil amount distributed to the local school division (in which the eligible student with a disability resides) as the state's share of the standards of quality costs using the composite index of ability to pay as defined in the general appropriation act.

b. Except as provided in subdivision 1, scholarships may only be provided to an eligible student with a disability who is attending a school for students with disabilities, as defined in § 22.1-319, that (i) is licensed by the Department of Education to serve students with disabilities, (ii) complies with the nonpublic school accreditation requirements of the Virginia Association of Independent Schools, (iii) is exempt from taxation under § 501(c)(3) of the Internal Revenue Code, and (iv) does not receive public funds to supplement the cost of the education of the eligible student with a disability that is receiving the scholarship pursuant to this section.

F. Scholarship foundations shall develop procedures for disbursing scholarships in quarterly or semester payments throughout the school year to ensure scholarships are portable.

G. Scholarship foundations that receive donations of marketable securities for which tax credits were issued under this article shall be required to sell such securities and convert the donation into cash immediately, but in no case more than 21 days after receipt of the donation.

H. Each scholarship foundation with total revenues (including the value of all donations) (i) in excess of \$100,000 for the foundation's most recent fiscal year ended shall have an audit or review performed by an independent certified public accountant of the foundation's donations received in such year for which tax credits were issued under this article or (ii) of \$100,000 or less for the foundation's most recent fiscal year ended shall have a compilation performed by an independent certified public accountant of the foundation's donations received in such year for which tax credits were issued under this article. A summary report of the audit, review, or compilation shall be made available to the public and the Department of Education upon request.

I. The Department of Education shall publish annually on its website a list of each scholarship foundation qualified under this article. Once a foundation has been qualified by the Department of Education, it shall remain qualified until the Department removes the foundation from its annual list. The Department of Education shall remove a foundation from the annual list if it no longer meets the requirements of this article. The Department of Education may periodically require a qualified foundation to submit updated or additional information for purposes of determining whether or not the foundation continues to meet the requirements of this article.

J. Actions of the Superintendent of Public Instruction or the Department of Education relating to the awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the Superintendent of Public Instruction or the Department of Education shall be final and not subject to review or appeal.