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VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 2.2-3705.4 of the Code of Virginia and to amend the Code of Virginia by adding in Subtitle III of Title 23.1 a chapter numbered 12.1, consisting of sections numbered 23.1-1239 through 23.1-1243, relating to creation of the Tech Talent Investment Program.

[S 1617]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705.4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Subtitle III of Title 23.1 a chapter numbered 12.1, consisting of sections numbered 23.1-1239 through 23.1-1243, as follows:

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

A. The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except as provided in subsection B or where such disclosure is otherwise prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a public institution of higher education in the Commonwealth, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such records shall be disclosed.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment or promotion, or (iii) receipt of an honor or honorary recognition.

3. Information held by the Brown v. Board of Education Scholarship Committee that would reveal personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such information has not been publicly released, published, copyrighted or patented.

5. Information held by the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be.

6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1, including personal information related to (i) qualified

57 beneficiaries as that term is defined in § 23.1-700, (ii) designated survivors, or (iii) authorized
 58 individuals. Nothing in this subdivision shall be construed to prevent disclosure or publication of
 59 information in a statistical or other form that does not identify individuals or provide personal
 60 information. Individuals shall be provided access to their own personal information.

61 For purposes of this subdivision:

62 "Authorized individual" means an individual who may be named by the account owner to receive
 63 information regarding the account but who does not have any control or authority over the account.

64 "Designated survivor" means the person who will assume account ownership in the event of the
 65 account owner's death.

66 7. Information maintained in connection with fundraising activities by or for a public institution of
 67 higher education that would reveal (i) personal fundraising strategies relating to identifiable donors or
 68 prospective donors or (ii) wealth assessments; estate, financial, or tax planning information;
 69 health-related information; employment, familial, or marital status information; electronic mail addresses,
 70 facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or
 71 prospective donors. Nothing in this subdivision, however, shall be construed to prevent the disclosure of
 72 information relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of
 73 the donor unless the donor has requested anonymity in connection with or as a condition of making a
 74 pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure
 75 (i) the identities of sponsors providing grants to or contracting with the institution for the performance
 76 of research services or other work or (ii) the terms and conditions of such grants or contracts.

77 8. Information held by a threat assessment team established by a local school board pursuant to
 78 § 22.1-79.4 or by a public institution of higher education pursuant to § 23.1-805 relating to the
 79 assessment or intervention with a specific individual. However, in the event an individual who has been
 80 under assessment commits an act, or is prosecuted for the commission of an act that has caused the
 81 death of, or caused serious bodily injury, including any felony sexual assault, to another person, such
 82 information of the threat assessment team concerning the individual under assessment shall be made
 83 available as provided by this chapter, with the exception of any criminal history records obtained
 84 pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic
 85 records as defined in § 22.1-289. The public body providing such information shall remove personally
 86 identifying information of any person who provided information to the threat assessment team under a
 87 promise of confidentiality.

88 9. *Records provided to the Governor or the designated reviewers by a qualified institution, as those*
 89 *terms are defined in § 23.1-1239, related to a proposed memorandum of understanding, or proposed*
 90 *amendments to a memorandum of understanding, submitted pursuant to Chapter 12.1 (§ 23.1-1239 et*
 91 *seq.) of Title 23.1. A memorandum of understanding entered into pursuant to such chapter shall be*
 92 *subject to public disclosure after it is agreed to and signed by the Governor.*

93 B. The custodian of a scholastic record shall not release the address, phone number, or email address
 94 of a student in response to a request made under this chapter without written consent. For any student
 95 who is (i) 18 years of age or older, (ii) under the age of 18 and emancipated, or (iii) attending an
 96 institution of higher education, written consent of the student shall be required. For any other student,
 97 written consent of the parent or legal guardian of such student shall be required.

98 CHAPTER 12.1.

99 TECH TALENT INVESTMENT PROGRAM.

100 § 23.1-1239. *Definitions.*

101 *As used in this chapter, unless the context requires a different meaning:*

102 "*Designated reviewers*" means the Secretaries of Education and Finance, the director of the
 103 Department of Planning and Budget, the director of the Council, the president of the Virginia Economic
 104 Development Partnership, and the staff directors of the House Committee on Appropriations and the
 105 Senate Committee on Finance, or their designees.

106 "*Eligible degree*" means a new bachelor's or master's degree, or a certificate issued by a
 107 baccalaureate public institution of higher education in association with a bachelor's degree, in the field
 108 of computer science, computer engineering, or other closely related fields of study, or that otherwise
 109 aligns with traded-sector, technology-focused growth opportunities identified by the Virginia Economic
 110 Development Partnership Authority.

111 "*Fund*" means the Tech Talent Investment Fund.

