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HOUSE BILL NO. 389

Offered January 13, 2016

Prefiled January 6, 2016

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 22.1-222.5, relating to Parental Choice Education Savings Accounts.*

Patrons—LaRock, Bell, Robert B., Bell, Richard P., Byron, Cline, Cole, Collins, Cox, Fariss, Farrell, Freitas, Greason, Howell, Landes, Marshall, D.W., Marshall, R.G., Massie, Morris, O'Bannon, Peace, Poindexter, Webert and Wilt; Senators: Black, Chase, Dunnivant, Garrett, Ruff and Sturtevant

Referred to Committee on Education

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 22.1-222.5, 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:

"Child" means any individual who has not reached 22 years of age on or before September 30 of the current year.

"Department" means the Virginia Department of Education.

"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, as defined in § 58.1-302, in the Commonwealth.

"Parental Choice Education Savings Account" or "savings account" means a bank account at a qualified financial institution in the name of a parent and into which only funds from the Commonwealth may be deposited for the benefit of a qualified student as provided in subsection E of § 22.1-222.2.

"Qualified financial institution" means a financial institution selected pursuant to § 22.1-222.4 and that provides a savings account that (i) offers restricted-use payment features that minimize fraud and abuse, (ii) is self-adjudicating with respect to charges placed against the account, and (iii) provides the 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 that is located in the Commonwealth and does not discriminate on the basis of race, color, or national origin.

"Qualified student" means a child who is deemed to reside in a school division pursuant to subsection A of § 22.1-3 and who (i) was enrolled at and attended a public elementary or secondary school or preschool in the Commonwealth during the two semesters immediately preceding the semester or term for which the student initially applies for a savings account or (ii) is entering kindergarten.

"Quarter" means one fourth of the fiscal year. "Quarter" includes July 1 through September 30, October 1 through December 31, January 1 through March 31, and April 1 through June 30.

"Quarterly" means once every quarter.

"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 school division in which a qualified student resides, including the per pupil share of state sales tax funding in basic aid and any state per pupil share of special education funding for 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, consistent with § 1-240.1.

B. The Department shall:

1. Create a standard application form for the establishment of eligibility for a savings account by a

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HB389

57 parent that shall be made readily available to interested parents through resident school divisions and
58 various sources, including the Internet.

59 2. Establish savings account application and participation timelines that maximize student and
60 resident school division participation and are consistent with the deadlines established in this article.

61 3. Provide any interested parent with a written explanation of the allowable uses of a savings
62 account, the parent's responsibility relating to a savings account, and the duties of the Department and
63 resident school divisions relating to a savings account.

64 4. Ensure that all family or household members, as defined in § 16.1-228, of a qualified student are
65 made aware of savings accounts and such student's potential eligibility.

66 5. Adopt policies and procedures for the administration of savings accounts, as set forth in
67 subsection A of § 22.1-222.3.

68 C. The parent of a qualified student shall make an initial application or annual renewal application
69 for a savings account to the resident school division no later than 30 days preceding the beginning of
70 the school year in the resident school division. The application and renewal process shall include a
71 requirement for the parent to annually sign a one-year, renewable written agreement to:

72 1. Provide an education for his child as required by § 22.1-254.

73 2. Not enroll the qualified student in any local school division in the Commonwealth in the school
74 year for which the parent receives disbursement of state funds into the savings account pursuant to
75 subsection E.

76 3. Release the resident school division from all obligations to educate the qualified student. The
77 receipt of an education savings account has the same effect as a refusal to consent to the receipt of
78 services under 20 U.S.C. § 1414 of the Individuals with Disabilities Education Act (IDEA).

79 4. Not accept, concurrently with receipt of a savings account, a scholarship from a scholarship
80 foundation that received a donation from a person who is eligible to earn a credit for such donation
81 pursuant to Article 13.3 (§ 58.1-439.25 et seq.) of Chapter 3 of Title 58.1.

