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HOUSE BILL NO. 2238

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 19, 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 bank account at a qualified financial institution in the name of the parent and into which only funds from the Commonwealth may be deposited for the benefit of a qualified student as provided in subsection D of § 22.1-222.2.

"Plan" means the Virginia College Savings Plan.

"Qualified financial institution" means a financial institution selected pursuant to subsection B of § 22.1-222.3 that provides a Savings Account that (i) offers a restricted use debit card feature, (ii) is self-adjudicating with respect to charges placed against the debit card, and (iii) provides each parent and the Department with reporting functionality pursuant to their responsibilities under this article.

"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. is identified as having a disability and 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 Savings Account (ii) was domiciled in a state other than the Commonwealth during the school year immediately preceding his parent's application for a 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 Savings Account, received a scholarship from a Scholarship Foundation.

"Resident school division" means the school division in which a qualified student resides.

"Retained savings" means an amount that is equivalent to 10 percent of all applicable Standards of Quality per pupil state funds appropriated for public school purposes and apportioned to the resident school division, including the per pupil share of state sales tax funding in basic aid and any state per pupil share of special needs funding to which the qualified student is eligible.

"Scholarship Foundation" has the same meaning provided in § 58.1-439.25.

§ 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. Each school division shall notify, as part of the Individualized Education Program (IEP) planning process, all such students of the existence and operation of Savings Accounts. The Department shall include information on Savings Accounts in its Parent's Guide to Special Education or equivalent publication and otherwise make such information available for students and their parents.

B. The parent of a qualified student may apply to the resident school division no later than April 1

60 of the immediately preceding school year for a Savings Account that is renewable annually. The
61 application and renewal process shall include a requirement for such parent to annually sign a written
62 agreement to:

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

64 2. Not enroll the qualified student in any school division in the school year for which the application
65 or renewal applies and for which the parent receives disbursement of state funds into the Savings
66 Account pursuant to subsection D of § 22.1-222.2;

67 3. Release the resident school division from all obligations to educate the qualified student for the
68 duration of such agreement;

69 4. Not accept a scholarship from a Scholarship Foundation that received a donation from a person
70 who is eligible to earn a credit for such donation pursuant to Article 13.3 (§ 58.1-439.25 et seq.) of
71 Chapter 3 of Title 58.1 concurrently with receipt of a Savings Account;

72 5. Use the moneys deposited in the Savings Account solely for one or more of the following expenses
73 of the qualified student: (i) tuition, fees, or required textbooks at a qualified school; (ii) educational
74 therapies or services for the qualified student from a practitioner or provider, including
75 paraprofessionals or educational aides; (iii) tutoring services; (iv) curriculum; (v) tuition or fees for a
76 private online learning program; (vi) fees for a nationally standardized norm-referenced achievement
77 test, an Advanced Placement examination, or any examination taken to gain admission to an institution
78 of higher education; (vii) tuition fees or required textbooks at an eligible institution; (viii) contributions
79 to a qualified tuition program established by the parent pursuant to 11 U.S.C. § 529 or a Coverdell
80 education savings account established pursuant to 26 U.S.C. § 530; (ix) services that are offered on a
81 fee-for-service basis by a public elementary or secondary school or preschool to the public, including
82 classes and extracurricular activities; (x) such insurance, surety bond payments, or Savings Account fees
83 as may be required by a qualified financial institution pursuant to subsection B of § 22.1-222.3; or (xi)
84 transportation, consumable educational supplies, or any other goods or services that are necessary for
85 the provision of the qualified student's education pursuant to § 22.1-254;

86 6. Submit an expense summary, and all applicable invoices and receipts, to the resident school
87 division for the preceding school year no later than July 15 and prior to receiving a Savings Account
88 disbursement for the subsequent year; and

89 7. Submit to audits of the Savings Account by the resident school division as provided in subsection
90 C of § 22.1-222.3.

91 C. The resident school division shall give written notice to any parent applying for or requesting
92 renewal of a Savings Account as to the disposition of the application or renewal request no later than
93 30 days immediately succeeding the application or renewal request date and shall approve any such
94 application or renewal request that is complete and contains all requisite information and agreements.
95 The resident school division may send the parent a written notice requesting additional information, if
96 needed, to determine the final disposition of the application or renewal request. Such parent shall
97 submit the requested information to the resident school division within 30 calendar days of the date of
98 the receiving such written notice from the resident school division. If the requested information is
99 received within such time, the resident school division shall make a final determination to accept or
100 deny the application or renewal request and notify the parent within 10 days of such final
101 determination. If the requested information is not received within such time, the resident school division
102 may deny the application or renewal request. In the event that the resident school division denies any
103 application or renewal request, the parent may appeal such denial to the school board in the resident
104 school division and such school board shall hear and take action on such appeal within 30 calendar
105 days of receipt of the appeal. Any party aggrieved by a decision of the resident school division may
106 appeal such decision within 30 days to an independent hearing officer. The independent hearing officer
107 shall be chosen from the list maintained by the Executive Secretary of the Supreme Court for hearing
108 appeals of the placements of children with disabilities. The costs of the hearing shall be apportioned
109 among the parties by the hearing officer in a manner consistent with his findings. If the parent prevails
110 in the independent hearing, the application or renewal request shall immediately be approved and shall
111 become effective on the date on which it was first submitted.

