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HOUSE BILL NO. 293

Offered January 12, 2022

Prefiled January 11, 2022

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 Education Savings Account Program; establishment.

Patrons—Freitas, Cherry, Davis, LaRock, Runion, Scott, P.A., Tata, Walker and Williams

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.**Education Savings Account Program.***§ 22.1-222.1. Definitions.**

As used in this article, unless the context requires a different meaning:

"Account" means an education savings account.

"Eligible student" means any elementary or secondary school student who (i) is a member of a household whose annual income does not exceed two times the annual household income that would qualify the student for free or reduced-price lunch and (ii) was eligible to attend a public school in the Commonwealth in the preceding semester or is starting elementary or secondary school in the Commonwealth for the first time.

"Local school division of residence" means the local school division in which an eligible student resides.

"Program" means the Education Savings Account Program.

"Qualified expense" means one or more of the following expenses for the benefit of an eligible student: (i) tuition and fees at a private elementary or secondary school, including a school that provides online or virtual learning; (ii) textbooks required by a private elementary or secondary school; (iii) a licensed or accredited tutor; (iv) curriculum; (v) national norm-referenced examinations, Advanced Placement examinations or similar examinations, and any college admissions examinations; (vi) contributions of up to \$2,000 annually to the eligible student's qualified tuition program established pursuant to 26 U.S.C. § 530 or 11 U.S.C. § 529; (vii) educational services for children with disabilities from a licensed or accredited practitioner or provider; (viii) tuition and fees at an eligible postsecondary institution; (ix) textbooks required by an eligible postsecondary institution; and (x) fees for account management by private financial management firms approved by the Department.

§ 22.1-222.2. Education Savings Account Program established; eligibility; amount; certain conditions and limitations.

A. The Education Savings Account Program is hereby established for the purpose of providing parents who reside in the Commonwealth with resources and choices for the education of their children. The Program shall be administered by the Department, with the assistance of each local school board.

B. Any parent of an eligible student is eligible to receive an account for the benefit of the student for as long as the student remains a person of school age, as defined in § 22.1-1, if the parent agrees in writing to (i) provide an education for his child as required in subsection A of § 22.1-254 in any setting described therein other than a public elementary or secondary school and (ii) use account funds solely to cover one or more qualified expenses.

C. Each account shall be funded in an annual amount equal to the annual amount that the local school division of residence would have received to serve and educate the eligible student from all sources, including federal, state, and local sources. Each eligible student shall be counted in the average daily membership of his local school division of residence for the purpose of calculating state aid to the local school division of residence. Account funds shall be subtracted from the state aid payable to the student's local school division of residence.

D. No individual or entity that receives funds from an account to cover qualified expenses shall refund to, rebate to, or share with in any manner an eligible student or the student's parent such funds.

E. Each account shall be used solely for the purpose of covering qualified expenses. However, the parent of any eligible student may use other funds to supplement the account in order to educate his child.

§ 22.1-222.3. Accountability and autonomy of private elementary and secondary schools.

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59 A. To ensure that each eligible student who uses an account to enroll at a private elementary or
60 secondary school is treated fairly and kept safe, each such school shall:

61 1. Comply with all health and safety laws or codes that apply to private schools;

62 2. Hold a valid occupancy permit if required by the locality in which the school is located;

63 3. Certify that the school complies with the nondiscrimination provisions set forth in 42 U.S.C.
64 § 1981; and

65 4. Conduct criminal background checks on employees and exclude from employment any individual
66 not permitted by relevant state law to be employed in a private school and any individual who might
67 reasonably pose a threat to the safety of students.

68 B. To ensure that all account funds are spent appropriately, each individual or entity that receives
69 \$50,000 or more of account funds to cover qualified expenses shall demonstrate its financial viability by
70 showing that the individual or entity can repay any account funds received by filing with the
71 Department prior to the start of the school year:

72 1. A surety bond payable to the Commonwealth in an amount equal to the aggregate amount of
73 account funds expected to be received during the school year; or

74 2. Financial information that demonstrates that the individual or entity has the ability to repay an
75 amount equal to the aggregate amount of account funds expected to be received during the school year.

76 C. Each individual or entity that receives account funds to cover qualified expenses is autonomous
77 and is not an agent of the state or federal government and therefore:

78 1. Neither the Department nor any other agency, instrumentality, or officer of the Commonwealth
79 shall in any way regulate the educational program that the individual or entity provides;

80 2. The establishment of the Program pursuant to this article shall not be construed to expand the
81 regulatory authority of the Commonwealth or any agency, instrumentality, or officer thereof or any local
82 school board to impose any additional regulation of the individual or entity beyond those that are
83 necessary to enforce the requirements of the Program; and

84 3. The individual or entity shall be afforded the maximum freedom to provide for the educational
85 needs of enrolled students without governmental control.

86 **§ 22.1-222.4. Responsibilities of the Department.**

87 A. The Department shall ensure that eligible students and their parents, and especially students and
88 parents in low-income households, are informed annually about the individuals and entities that will
89 receive account funds to cover qualified expenses during the upcoming school year.

90 B. The Department shall create a standard application that parents of students can use to submit to
91 establish eligibility for the Program. The Department shall ensure that the application is readily
92 available to interested students and their parents through various sources, including the Internet.

93 C. The Department may bar an individual or entity from receiving account funds to cover qualified
94 expenses pursuant to the Program if the Department establishes that the individual or entity has:

95 1. Failed to provide the educational service for which the qualified expense from the account was
96 made; or

97 2. Routinely failed to comply with the accountability standards established in subsection A or B of
98 § 22.1-222.3;

99 D. The Department shall notify eligible students and their parents as soon as practicable after any
100 decision to bar an individual or entity from participating in the Program pursuant to subsection C.

101 E. The Department shall adopt such rules and procedures as are necessary for the administration of
102 the Program.

103 **§ 22.1-222.5. Responsibilities of school boards governing school divisions of residence.**

104 A. Subject to the limitations set forth in the federal Family Educational Rights and Privacy Act (20
105 U.S.C. § 1232g) and any relevant state law, each school board that governs a local school division of
106 residence shall provide to any school at which an eligible student has used an account to enroll a
107 complete copy of the eligible student's school records.

108 B. Any school board that governs a local school division of residence may provide transportation to
109 an eligible student who uses a Program scholarship to attend a school or educational program, and the
110 Commonwealth may subsidize all or a portion of the cost of such transportation.