82 5. Use the moneys deposited in the savings account only for one or more of the following
83 education-related expenses of the qualified student: (i) tuition, deposits, fees, or required textbooks at a
84 qualified school; (ii) educational therapies or services for the qualified student from a practitioner or
85 provider, including paraprofessionals or educational aides; (iii) tutoring services; (iv) curriculum; (v)
86 tuition or fees for a private online learning program; (vi) fees for a nationally standardized
87 norm-referenced achievement test, an Advanced Placement examination, or any examination taken to
88 gain admission to an institution of higher education; (vii) tuition, fees, or required textbooks at an
89 eligible institution; (viii) contributions to a Coverdell education savings account established pursuant to
90 26 U.S.C. § 530 for the benefit of the qualified student, except that funds used for elementary or
91 secondary education expenses shall be for expenses otherwise allowed under this section; (ix) services
92 that are offered on a fee-for-service basis by a public elementary or secondary school or preschool to
93 the public, including classes and extracurricular activities; (x) such insurance, surety bond payments, or
94 fees as may be required for the savings account; (xi) transportation; (xii) computer hardware and
95 software, not to exceed 10 percent of the annual savings account disbursement; and (xiii) consumable
96 educational supplies or any other education-related goods or services, such as Internet access, that are
97 necessary for the provision of the qualified student's education pursuant to § 22.1-254.

98 6. Submit a quarterly expense summary, in the form prescribed by the Department and containing
99 such provisions as prescribed by the Department, for education-related expenses pursuant to subdivision
100 5 that were incurred prior to or during such quarter, including all applicable invoices and receipts, to
101 the resident school division prior to receiving a savings account disbursement for the subsequent
102 quarter. Each resident school division shall determine, based on policies and procedures established by
103 the Department pursuant to subsection A of § 22.1-222.3, the appropriateness of such expenses based on
104 such receipts and invoices prior to making a savings account disbursement for the subsequent quarter or
105 renewing the written agreement.

106 7. Notify the resident school division in writing within 30 days of the date on which his child ceases
107 to reside in the resident school division, in which case the parent shall immediately cease to make
108 additional expenditures for education-related expenses of his child and shall reimburse to the resident
109 school division an amount equal to the difference between (i) the year-to-date disbursements to the
110 savings account and (ii) the total annual amount that the qualified parent would have received in the
111 savings account, multiplied by the number of days during which his child resided in the resident school
112 division while the savings account contained disbursed funds and divided by the total school days in the
113 resident school division's current school year. The parent may spread such reimbursement payments
114 over no more than four equal quarterly payments.

115 8. Submit to audits of the savings account as provided in subsection B of § 22.1-222.3.

116 D. The resident school division shall give written notice to any parent applying for or requesting
117 renewal of a savings account as to the disposition of the application or renewal request no later than
118 14 days immediately succeeding such application or renewal request. The resident school division may

send the parent a written notice requesting any additional information that is necessary to determine the final disposition of the application or renewal request. Such parent shall submit the requested information to the resident school division no later than 30 calendar days immediately succeeding such request for additional information. If the requested information is not received within such time, the resident school division may deny the application or renewal request. In the event that the resident school division denies any application or renewal request, the parent may appeal such denial no later than 30 calendar days immediately succeeding receipt of the notice of denial to the school board in the resident school division and such school board shall hear and take action on such appeal no later than 30 calendar days immediately succeeding the receipt of the notice of appeal. In the event that the school board denies any such application or renewal request on appeal, the parent may appeal such denial no later than 30 calendar days immediately succeeding receipt of the notice of denial to an independent hearing officer chosen from the list maintained by the Executive Secretary of the Supreme Court. The costs of an appeal before an independent hearing officer shall be apportioned among the parties by the hearing officer in a manner consistent with his findings. If the parent prevails in an appeal before independent hearing officer, the application or renewal request shall immediately be approved, effective the date on which it was first submitted.

