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**HOUSE BILL NO. 2225**

Offered January 13, 2021

Prefiled January 13, 2021

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 Empowerment Scholarship Accounts.*

Patrons—Davis, Cole, M.L., LaRock and Wiley; Senators: Kiggans and Stanley

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.**Empowerment Scholarship 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.*

*"IEP" means an Individualized Education Program.*

*"Empowerment Scholarship Account" or "scholarship 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.*

*"Qualified financial institution" means a financial institution or private financial management firm selected pursuant to § 22.1-222.4 that provides a scholarship 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.*

*"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 was enrolled at a public elementary or secondary school for at least the first 100 school days of the immediately preceding school year or is entering kindergarten; and (iv) (a) whose parent is an active duty member in the Armed Forces of the United States, Reserves of the Armed Forces of the United States, or Virginia National Guard 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. Empowerment Scholarship Accounts established; application; agreement; disbursement.**

*A. Empowerment Scholarship 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 scholarship 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 scholarship 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 scholarship*

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59 account, the parent's responsibility relating to a scholarship account, and the duties of the Department  
60 and resident school divisions relating to a scholarship account.

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

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

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

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

70 2. Not enroll the qualified student in any local school division in the Commonwealth in the school  
71 year for which the parent receives disbursement of state funds into the scholarship account pursuant to  
72 subsection E.

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

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

80 5. Use the moneys deposited in the scholarship account for education-related expenses such as  
81 private tutoring, textbooks, educational therapies, vocational and life skills education, educational and  
82 psychological evaluations, curricular materials, online classes, standardized tests, college tuition, college  
83 savings plans, public school expenses, school uniforms, and tuition and fees at qualified schools.

84 6. Submit a quarterly expense summary, in the form prescribed by the Department and containing  
85 such provisions as prescribed by the Department, for education-related expenses pursuant to subdivision  
86 5 that were incurred prior to or during such quarter, including all applicable invoices and receipts, to  
87 the resident school division prior to receiving a scholarship account disbursement for the subsequent  
88 quarter. Each resident school division shall determine, on the basis of policies and procedures  
89 established by the Department pursuant to subsection A of § 22.1-222.3, the appropriateness of such  
90 expenses on the basis of such receipts and invoices prior to making a scholarship account disbursement  
91 for the subsequent quarter or renewing the written agreement.

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

101 8. Submit to audits of the scholarship account.

102 D. The resident school division shall give written notice to any parent applying for or requesting  
103 renewal of a scholarship account as to the disposition of the application or renewal request no later  
104 than 14 days immediately succeeding such application or renewal request. The resident school division  
105 may send the parent a written notice requesting any additional information that is necessary to  
106 determine the final disposition of the application or renewal request. Such parent shall submit the  
107 requested information to the resident school division no later than 30 calendar days immediately  
108 succeeding such request for additional information. If the requested information is not received within  
109 such time, the resident school division may deny the application or renewal request. In the event that  
110 the resident school division denies any application or renewal request, the parent may appeal such  
111 denial no later than 30 calendar days immediately succeeding receipt of the notice of denial to the  
112 school board in the resident school division, and such school board shall hear and take action on such  
113 appeal no later than 30 calendar days immediately succeeding the receipt of the notice of appeal. In the  
114 event that the school board denies any such application or renewal request on appeal, the parent may  
115 appeal such denial no later than 30 calendar days immediately succeeding receipt of the notice of  
116 denial to an independent hearing officer chosen from the list maintained by the Executive Secretary of  
117 the Supreme Court. The costs of an appeal before an independent hearing officer shall be apportioned  
118 among the parties by the hearing officer in a manner consistent with his findings. If the parent prevails  
119 in an appeal before the independent hearing officer, the application or renewal request shall  
120 immediately be approved, effective on 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 scholarship 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 scholarship account.*

*F. 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 scholarship accounts; (ii) managing and administering scholarship 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 scholarship 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 scholarship 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.*

*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 scholarship account and the amount of funds transferred to each such scholarship 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 and Appropriations the name of each school division in which the parent of a qualified student has received a scholarship account, the number of qualified students whose parents have received a scholarship account, and the total Standards of Quality state funding transferred to scholarship accounts and retained savings.*

*J. Any entity that receives moneys from a scholarship 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 scholarship account shall be closed and any funds remaining in the scholarship account shall be returned to the Commonwealth.*

*L. Moneys in a scholarship 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, processes, and procedures for application, quarterly expense summary administration, renewal, and appeal pursuant to § 22.1-222.2. To the extent practicable, such policies, processes, and procedures shall take advantage of existing Department and resident school division policies, processes, 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. 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 accountant who conducts the audit of the locality include 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 scholarship account for a qualified student as described in subdivision C 5 of*

182 § 22.1-222.2 or otherwise materially breached the written scholarship account agreement, the resident  
183 school division may rescind the written agreement, reclaim the remaining moneys in the scholarship  
184 account, and declare such parent ineligible for renewal of the written scholarship account agreement.  
185 The parent may appeal such decision as provided in subsection D of § 22.1-222.2.

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

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

191 **§ 22.1-222.4. Scholarship account administration.**

192 The Department shall contract through scholarship foundations or with one or more qualified  
193 financial institutions to establish and require such scholarship foundations or qualified financial  
194 institutions to manage scholarship accounts that comply with the provisions of this article.  
195 Department-approved costs associated with the ongoing administration of the scholarship account and  
196 compliance with this article are allowable account fees that may be passed to the scholarship account  
197 holder.

198 **§ 22.1-222.5. Scope of article.**

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

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

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

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

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

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