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SENATE BILL NO. 336

Offered January 19, 2000

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 3.1, consisting of sections numbered 58.1-339.8 through 58.1-339.13, relating to income tax credits for donations to school tuition organizations and for payment of certain costs associated with the enrollment of children in certain schools; the Virginia Children's Educational Opportunity Act 2000.

Patrons—Martin, Bolling, Rerras and Schrock; Delegates: Black, Byron, Cantor, Cox, Davis, Drake, Hargrove, Harris, Katzen, Louderback, McDonnell, Nixon, Ruff, Suit and Ware

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 3.1, consisting of sections numbered 58.1-339.8 through 58.1-339.13, as follows:

Article 3.1.

Virginia Children's Educational Opportunity Act 2000.

§ 58.1-339.8. Definitions.

For the purposes of this chapter:

"Academic instruction" means instruction in reading, writing, mathematics, science, history (including art and music history), geography, social studies (including government and citizenship), literature, philosophy, and foreign languages.

"Household" means a taxpayer, the taxpayer's spouse residing or domiciled with the taxpayer, and any person claimed as a dependent on the taxpayer's income tax return for the taxable year.

"Low-income household" means a household for which the Virginia combined adjusted gross income for the most recent complete tax year does not exceed 185 percent of the poverty guideline amount corresponding to a household of an equal number of persons as listed in the poverty guidelines published during the applicable taxable year.

"Poverty guidelines" means the poverty guidelines for the forty-eight 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 school" means either (i) a public elementary or secondary school charging tuition pursuant to subdivision A 2 of § 22.1-5 or § 22.1-269.1 or (ii) a private educational program, including home schooling, that can be used to satisfy the compulsory school attendance requirements of § 22.1-254.

"Qualifying educational expenses" means (i) with respect to a qualified school other than a home school, tuition and other instructional fees charged by the qualified school; and (ii) with respect to home schooling in kindergarten through grade twelve, tutoring fees charged by an individual teacher or a home school correspondence school for academic instruction, including remedial assistance, and the cost of textbooks, workbooks, curricula, and other written materials used primarily for academic instruction.

"School tuition organization" means a charitable organization in Virginia that is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, and is organized in whole or in part to provide financial assistance for the education of children who are eligible to be enrolled in a public school in Virginia free of charge pursuant to § 22.1-3 and who are (i) claimed as dependents by taxpayers in low-income households or (ii) claimed as dependents by taxpayers who are not in low-income households, but whose tax liability for the most recently completed tax year, excluding any allowance for credits claimed pursuant to § 58.1-339.9 or § 58.1-339.10, did not exceed the maximum allowable credit under § 58.1-339.10 for the current tax year. To qualify as a school tuition organization, the organization must expend all of its tax credit-qualifying contributions as payments to cover the qualifying educational expenses of such children at qualified schools of the parents' choice. All tax credit-qualifying contributions must be expended by the end of the first complete tax year following the date that the qualifying contribution is received. Payments from tax credit-qualifying contributions for the qualifying educational expenses of a child who is not in a low income household may not exceed eighty percent of such expenses, reduced further by the estimated amount for which the parent will be able to claim a tax credit. In no event shall financial assistance provided from tax credit-qualifying contributions exceed \$3,100 per recipient child per school year for a child enrolled in a qualified school charging tuition, or \$550 per recipient child per school year for home schooling or other educational programs that do not require the payment of tuition.

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SB336

60 "Tax credit-qualifying revenues" means those voluntary cash contributions to a school tuition
61 organization for which a receipt satisfying the requirements of § 58.1-339.11 has been given by the
62 school tuition organization to the donor of the cash contribution.

63 § 58.1-339.9. Tax credit for contributions to school tuition organizations.

64 A. For taxable years beginning on and after January 1, 2001, any taxpayer shall be allowed a
65 nonrefundable credit against any tax imposed pursuant to § 58.1-320 or § 58.1-400 for voluntary cash
66 contributions made by the taxpayer to a school tuition organization, provided that the contributions to
67 the school tuition organization cannot be designated for the direct benefit of any specific child.

68 B. The amount of the credit allowed to a taxpayer under subsection A shall not exceed the lesser of
69 the total amount of the tax imposed on the taxpayer pursuant to § 58.1-320 or § 58.1-400 for the
70 taxable year or (i) for taxable year 2001, \$200 per taxpayer; (ii) for taxable year 2002, \$300 per
71 taxpayer; (iii) for taxable year 2003, \$400 per taxpayer; and (iv) for taxable years 2004 and thereafter,
72 \$500 per taxpayer.

73 C. Amounts claimed under this section shall not also be claimed as an itemized charitable deduction
74 when computing the taxpayer's liability for taxes under § 58.1-320 or § 58.1-400.

75 § 58.1-339.10. Tax credit for certain qualifying educational expenses.