E. No later than 14 calendar days immediately succeeding the approval of an application or renewal request or submission of a quarterly expense summary, the resident school division shall make warrant for and disburse on a quarterly basis (i) to the appropriate savings account state funds in an amount that is equivalent to one quarter of 90 percent of all applicable annual Standards of Quality per pupil state funds appropriated for public school purposes and apportioned to the resident school division in which the qualified student resides, including the per pupil share of state sales tax funding in basic aid and any state per pupil share of special education funding to which the qualified student is eligible and (ii) to the Department retained savings. No resident school division shall transfer federal funds, the local share of Standards of Quality per pupil funds, or any portion of such local share to a savings account.

F. The Department shall disburse retained savings for the following purposes and in the following order: (i) establishing procedures for managing and administering savings accounts; (ii) managing and administering savings accounts, including Department expenditures and third-party expenditures to qualified financial institutions, auditors as specified in subsection B of § 22.1-222.3, and other organizations; and (iii) other public elementary and secondary school purposes for which the Department is authorized to disburse funds.

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 retained savings account and not for any other purpose such as calculating the state share of costs for other program accounts. No such 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 Standards of Quality per pupil state funds for a qualified student and retained savings based on the current general appropriation act.

I. 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 school division whose parents have received a savings account and the amount of funds transferred to each such savings account and retained savings. 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 Standards of Quality state funding transferred to savings accounts and retained savings.

J. Any entity that receives moneys from a savings account shall refund, rebate, or otherwise remit any such moneys when such refund, rebate, or remission is required pursuant to policies and procedures established by the Department pursuant to subsection A of § 22.1-222.3 but no such entity shall refund, rebate, or otherwise remit any such moneys to a parent or qualified student.

K. Upon a qualified student's graduation from high school, receipt of a high school equivalency certification, acceptance into an institution of higher education for full-time enrollment, or reaching the age of 22, whichever occurs first, his savings account shall be closed and any funds remaining in the savings account shall be returned to the Commonwealth.

L. Moneys in a savings account received by a parent pursuant to this article do not constitute state taxable income to the parent.

§ 22.1-222.3. Policies and procedures; audit.

A. The Department shall establish policies and procedures for application, quarterly expense summary administration, renewal, and appeal pursuant to § 22.1-222.2. Each resident school division shall comply with such policies and procedures and may establish additional local policies and procedures for the implementation of the Department's policies and procedures.

B. The Auditor of Public Accounts shall include in the specifications published pursuant to § 15.2-2511 for audits of all localities that contain a local school division a requirement that the independent certified public account who conducts the audit of the locality includes in such audit tests of compliance with subdivisions C 4 and 5 of § 22.1-222.2. Any such adjustment to such specifications is exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

C. Upon finding that a parent made a knowing misrepresentation relating to any education-related expense from a savings account for a qualified student set forth in subdivision C 5 of § 22.1-222.2 or otherwise materially breached the written savings account agreement, the resident school division may rescind the written agreement, reclaim the remaining moneys in the savings account, and declare such parent ineligible for renewal of the written savings account agreement. The parent may appeal such decision as provided in subsection D of § 22.1-222.2.

D. The resident school division may refer to the Office of the State Inspector General for investigation any case in which it finds evidence of fraudulent use of moneys in a savings account by a parent.

E. If any education-related expense from a savings account for a qualified student is determined to be invalid, the resident school division shall withhold subsequent disbursements until the parent reimburses the resident school division for such expense.

§ 22.1-222.4. Savings account administration.

The Department shall contract through scholarship foundations or with one or more qualified financial institutions to establish and require such scholarship foundations or qualified financial institutions to manage restricted-use, self-adjudicating savings accounts that comply with the provisions of this article. Costs associated with the ongoing administration of the savings account and compliance with this article are allowable account fees that may be passed to the savings account holder.

§ 22.1-222.5. Scope of article.

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

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

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

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

E. If any education-related expense from a savings account for a qualified student set forth in subdivision C 5 of § 22.1-222.2 is held to be invalid, such holding shall not affect the validity of any other education-related expense of a qualified student set forth in such subdivision.

F. Nothing in this article shall be deemed to prohibit a parent or qualified student from making expenditures for the education-related expenses set forth in subdivision C 5 of § 22.1-222.2 from a source other than a savings account.