112 "*Grant*" means a grant paid from the Tech Talent Investment Fund.

113 "*Memorandum of understanding*" means the negotiated instrument entered into by a qualified
 114 institution and the Commonwealth, regardless of whether the terms of the memorandum of
 115 understanding are encompassed or included within any other institutional partnership or performance
 116 agreement required by law. A memorandum of understanding shall contain criteria for eligible degrees,
 117 eligible expenses, and degree production goals for a period ending in 2039.

118 "New bachelor's and master's degrees" means the awarding of eligible degrees produced by a
119 qualified institution to meet the degree production goals set forth in a qualified institution's
120 memorandum of understanding.

121 "Qualified institution" means (i) any associate-degree-granting public institution of higher education,
122 as defined in § 23.1-100, that has a transfer plan that culminates in an eligible degree and (ii) any
123 baccalaureate public institution of higher education, as defined in § 23.1-100.

124 **§ 23.1-1240. Tech Talent Investment Fund created.**

125 A. There is hereby created in the state treasury a special nonreverting fund to be known as the Tech
126 Talent Investment Fund. The Fund shall be established on the books of the Comptroller. All funds
127 appropriated for the Fund shall be paid into the state treasury and credited to the Fund. Interest earned
128 on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the
129 Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but
130 shall remain in the Fund. Moneys in the Fund shall be used solely to fund grants approved pursuant to
131 the provisions of this chapter. Expenditures and disbursements from the Fund shall be made by the State
132 Treasurer on warrants issued by the Comptroller.

133 B. Moneys in the Fund shall be used to support the efforts of qualified institutions to increase by
134 fiscal year 2039 the number of new eligible degrees by at least 25,000 more degrees than the number of
135 such degrees awarded in 2018 and to improve the readiness of graduates to be employed in
136 technology-related fields and fields that align with traded-sector growth opportunities identified by the
137 Virginia Economic Development Partnership. Funds from the Fund may be used to support admissions
138 and advising programs designed to convey labor market information to students to guide decisions to
139 enroll in eligible degree programs and academic programs and to fund facility construction, renovation,
140 and enhancement and equipment purchases related to the initiative to increase the number of eligible
141 degrees awarded.

142 **§ 23.1-1241. Approval and update of memorandum of understanding.**

143 A. In order to support the goal of the creation of at least 25,000 new eligible degrees by 2039, the
144 amount of grants available under this chapter shall be calculated in accordance with a memorandum of
145 understanding negotiated with each qualified institution. Each memorandum of understanding shall
146 contain criteria for eligible degrees, eligible expenses, and degree production goals for the institution to
147 reach by 2039.

148 B. Each memorandum of understanding shall be structured in accordance with and be consistent
149 with the objectives and purposes of this chapter and the criteria and requirements developed by, and in
150 the form and manner prescribed by, the Secretary of Finance in consultation with the other designated
151 reviewers. Such criteria and requirements shall include:

152 1. The submission of an enrollment plan by the qualified institution detailing the number of eligible
153 degrees produced between July 1, 2013, and June 30, 2018;

154 2. A detailed plan of (i) how the qualified institution proposes to materially increase the enrollment,
155 retention, and graduation of students pursuing eligible degrees, (ii) the resources necessary to
156 accomplish such increase in enrollment, retention, and graduation, and (iii) how the qualified institution
157 plans to track new enrollment;

158 3. An accounting of the anticipated number of in-state and out-of-state students enrolling in eligible
159 degree programs;

160 4. The existing capacity of current eligible degree programs, and an estimate of the amount of
161 funding necessary to grow the qualified institution's enrollment capacity pursuant to the plan submitted
162 pursuant to subdivision 2;

163 5. Where applicable, proposed plans to partner with other qualified institutions to provide courses or
164 programs that will lead to the completion of an eligible degree;

165 6. Where applicable, existing or proposed articulation agreements with the Virginia Community
166 College System to provide guaranteed admission for qualified students with an associate degree for
167 transfer into an eligible degree program;

168 7. A proposed reallocation of existing funds held by or appropriated to the qualified institution to
169 meet increased enrollment, retention, and graduation goals in eligible degree programs; and

170 8. Any other information deemed relevant.

171 C. The designated reviewers shall review each qualified institution's proposed memorandum of
172 understanding, or amendments thereto; provide comments or affirmation to the qualified institution by
173 September 1 of the applicable year; and forward the proposed memorandum of understanding and any
174 comments or affirmations to the Governor for approval of specific funding recommendations.

