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**HOUSE BILL NO. 2238****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Education

on February 2, 2015)

(Patron Prior to Substitute—Delegate LaRock)

A BILL to amend the Code of Virginia by adding in Chapter 13 of Title 22.1 an article numbered 2.1, consisting of sections numbered 22.1-222.1 through 22.1-222.4, relating to Parental Choice Education Savings Accounts.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 13 of Title 22.1 an article numbered 2.1, consisting of sections numbered 22.1-222.1 through 22.1-222.4, as follows:

Article 2.1.

Parental Choice Education Savings Accounts.

**§ 22.1-222.1. Definitions.**

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

"Department" means the Virginia Department of Education.

"Domicile" has the same meaning as provided in § 58.1-302.

"Eligible institution" means a public two-year or four-year institution of higher education or an accredited private institution of higher education in the Commonwealth.

"Parent" means a parent, as defined in § 22.1-1, who has established domicile in the Commonwealth.

"Parental Choice Education Savings Account" or "Savings Account" means a private bank account in the name of and controlled by a parent and into which only funds from the Commonwealth may be deposited as provided in subsection C of § 22.1-222.2.

"Private Scholarship Foundation" means a nonstock, nonprofit corporation that complies with all relevant requirements regarding solicitation of contributions in Chapter 5 (§ 57-48 et seq.) of Title 57 and whose articles of incorporation, governing rules, or equivalent documents, such as its bylaws, as originally established or legally and validly amended, state that one of its purposes is to provide principal aid for the education of students residing in the Commonwealth.

"Qualified school" means a private, sectarian or nonsectarian elementary or secondary school or preschool for students that is located in the Commonwealth and does not discriminate on the basis of race, color, or national origin.

"Qualified student" means a resident of the Commonwealth to whom public schools shall be free pursuant to § 22.1-3 and who:

1. (i) is identified as having a disability under § 504 of the Rehabilitation Act, 29 U.S.C. § 794 (§ 504) or (ii) is receiving or is eligible to receive services from a school division pursuant to § 22.1-214 and

2. (i) was enrolled at and attended a public elementary or secondary school or preschool in the Commonwealth for at least half of the school year immediately preceding his parent's application for a Virginia Parental Choice Education Savings Account; (ii) was domiciled in a state other than the Commonwealth during the school year immediately preceding his parent's application for a Virginia Parental Choice Education Savings Account and did not attend a private elementary or secondary school or preschool in the Commonwealth for more than half of such school year; or (iii) while enrolled at and attending a qualified school during the school year immediately preceding his parent's application for a Virginia Parental Choice Education Savings Account, received a scholarship from a scholarship foundation, as that term is defined in § 58.1-439.25.

"Treasurer" means the Office of the Treasurer of the Commonwealth.

**§ 22.1-222.2. Virginia Parental Choice Education Savings Accounts established; application; agreement; disbursement.**

A. Virginia Parental Choice Education Savings Accounts are established to provide the parent of a qualified student with options for the education of his child.

B. The parent of a qualified student may apply to the Department for a Savings Account that is renewable annually. The application and renewal process shall include a requirement for such parent to annually sign a written agreement to:

1. Provide an education for the qualified student as required by § 22.1-254;

2. Not enroll the qualified student in a school division for the school year immediately succeeding receipt of the Savings Account;

3. Release the school division in which the qualified student resides from all obligations to educate the qualified student;

4. Not accept a scholarship from a scholarship foundation, as that term is defined in § 58.1-439.25,

60 that received a donation from a person who is eligible to earn a credit for such donation pursuant to  
61 Article 13.3 (§ 58.1-439.25 et seq.) of Chapter 3 of Title 58.1 concurrently with receipt of a Savings  
62 Account;

