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HOUSE BILL NO. 1605

House Amendments in [ ] — February 6, 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.

Patron Prior to Engrossment—Delegate LaRock

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.

B. The Department shall:

1. Create a standard application form for the establishment of eligibility for a savings account by a

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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 subsections E and F.

79 3. Release the resident school division from all obligations to educate the qualified student. The  
80 receipt of a savings account has the same effect as a refusal to consent to the receipt of services under  
81 20 U.S.C. § 1414 of the Individuals with Disabilities Education Act (IDEA).

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

85 5. Use the moneys deposited in the savings account only for one or more of the following  
86 education-related expenses of the qualified student: (i) tuition, deposits, fees, or required textbooks at a  
87 qualified school; (ii) educational therapies or services for the qualified student from a practitioner or  
88 provider, including paraprofessionals or educational aides; (iii) tutoring services; (iv) curriculum; (v)  
89 tuition or fees for a private online learning program; (vi) fees for a nationally standardized  
90 norm-referenced achievement test, an Advanced Placement examination, or any examination taken to  
91 gain admission to an institution of higher education; (vii) tuition, fees, or required textbooks at an  
92 eligible institution; (viii) contributions to a Coverdell education savings account established pursuant to  
93 26 U.S.C. § 530 for the benefit of the qualified student, except that funds used for elementary or  
94 secondary education expenses shall be for expenses otherwise allowed under this section; (ix) services  
95 that are offered on a fee-for-service basis by a public elementary or secondary school or preschool to  
96 the public, including classes and extracurricular activities; (x) such insurance, surety bond payments, or  
97 fees as may be required for the savings account; (xi) transportation; (xii) computer hardware and  
98 software, not to exceed 10 percent of the annual savings account disbursement; and (xiii) consumable  
99 educational supplies or any other education-related goods or services, such as Internet access, that are  
100 necessary for the provision of the qualified student's education pursuant to § 22.1-254.

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

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

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

119 D. The resident school division shall give written notice to any parent applying for or requesting  
120 renewal of a savings account as to the disposition of the application or renewal request no later than  
121 14 days immediately succeeding such application or renewal request. The resident school division may

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

138 E. For qualified students (i) whose family income is less than or equal to 300 percent of the poverty  
 139 guidelines [ ~~or (ii)~~ , (ii) failed any Standards of Learning assessment during its last administration, (iii)  
 140 is suspended or expelled, or (iv) ] who receive special education pursuant to an Individualized  
 141 Education Program (IEP), no later than 14 calendar days immediately succeeding the approval of an  
 142 application or renewal request or submission of a quarterly expense summary, the resident school  
 143 division shall make warrant for and disburse on a quarterly basis to the appropriate savings account  
 144 state funds in an amount that is equivalent to one quarter of 100 percent of all applicable annual  
 145 Standards of Quality per pupil state funds appropriated for public school purposes and apportioned to  
 146 the resident school division in which the qualified student resides, including the per pupil share of state  
 147 sales tax funding in basic aid and any state per pupil share of special education funding to which the  
 148 qualified student is eligible. No resident school division shall transfer federal funds, the local share of  
 149 Standards of Quality per pupil funds, or any portion of such local share to a savings account.

150 F. For qualified students whose family income is greater than 300 percent of the poverty guidelines,  
 151 no later than 14 calendar days immediately succeeding the approval of an application or renewal  
 152 request or submission of a quarterly expense summary, the resident school division shall make warrant  
 153 for and disburse on a quarterly basis (i) to the appropriate savings account state funds in an amount  
 154 that is equivalent to one quarter of 90 percent of all applicable annual Standards of Quality per pupil  
 155 state funds appropriated for public school purposes and apportioned to the resident school division in  
 156 which the qualified student resides, including the per pupil share of state sales tax funding in basic aid  
 157 and any state per pupil share of special education funding to which the qualified student is eligible and  
 158 (ii) to the Department retained savings. No resident school division shall transfer federal funds, the  
 159 local share of Standards of Quality per pupil funds, or any portion of such local share to a savings  
 160 account.

161 G. The Department shall disburse retained savings for the following purposes and in the following  
 162 order: (i) establishing policies, processes, and procedures for managing and administering savings  
 163 accounts; (ii) managing and administering savings accounts, including Department expenditures and  
 164 third-party expenditures to qualified financial institutions, auditors as specified in subsection B of  
 165 § 22.1-222.3, and other organizations; and (iii) other public elementary and secondary school purposes  
 166 for which the Department is authorized to disburse funds.

167 H. Each qualified student whose parent has applied for and received a savings account shall be  
 168 counted in the March 31 average daily membership or fall membership of the resident school division  
 169 as a full-time equivalent student and shall be identified as such for the purpose of the calculation of the  
 170 state share to be transferred to the savings account and, as applicable, to the Department as retained  
 171 savings. No such qualified student shall be counted in the resident school division's required effort to  
 172 meet actual need for required matching local funds as prescribed by the Standards of Quality. Each  
 173 such qualified student shall be counted in the resident school division's required effort to meet actual  
 174 need for required matching local funds for any other initiative supported by the Commonwealth that  
 175 requires matching local funds.

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

178 J. No later than November 1 of each year, each division superintendent shall certify and report to  
 179 the Superintendent of Public Instruction the number of students in the school division whose parents  
 180 have received a savings account and the amount of funds transferred to each such savings account and  
 181 retained savings. No later than December 15 of each year, the Superintendent of Public Instruction shall  
 182 report to the Governor and the Chairmen of the House Committee on Appropriations and Senate

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

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

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

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

197 **§ 22.1-222.3. Policies and procedures; audit.**

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

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

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

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

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

221 **§ 22.1-222.4. Savings account administration.**

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

228 **§ 22.1-222.5. Scope of article.**

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

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

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

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

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

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