175 D. The Secretary of Finance, in consultation with the other designated reviewers, shall make a
176 recommendation regarding the amount of annual grant payments for which a qualified institution may
177 be eligible pursuant to its memorandum of understanding. In determining the appropriate amount of
178 such grants, the Secretary and designated reviewers shall consider (i) the actual cost of eligible degrees

179 at the qualified institution, (ii) the number of students enrolled in qualified degree programs adjusted for
180 actual graduation rates at the qualified institution, (iii) tuition revenues generated by in-state and
181 out-of-state students in eligible degree programs at the qualified institution, and (iv) the reallocation of
182 other funds held by or appropriated to the qualified institution for eligible new degree programs. A
183 qualified institution shall be eligible to receive grants pursuant to this chapter, and subject to
184 appropriation, upon signature of the memorandum of understanding by the Governor.

185 E. A qualified institution with an approved memorandum of understanding may request an update to
186 its memorandum of understanding no more than once annually and no later than July 1 of each year.
187 The designated reviewers shall review the request and determine if an update is warranted. The
188 Secretary of Finance, in consultation with the other designated reviewers, may request that a qualified
189 institution update its agreement at any point during the year. No amendment to a memorandum of
190 understanding shall be final until signed by the Governor.

191 F. A new or amended memorandum of understanding shall be approved and signed pursuant to
192 subsection D no later than November 1 in order for a qualified institution to apply for a grant in the
193 next fiscal year.

194 **§ 23.1-1242. Eligibility for grant payments.**

195 A. A qualified institution with a memorandum of understanding approved and signed in accordance
196 with the provisions of § 23.1-1241 shall be eligible to apply for a grant each fiscal year beginning with
197 the Commonwealth's fiscal year beginning July 1, 2019, through the Commonwealth's fiscal year
198 starting on July 1, 2038. Grants available under this chapter shall be paid to the qualified institution
199 from the Fund, subject to appropriation by the General Assembly, during each such fiscal year,
200 contingent upon the qualified institution's meeting the requirements set forth in its memorandum of
201 understanding. If the total amount of moneys appropriated to the Fund in a fiscal year is less than
202 anticipated, grants to all qualified institutions under this chapter may be prorated to reflect the actual
203 amount appropriated.

204 B. To apply for a grant each year, a qualified institution shall report to the Secretary of Finance
205 regarding the qualified institution's progress on increasing the number of eligible degrees and meeting
206 the requirements pursuant to its memorandum of understanding. Such report shall include, at a
207 minimum: (i) progress on increasing the number of eligible degrees, as set forth in the memorandum of
208 understanding, including actual enrollment in qualified degree programs; (ii) the aggregate number of
209 new eligible degrees created and maintained as of the last day of the calendar year that immediately
210 precedes the date of the application, including information related to the retention of students who
211 enrolled in the calendar year immediately preceding the application; and (iii) the average annual cost
212 incurred in the production of the new eligible degrees described in clause (ii). For applications filed
213 four years or more after the date of a qualified institution's original memorandum of understanding, the
214 qualified institution shall also include actual graduation rates from qualified degree programs. The
215 report shall be filed with the Secretary no later than May 1 of the year following the calendar year
216 upon which the report is based, as an application for a grant in the fiscal year beginning on the
217 immediately following July 1. Failure to meet the reporting deadline shall result in a deferral of a
218 payment in the upcoming fiscal year.

219 C. A report received pursuant to subsection B shall be reviewed by the designated reviewers. Within
220 60 days of receipt of the report, the Secretary of Finance, in consultation with the other designated
221 reviewers, shall certify to the Comptroller and the qualified institution the amount of the grant payment
222 to be paid to the qualified institution, subject to appropriation. Payment of such grant shall be made by
223 check issued by the State Treasurer on warrant of the Comptroller in the fiscal year immediately
224 following the submission of such application, as provided in the memorandum of understanding. The
225 Comptroller shall not draw any warrants to issue checks for the grant installments under this section
226 without a specific appropriation for the same.

227 D. As a condition of receipt of grant payments, a qualified institution shall make available for
228 inspection to the designated reviewers all documents relevant and applicable to determining whether the
229 qualified institution has met the requirements for the receipt of a grant as set forth in this chapter and
230 subject to the memorandum of understanding.

231 E. Failure of a qualified institution to meet the goals, metrics, and requirements set forth in its
232 memorandum of understanding shall result in the adjustment of any future awards to the qualified
233 institution to reflect such discrepancy.

234 **§ 23.1-1243. Annual report.**

235 The Secretary of Finance, in consultation with the other designated reviewers, shall submit a report
236 by December 1 of each year to the Chairmen of the House Committee on Appropriations and the Senate
237 Committee on Finance. Such report shall provide an update as to the progress of each qualified
238 institution in meeting the goals set forth in its memorandum of understanding and the aggregate amount
239 of grants awarded to the qualified institution pursuant to this chapter.