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HOUSE BILL NO. 678

Offered January 8, 2020

Prefiled January 6, 2020

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, Cole, M.L., Freitas and McGuire; Senators: Chase and Peake

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.

"IEP" means Individualized Education Program.

"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 qualified student and into which only funds from the Commonwealth may be deposited as provided in subsection E of § 22.1-222.2 for expenditure by the parent of the qualified student for such student's benefit.

"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 debit card 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 sectarian or nonsectarian private elementary school or secondary school that is located in the Commonwealth and complies with the provisions of 42 U.S.C. § 1981.

"Qualified student" means a child (i) who is deemed to reside in a school division pursuant to subsection A of § 22.1-3, (ii) for whom compulsory attendance is required pursuant to subsection A of § 22.1-254, (iii) who (a) was enrolled at and attended a public elementary or secondary school in the Commonwealth during the two semesters immediately preceding the semester or term for which the student initially applies for a savings account or (b) is entering kindergarten, and (iv) (a) whose family income is less than or equal to 300 percent of the poverty guidelines or (b) who receives special education pursuant to an IEP.

"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. Parental Choice Education Savings Accounts established; application; agreement; disbursement.

A. 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:

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

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

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

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

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

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

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

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

79 3. Release the resident school division from all obligations to educate the qualified student. For
80 qualified students who receive special education pursuant to an IEP, the receipt of a savings account
81 has the same effect as the enrollment of such qualified student by his parent in private school under 20
82 U.S.C. § 1412(a)(10) of the Individuals with Disabilities Education Act (IDEA).

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

86 5. Use the moneys deposited in the savings account only for one or more of the following
87 education-related expenses of the qualified student: (i) tuition, deposits, fees, or required textbooks at a
88 qualified school; (ii) educational therapies or services for the qualified student from a practitioner or
89 provider, including paraprofessionals or educational aides; (iii) tutoring services; (iv) curriculum; (v)
90 tuition or fees for a private online learning program; (vi) fees for a nationally standardized
91 norm-referenced achievement test, an Advanced Placement examination, or any examination taken to
92 gain admission to an institution of higher education; (vii) services that are offered on a fee-for-service
93 basis by a public elementary or secondary school to the public, including classes and extracurricular
94 activities; (viii) such insurance, surety bond payments, or fees as may be required for the savings
95 account; (ix) transportation, provided that such expense does not exceed 20 percent of the total amount
96 deposited in the savings account annually; (x) computer hardware and software, not to exceed 10
97 percent of the annual savings account disbursement; and (xi) any other education-related goods or
98 services, such as Internet access, that are necessary for the provision of the qualified student's education
99 pursuant to § 22.1-254.

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

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

117 8. Submit to audits of the savings account.

118 D. The resident school division shall give written notice to any parent applying for or requesting
119 renewal of a savings account as to the disposition of the application or renewal request no later than
120 14 days immediately succeeding such application or renewal request. The resident school division may

121 send the parent a written notice requesting any additional information that is necessary to determine the
 122 final disposition of the application or renewal request. Such parent shall submit the requested
 123 information to the resident school division no later than 30 calendar days immediately succeeding such
 124 request for additional information. If the requested information is not received within such time, the
 125 resident school division may deny the application or renewal request. In the event that the resident
 126 school division denies any application or renewal request, the parent may appeal such denial no later
 127 than 30 calendar days immediately succeeding receipt of the notice of denial to the school board in the
 128 resident school division, and such school board shall hear and take action on such appeal no later than
 129 30 calendar days immediately succeeding the receipt of the notice of appeal. In the event that the school
 130 board denies any such application or renewal request on appeal, the parent may appeal such denial no
 131 later than 30 calendar days immediately succeeding receipt of the notice of denial to an independent
 132 hearing officer chosen from the list maintained by the Executive Secretary of the Supreme Court. The
 133 costs of an appeal before an independent hearing officer shall be apportioned among the parties by the
 134 hearing officer in a manner consistent with his findings. If the parent prevails in an appeal before the
 135 independent hearing officer, the application or renewal request shall immediately be approved, effective
 136 on the date on which it was first submitted.

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

147 F. The Department shall disburse retained savings for the following purposes and in the following
 148 order: (i) establishing policies, processes, and procedures for managing and administering savings
 149 accounts; (ii) managing and administering savings accounts, including Department expenditures and
 150 third-party expenditures to qualified financial institutions, auditors as specified in subsection B of
 151 § 22.1-222.3, and other organizations; and (iii) other public elementary and secondary school purposes
 152 for which the Department is authorized to disburse funds.

153 G. Each qualified student whose parent has applied for and received a savings account shall be
 154 counted in the March 31 average daily membership or fall membership of the resident school division
 155 as a full-time equivalent student and shall be identified as such for the purpose of the calculation of the
 156 state share to be transferred to the savings account and, as applicable, to the Department as retained
 157 savings. No such qualified student shall be counted in the resident school division's required effort to
 158 meet actual need for required matching local funds as prescribed by the Standards of Quality. Each
 159 such qualified student shall be counted in the resident school division's required effort to meet actual
 160 need for required matching local funds for any other initiative supported by the Commonwealth that
 161 requires matching local funds.

162 H. The Department shall determine the Standards of Quality per pupil state funds for a qualified
 163 student and retained savings based on the current general appropriation act.

164 I. No later than November 1 of each year, each division superintendent shall certify and report to
 165 the Superintendent of Public Instruction the number of students in the school division whose parents
 166 have received a savings account and the amount of funds transferred to each such savings account and
 167 retained savings. No later than December 15 of each year, the Superintendent of Public Instruction shall
 168 report to the Governor and the Chairmen of the House Committee on Appropriations and Senate
 169 Committee on Finance the name of each school division in which the parent of a qualified student has
 170 received a savings account, the number of qualified students whose parents have received a savings
 171 account, and the total Standards of Quality state funding transferred to savings accounts and retained
 172 savings.

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

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

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

182 taxable income to the parent.

183 **§ 22.1-222.3. Policies and procedures; audit.**

184 A. The Department shall establish policies, processes, and procedures for application, quarterly
185 expense summary administration, renewal, and appeal pursuant to § 22.1-222.2. To the extent
186 practicable, such policies, processes, and procedures shall take advantage of existing Department and
187 resident school division policies, processes, and procedures and third-party automated solutions to
188 minimize cost and improve effectiveness. Each resident school division shall comply with such policies
189 and procedures and may establish additional local policies and procedures for the implementation of the
190 Department's policies and procedures.

191 B. The Auditor of Public Accounts shall include in the specifications published pursuant to
192 § 15.2-2511 for audits of all localities that contain a local school division a requirement that the
193 independent certified public accountant who conducts the audit of the locality include in such audit tests
194 of compliance with subdivisions C 4 and 5 of § 22.1-222.2. Any such adjustment to such specifications is
195 exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

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

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

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

207 **§ 22.1-222.4. Savings account administration.**

208 The Department shall contract through scholarship foundations or with one or more qualified
209 financial institutions to establish and require such scholarship foundations or qualified financial
210 institutions to manage savings accounts that comply with the provisions of this article.
211 Department-approved costs associated with the ongoing administration of the savings account and
212 compliance with this article are allowable account fees that may be passed to the savings account
213 holder.

214 **§ 22.1-222.5. Scope of article.**

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

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

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

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

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

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