76 A. For taxable years beginning on and after January 1, 2001, a taxpayer shall be allowed a
77 nonrefundable credit against any tax imposed pursuant to § 58.1-320 for a percentage of the qualifying
78 educational expenses incurred during the taxable year on behalf of each child of the taxpayer who (i) is
79 eligible to be enrolled in a public school in Virginia free of charge pursuant to § 22.1-3; (ii) qualifies
80 as the taxpayer's dependent for federal income tax purposes; and (iii) does not attend a free public
81 school during the semester or other portion of the school year for which such qualified educational
82 expenses were incurred.

83 B. 1. Subject to the provisions of subdivision B 4 below, the credit shall be for 100 percent of the
84 qualifying educational expenses incurred during the taxable year on behalf of each such child by a
85 taxpayer in a low-income household.

86 2. Subject to the provisions of subdivisions B 3 and B 4 below, the credit shall be for eighty percent
87 of the qualifying educational expenses incurred during the taxable year on behalf of each such child of
88 a taxpayer who is not in a low-income household.

89 3. If the taxpayer is not a member of a low-income household, then in no event shall the amount of
90 the credit per child allowed pursuant to this subsection B in any taxable year, including carry-over
91 credits allowed by subsection D, (i) for taxable year 2001 exceed \$500; (ii) for taxable year 2002
92 exceed \$1,000; (iii) for taxable year 2003 exceed \$1,500; (iv) for taxable year 2004 exceed \$2,000; and
93 (v) for taxable years 2005 and thereafter exceed \$2,500.

94 4. For a child enrolled in a qualified school that is not a school charging tuition, in no event shall
95 the amount of the credit allowed pursuant to this section in any taxable year, including carry-over
96 credits allowed by subsection D, exceed \$550 per child.

97 C. For purposes of determining whether a taxpayer has claimed the maximum allowable credit
98 pursuant to this subsection for a tax year, financial assistance received from a school tuition
99 organization shall be treated by the taxpayer as a credit claimed.

100 D. If the amount of the allowable credit exceeds the taxpayer's tax liability for any taxable year,
101 such excess may be carried over and credited against the taxpayer's tax liability in the three succeeding
102 taxable years until the total amount of the credit has been claimed.

103 E. Amounts claimed under this section shall not also be claimed as an itemized deduction when
104 computing the taxpayer's liability for taxes under § 58.1-320.

105 § 58.1-339.11. Forms; regulations.

106 A. The Department of Taxation is authorized to require a taxpayer to submit with the tax return
107 copies of such receipts or similar financial documentation as is necessary to confirm the taxpayer's
108 claim of the credit.

109 B. The Department of Taxation shall promulgate regulations required to implement this article. The
110 regulations shall (i) modify the state individual and corporate tax forms, directions, and worksheets to
111 provide a convenient way for taxpayers to claim a credit under this article; (ii) provide a format for a
112 standardized receipt to be issued by school tuition organizations to indicate the tax credit value of a
113 cash contribution to the school tuition organization, and including the date of the receipt, the name of
114 the donor, the total amount of the contribution, the amount of the donation that can be claimed for a
115 tax credit, the name of the school tuition organization, and the printed name and signature of the agent
116 issuing the receipt on behalf of the school tuition organization; and (iii) provide a format for a
117 standardized receipt to be issued by qualified schools at the conclusion of a student's period of
118 instruction for which qualifying educational expenses have been paid, and including the date of the
119 receipt, the dates of the student's enrollment for which expenses are being paid, the name of the person
120 paying the expense, the total expenses, the portion of the amount paid toward qualifying educational
121 expenses, the name of the qualified school, and the printed name and signature of the agent issuing the

122 receipt on behalf of the qualified school.

123 C. Regardless of what documentation the Department of Taxation may require for purposes of
124 allowing credit for payments of qualifying educational expenses, no school or other organization shall
125 be required to provide such documentation or otherwise act to facilitate taxpayers' access to credits
126 under this article, except that schools may be required to fulfill a prior agreement to a taxpayer to
127 provide such information.

128 § 58.1-339.12. Limitation on regulations.

129 A. Eligibility of a school or other educational program to be considered a qualified school under
130 this article shall not be conditioned on a school's compliance with any state law or regulation not
131 applicable to all private schools or providers of home schooling in the Commonwealth, with the
132 exception of the financial documentation requirements authorized by § 58.1-339.11.

133 B. The General Assembly intends that the credits authorized by this article not result in any
134 additional regulation of public or private schools or taxpayers' decisions about the education of their
135 dependent children, except to the minimal extent necessary to provide for the prevention of fraud and
136 the efficient administration of the credits.

137 § 58.1-339.13. Annual reports.

138 A. The Tax Commissioner shall determine annually, by type of credit and level of taxable income, the
139 total amount of credits claimed under this article on all state income tax returns and shall report the
140 same to the Secretary of Finance and the Secretary of Education.

141 B. Within sixty days preceding each regular session of the General Assembly, the Secretary of
142 Finance and the Secretary of Education shall present a report to the Chairmen of the Senate Committee
143 on Finance and the House Committee on Appropriations projecting, as of the date of the report, the
144 total amount of credits expected to be claimed under this article on returns for the current taxable year
145 and the following taxable year.