112 D. Within 14 calendar days of the approval of an initial application or renewal request, the resident
113 school division shall disburse to the appropriate Savings Account, on behalf of the parent, state funds in
114 an amount that is equivalent to 90 percent of all applicable Standards of Quality per pupil state funds
115 appropriated for public school purposes and apportioned to the school division in which the qualified
116 student resides, including the per pupil share of state sales tax funding in basic aid and any state per
117 pupil share of special needs funding to which the qualified student is eligible.

118 E. Within 14 calendar days of the approval of an initial application or renewal request, the resident
119 school division shall disburse retained savings to the Department.

120 F. No resident school division shall transfer the local share of per pupil funds or any portion thereof
121 to a Savings Account.

G. Each qualified student whose parent has applied for and received a Savings Account shall be counted in the March 31 average daily membership or fall membership of the resident school division as a full time equivalent student and shall be identified as such for the sole purpose of the resident school division's calculation of the state share to be transferred to the Savings Account and the retained savings to be transferred to the Department and not for any other purpose such as calculating the state share of costs for other program accounts. No qualified student shall be counted in the resident school division's required effort to meet actual need for required matching local funds as prescribed by the Standards of Quality or any other initiative supported by the Commonwealth that requires a local match of funds.

H. The Department shall determine the state share per pupil funding for a qualified student and the retained savings based on the then current general appropriation act. The resident school division shall annually make warrant for and deposit the state share per pupil funding for a qualified student directly into the Savings Account.

I. The Department shall expend retained savings received pursuant to subsection E solely to establish, manage, and administer a program to implement the provisions and requirements of this article, except that the Department may expend any excess retained savings in furtherance of public elementary and secondary educational purposes.

J. No later than November 1 of each year, each division superintendent shall certify and report to the Superintendent of Public Instruction the number of students in the resident school division whose parents have received a Savings Account and the amount of funds transferred to each such Savings Account and the amount of retained savings transferred to the Department. No later than December 15 of each year, the Superintendent of Public Instruction shall report to the Governor and the chairmen of the House Committee on Appropriations and Senate Committee on Finance the name of each school division in which the parent of a qualified student has received a Savings Account, the number of qualified students whose parents have received a Savings Account, and the total state funding transferred to such Savings Accounts and retained savings transferred to the Department.

K. Pursuant to the provisions of the written agreement outlined in subdivisions B 6 and B 7 of § 22.1-222.2, each parent who receives a Savings Account shall submit all applicable receipts and invoices necessary to account for funds spent from such Savings Account to the resident school division for review and possible audit. Each resident school division shall determine, based on the policies established by the Auditor of Public Accounts pursuant to subsection C of § 22.1-222.3, the appropriateness of the submitted receipts and invoices prior to consideration for a subsequent renewal request.

L. No entity that receives moneys from a Savings Account shall refund, rebate, or otherwise remit any such moneys directly to the parent or qualified student, but shall refund, rebate, or otherwise remit any such moneys to the Savings Account.

M. Upon the qualified student's graduation from high school, the Savings Account shall be closed and any remaining funds shall be returned to the Commonwealth.

N. Moneys received by a parent in a Savings Account pursuant to this article do not constitute state taxable income to the parent.

§ 22.1-222.3. Administration; audit; rules.

A. The Department shall establish a process for application, renewal, and appeal pursuant to subsections B and C § 22.1-222.2.

B. The Department shall contract, either (i) directly or (ii) indirectly through Scholarship Foundations or the Plan, with one or more qualified financial institutions to establish and require such financial institutions to manage Savings Accounts that comply with the provisions of this article. The costs to the qualified financial institution associated with the ongoing administration of the Savings Account and any compliance with this article may be passed on to the parent.

C. The Auditor of Public Accounts shall establish a process by which local school divisions shall audit Savings Accounts to ensure compliance with this article. Audit costs shall be borne by the resident school division.

D. Upon receiving the results of any audit pursuant to this article and a finding that a parent has intentionally misrepresented any expenditure set forth in subdivision B 5 of § 22.1-222.2, the resident school division may rescind the agreement, reclaim the balance in any such Savings Account, and declare such parent ineligible for renewal of the Savings Account. The parent may appeal such decision as provided in subsection C of § 22.1-222.2.

E. The resident school division may refer to the Department and the Office of the State Inspector General for investigation any case in which it finds evidence of fraudulent use of Savings Account moneys by a parent. If any expenditure is determined to be invalid or not permitted, the parent shall be required to reimburse the resident school division for such expense and the resident school division shall withhold any future disbursement to the Savings Account until such time as the parent has made

183 *such reimbursement.*

184 *F. The Department shall establish policies for conducting appeals, preventing fraud, and determining*
185 *the circumstances under which surety bond shall be required for Savings Account holders. Each local*
186 *school board shall adopt policies that are consistent with such policies of the Department.*

187 **§ 22.1-222.4. Scope of article.**

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

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

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

194 *D. In any legal proceeding challenging the application of this article to a qualified school, the*
195 *Commonwealth bears the burden of establishing that the law is necessary and does not impose any*
196 *undue burden on the qualified school.*

197 *E. If any expense of a qualified student set forth in subdivision B 5 of § 22.1-222.2 is held to be*
198 *invalid, such holding shall not affect the validity of any other expense of a qualified student set forth in*
199 *such subdivision.*