63 5. Use the moneys deposited in the Savings Account solely for one or more of the following expenses  
64 of the qualified student: (i) tuition, fees, or required textbooks at a qualified school; (ii) educational  
65 therapies or services for the qualified student from a practitioner or provider, including  
66 paraprofessionals or educational aides; (iii) tutoring services; (iv) curriculum; (v) tuition or fees for a  
67 private online learning program; (vi) fees for a nationally standardized norm-referenced achievement  
68 test, an Advanced Placement examination, or any examination taken to gain admission to an institution  
69 of higher education; (vii) contributions to a qualified tuition program established pursuant to 11 U.S.C.  
70 § 529; (viii) tuition fees or required textbooks at an eligible institution; (ix) fees for management of the  
71 Savings Account by firms selected by the Treasurer pursuant to subsection A of § 22.1-222.3; (x)  
72 services that are offered on a fee-for-service basis by a public elementary or secondary school or  
73 preschool to the public, including classes and extracurricular activities; (xi) insurance or surety bond  
74 payments as required by the Treasurer; or (xii) computer hardware or software, transportation,  
75 consumable educational supplies, or any other goods or services that are necessary for the provision of  
76 the qualified student's education pursuant to § 22.1-254;

77 6. Submit an expense summary and receipts to the Department for the preceding year prior to  
78 receiving a Savings Account disbursement for the subsequent year; and

79 7. Submit to periodic audits of the Savings Account by the Department as provided in subsection B  
80 of § 22.1-222.3.

81 C. In exchange for the parent's agreement pursuant to subsection B, the Department shall annually  
82 transfer moneys from state funds to the Treasurer for deposit into a Savings Account in an amount that  
83 is equivalent to 90 percent of (i) the per pupil state funds appropriated for public school purposes and  
84 apportioned to the school division in which the qualified student resides and (ii) in the case of a  
85 qualified student identified as having a disability under § 504 or receiving or eligible to receive services  
86 from a school division pursuant to § 22.1-214, the special education and related service costs borne by  
87 the Commonwealth for which the qualified student would qualify in the school division in which he  
88 resides.

89 D. No entity that receives moneys from a Savings Account may refund, rebate, or otherwise remit  
90 any such moneys to the parent or qualified student.

91 E. Upon the qualified student's graduation from an eligible institution or after the first four  
92 consecutive years following the qualified student's graduation from high school during which the student  
93 is not enrolled at an eligible institution, the Savings Account shall be closed and any remaining funds  
94 shall be returned to the Commonwealth.

95 F. Moneys received by a parent in a Savings Account pursuant to this article do not constitute  
96 taxable income to the parent.

97 **§ 22.1-222.3. Administration; audit; rules.**

98 A. The Treasurer may contract, directly or indirectly, through Private Scholarship Foundations or  
99 with private financial management firms to manage Savings Accounts under the supervision of the  
100 Treasurer.

101 B. The Department shall conduct or contract for annual audits of a random sample of Savings  
102 Accounts to ensure compliance with subdivision B 5 of § 22.1-222.2 and may conduct or contract for  
103 audits of a random sample of Savings Accounts to ensure compliance with subdivision B 4 of  
104 § 22.1-222.2.

105 C. Upon receiving the results of an audit pursuant to subsection B and finding that a parent  
106 committed a misrepresentation or any other material violation of the agreement pursuant to subsection  
107 B of § 22.1-222.2 or any other provision of this article, the Department may notify the Treasurer,  
108 rescind the agreement, and declare such parent ineligible for renewal of the Savings Account, but the  
109 parent may appeal such decision pursuant to § 55-210.27.

110 D. The Department may refer to the Attorney General for investigation any case in which it finds  
111 evidence of fraudulent use of Savings Account moneys by a parent.

112 E. The Department may adopt policies necessary for the implementation of this article, including  
113 policies for conducting audits, preventing fraud, and requiring surety bond for Savings Account holders.

114 **§ 22.1-222.4. Scope of article.**

115 A. Nothing in this article shall be construed to permit any agency of the Commonwealth to exercise  
116 control or supervision over any private school or program of home instruction.

117 B. No qualified school that receives moneys from a Savings Account pursuant to this article shall be  
118 considered an agent of the state or federal government.

119 C. No qualified school shall be required to alter its creed, practices, admissions policies, or  
120 curriculum in order to receive moneys from a Savings Account pursuant to this article.

121 D. In any legal proceeding challenging the application of this article to a qualified school, the

122 *Commonwealth bears the burden of establishing that the law is necessary and does not impose any*  
123 *undue burden on the qualified school.*  
124 *E. If any expense of a qualified student set forth in subdivision B 5 of § 22.1-222.2 is held to be*  
125 *invalid, such holding shall not affect the validity of any other expense of a qualified student set forth in*  
126 *such subdivision.*