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HOUSE BILL NO. 1605

Offered January 11, 2017

Prefiled January 3, 2017

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, Freitas, Bell, Richard P., Cole, Collins, Fariss, Fowler, Greason, Landes, Lingamfelter, Marshall, R.G., Massie, Peace, Poindexter and Webert; Senators: Black and Chase

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 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 subsections E and F of § 22.1-222.2.

"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 financial institution" means a financial institution or private financial management firm selected pursuant to § 22.1-222.4 that provides a savings account that offers restricted-use payment features that minimize fraud and abuse and provides the parent and the Department with administration and 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, for whom compulsory attendance is required pursuant to subsection A of § 22.1-254, 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.

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B. The Department shall:

1. Create a standard application form for the establishment of eligibility for a savings account by a parent that shall be made readily available to interested parents through resident school divisions and various sources, including the Internet.

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

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

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

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

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

1. Provide an education for his child in compliance with § 22.1-254.

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

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

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

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

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

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

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

D. The resident school division shall give written notice to any parent applying for or requesting

renewal of a savings account as to the disposition of the application or renewal request no later than 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 the independent hearing officer, the application or renewal request shall immediately be approved, effective on the date on which it was first submitted.

E. For qualified students (i) whose family income is less than or equal to 300 percent of the poverty guidelines or (ii) who receive special education pursuant to an Individualized Education Program (IEP), 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 to the appropriate savings account state funds in an amount that is equivalent to one quarter of 100 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. 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. For qualified students whose family income is greater than 300 percent of the poverty guidelines, 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.

G. The Department shall disburse retained savings for the following purposes and in the following order: (i) establishing policies, processes, and 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.

H. 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 purpose of the calculation of the state share to be transferred to the savings account and, as applicable, to the Department as retained savings. 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. Each such qualified student shall be counted in the resident school division's required effort to meet actual need for required matching local funds for any other initiative supported by the Commonwealth that requires matching local funds.

I. 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.

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 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

181 report to the Governor and the Chairmen of the House Committee on Appropriations and Senate
182 Committee on Finance the name of each school division in which the parent of a qualified student has
183 received a savings account, the number of qualified students whose parents have received a savings
184 account, and the total Standards of Quality state funding transferred to savings accounts and retained
185 savings.

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

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

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

196 **§ 22.1-222.3. Policies and procedures; audit.**

197 A. The Department shall establish policies, processes, and procedures for application, quarterly
198 expense summary administration, renewal, and appeal pursuant to § 22.1-222.2. To the extent
199 practicable, such policies, processes, and procedures shall take advantage of existing Department and
200 resident school division policies, processes, and procedures and third-party automated solutions to
201 minimize cost and improve effectiveness. Each resident school division shall comply with such policies
202 and procedures and may establish additional local policies and procedures for the implementation of the
203 Department's policies and procedures.

204 B. The Auditor of Public Accounts shall include in the specifications published pursuant to
205 § 15.2-2511 for audits of all localities that contain a local school division a requirement that the
206 independent certified public accountant who conducts the audit of the locality include in such audit tests
207 of compliance with subdivisions C 4 and 5 of § 22.1-222.2. Any such adjustment to such specifications is
208 exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

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

215 D. The resident school division may refer to the appropriate state agency for investigation any
216 incident in which it finds evidence of fraudulent use of moneys in a savings account by a parent.

217 E. If any education-related expense from a savings account for a qualified student is determined to
218 be invalid, the resident school division shall direct the qualified financial institution to withhold
219 subsequent disbursements until the parent reimburses the expense that was determined to be invalid.

220 **§ 22.1-222.4. Savings account administration.**

221 The Department shall contract through scholarship foundations or with one or more qualified
222 financial institutions to establish and require such scholarship foundations or qualified financial
223 institutions to manage savings accounts that comply with the provisions of this article.
224 Department-approved costs associated with the ongoing administration of the savings account and
225 compliance with this article are allowable account fees that may be passed to the savings account
226 holder.

227 **§ 22.1-222.5. Scope of article.**

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

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

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

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

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

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