

# 2020 SPECIAL SESSION I

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## SENATE BILL NO. 5020

Offered August 18, 2020

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A *BILL to amend the Code of Virginia by adding in Chapter 8 of Title 22.1 an article numbered 7, consisting of sections numbered 22.1-124.1 through 22.1-124.6, relating to public education; voucher program; emergency.*

Patrons—Chase; Delegate: Cole, M.L.

Referred to Committee on Education and Health

### Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 8 of Title 22.1 an article numbered 7, consisting of sections numbered 22.1-124.1 through 22.1-124.6 as follows:

#### Article 7.

#### Voucher Program.

#### § 22.1-124.1. Definitions.

As used in this article:

"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.

"Open" means a school day on which a school requires students to be in attendance and physically present.

"Parent" means a parent, as defined in § 22.1-1, who has established domicile, as defined in § 58.1-302, in Virginia.

"Qualified financial institution" means a financial institution or private financial management firm selected pursuant to § 22.1-124.4 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 public, private, or parochial 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 (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; and (iii) who (a) was enrolled at and attending a public elementary or secondary school or preschool in Virginia during the two semesters immediately preceding the current semester or term or (b) is enrolled as a new student for the current semester or term at a public elementary or secondary school or preschool in Virginia.

"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.

"Reduced schedule" means a schedule under which students are required to be in attendance and physically present less than five days per school week and the school division offers online or virtual learning as a substitute for in-person attendance.

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

"Voucher account" or "savings account" means a bank account at a qualified financial institution in the name of a student and into which funds are deposited as provided in subsection E of § 22.1-124.2 for expenditures by a parent for the benefit of a qualified student.

"Unused funds" means any funds not used and any cost savings achieved as a result of operating under a reduced schedule.

#### § 22.1-124.2. Voucher program.

A. Any school division that operates under a reduced schedule shall report to the Department annually by September 30 the amount, in the aggregate and on a per-student basis, of unused funds. The school division shall deposit each qualified student's equal portion of the unused funds in a voucher account as provided in subsection E.

B. The Department shall:

1. 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.

2. Notify each parent of the existence of a voucher program and provide any interested parent with a

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59 written explanation of the allowable uses of a savings account, the parent's responsibility relating to a  
60 savings account, and the duties of the Department and resident school divisions relating to a savings  
61 account.

62 3. Adopt policies, processes, and procedures for the administration of savings accounts, as set forth  
63 in subsection A of § 22.1-124.3.

64 4. Require that no savings account be established for any qualified student who receives a  
65 scholarship from a scholarship foundation that received a donation from a person who is eligible to  
66 earn a credit for such donation pursuant to Article 13.3 (§ 58.1-439.25 et seq.) of Chapter 3 of Title  
67 58.1. Any funds attributable to such qualified student shall be returned to the resident school division.

68 C. The parent of a qualified student shall ensure that funds in a qualified student's savings account  
69 shall be used only for the purposes specified in this subsection, and if the parent does not do so, the  
70 parent shall be liable to reimburse the resident school division for all funds deposited in the savings  
71 account on behalf of the qualified student. The Department shall be responsible for the enforcement of  
72 this subsection. So long as an education-related expense is otherwise allowed under this subsection,  
73 such expense shall be allowed regardless of whether the entity providing the good or service is public,  
74 private, or parochial. The parent shall use the moneys deposited in the savings account only for one or  
75 more of the following education-related expenses of the qualified student:

76 1. Educational programs operated by the school division;

77 2. Tuition, deposits, fees, or required textbooks at a qualified school, including such schools that  
78 offer only online or virtual learning;

79 3. Educational therapies or services for the qualified student from a practitioner or provider,  
80 including paraprofessionals or educational aides;

81 4. Tutoring services;

82 5. Curriculum;

83 6. Tuition or fees for a private online learning program;

84 7. Fees for a nationally standardized norm-referenced achievement test, an Advanced Placement  
85 examination, or any examination taken to gain admission to an institution of higher education;

86 8. Services that are offered on a fee-for-service basis by a public elementary or secondary school or  
87 preschool to the public, including classes and extracurricular activities;

88 9. Such insurance, surety bond payments, or fees as may be required for the savings account;

89 10. Transportation;

90 11. Computer hardware and software, not to exceed 10 percent of the annual savings account  
91 disbursement; and

92 12. Consumable educational supplies or any other education-related goods or services, such as  
93 Internet access, that are necessary for the provision of the qualified student's education.

94 D. The parent of a qualified student shall comply with the following reporting requirements  
95 regarding savings accounts:

96 1. Submit a quarterly expense summary, in the form prescribed by the Department and containing  
97 such provisions as prescribed by the Department, for education-related expenses that were incurred  
98 prior to or during such quarter, including all applicable invoices and receipts, to the resident school  
99 division prior to receiving a savings account disbursement for the subsequent quarter. Each resident  
100 school division shall determine the appropriateness of such expenses on the basis of such receipts and  
101 invoices prior to making a savings account disbursement for the subsequent quarter.

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

111 3. Submit to audits of the savings account.

112 E. No later than 14 calendar days immediately succeeding the date a school division reports to the  
113 Department unused funds, it shall make warrant for and disburse on a quarterly basis to the  
114 appropriate savings account the appropriate share of the unused funds. Upon request by the school  
115 division, the Department may assist with such disbursement.

116 F. Any entity that receives moneys from a savings account shall refund, rebate, or otherwise remit  
117 any such moneys when such refund, rebate, or remission is required pursuant to policies and procedures  
118 established by the Department, but no such entity shall refund, rebate, or otherwise remit any such  
119 moneys to a parent or qualified student.

120 G. 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 resident school division.

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

**§ 22.1-124.3. Policies and procedures; audit.**

A. The Department shall establish policies and procedures implementing the provisions of this article. To the extent practicable, such policies and procedures shall take advantage of existing Department and resident school division policies and procedures and third-party automated solutions to minimize cost and improve effectiveness. 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. 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 subsection C of § 22.1-124.2, the Department may terminate the savings account, reclaim any remaining moneys in the savings account, and seek reimbursement for any misused funds. The parent may appeal such decision as provided in § 22.1-124.5.

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

D. If any education-related expense from a savings account for a qualified student is determined to be invalid, the Department shall direct the qualified financial institution to withhold subsequent disbursements until the parent reimburses the expense that was determined to be invalid.

**§ 22.1-124.4. 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 savings accounts that comply with the provisions of this article. Department-approved 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.

**§ 22.1-124.5. Appeals.**

In the event that the Department finds grounds for terminating a voucher account, the parent may appeal such denial no later than 30 calendar days immediately succeeding notice of such termination to the Department, which 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 Department denies such 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 termination shall be rescinded and the parent shall not be liable for reimbursement of costs.

**§ 22.1-124.6. Scope of article.**

A. Nothing in this article shall be construed to permit any state agency 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 is determined 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 from a source other than a savings account.

**2. That an emergency exists and this act is in force from its passage.**