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SENATE BILL NO. 1290

Offered January 11, 2023

Prefiled January 10, 2023

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 22.1-222.6, relating to School Choice Educational Savings Accounts.*

Patron—DeSteph

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 13 of Title 22.1 an article numbered 2.1, consisting of sections numbered 22.1-222.1 through 22.1-222.6, as follows:

Article 2.1.

School Choice Educational Savings Accounts.

§ 22.1-222.1. Definitions.

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

"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.

"Qualifying expense" means one or more of the following education-related expenses for which the parent of a qualified student may use the moneys disbursed to such student's account: (i) tuition or fees at a private school or nonpublic online learning program; (ii) tutoring services; (iii) services contracted for and provided by a local school division or public charter or magnet school, including individual classes and extracurricular activities or programs; (iv) textbooks, curriculum, or other instructional materials, including any supplemental materials or associated online instruction required by either a curriculum or an education service provider; (v) computer hardware or software, technological applications, or other technological devices that are primarily used to help meet a qualified student's educational needs; (vi) school uniforms; (vii) fees for nationally standardized assessments, Advanced Placements examinations, or examinations related to admission to an institution of higher education; (viii) tuition, fees, instructional materials, or examination fees at a career or technical school; (ix) educational services or therapies, including occupational, behavioral, physical, speech-language, and audiology therapies; (x) fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; (xi) tuition or fees at an institution of higher education; or (xii) any other educational expense approved by the Department.

"Qualified financial institution" means a financial institution or private financial management firm selected pursuant to subdivision A 1 of § 22.1-222.5 that provides a saving account that (i) offers debit card payment features that minimize fraud and abuse and (ii) provides the parent of a qualified student 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; and (iii) who is entering kindergarten or 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 child's parent initially applies for a savings account.

"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 any weighted funding for which a qualified student is eligible.

"Scholarship foundation" means the same as that term is defined in § 58.1-439.25.

"School choice educational 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 C of § 22.1-222.3 for expenditure by the parent of the qualified student for such student's benefit.

§ 22.1-222.2. School choice educational savings accounts; established.

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59 A. School choice educational savings accounts are established for the purpose of providing parents
60 in the Commonwealth with resources and options for the education of their children, consistent with
61 § 1-240.1.

62 B. The Department shall establish and administer, with the assistance of each local school board, the
63 school choice educational savings accounts. In establishing and administering the savings accounts, the
64 Department shall:

65 1. Create a standard application form for the establishment of eligibility for a savings account by a
66 parent of a qualified student that shall be made readily available to interested parents through resident
67 school divisions and various sources, including the Internet;

68 2. Establish policies and procedures for the application process, consistent with the provisions of
69 § 22.1-222.3, including (i) a savings account application, (ii) participation timelines that maximize
70 qualified student and resident school division participation and are consistent with the deadlines
71 established in this article, (iii) policies and procedures for the review and approval of applications, and
72 (iv) an official process by which the parent of a qualified student may appeal and request review of a
73 denial of his application for a savings account;

74 3. Provide any interested parent of a qualified student with a written explanation of (i) the qualified
75 expenses for which a savings account can be used, (ii) the parent's responsibility relating to a savings
76 account, and (iii) the duties of the Department and the resident school division relating to savings
77 accounts;

78 4. Adopt policies and procedures for the administration of savings accounts, in accordance with §§
79 22.1-222.5 and 22.1-222.6; and

80 5. Develop policies and procedures by which a parent of a qualified student shall be declared
81 ineligible for a savings account in the event that upon review it is found that intentional and substantial
82 fraudulent expenditures of savings account funds occurred. Such policies shall include a fair process for
83 review of such disputed expenditures, timely notice to the parent, and an opportunity by which the
84 parent can appeal the declaration of ineligibility.

85 **§ 22.1-222.3. School choice educational savings accounts; eligibility; application; certain conditions**
86 **and limitations.**

87 A. A parent of a qualified student shall be eligible to receive a savings account for the benefit of the
88 student if the parent submits an initial application or annual renewal application for such savings
89 account to the resident school division in compliance with the application procedures and deadline
90 established by the Department pursuant to subdivision B 2 of § 22.1-222.2 and signs an annual,
91 renewable agreement to:

92 1. Provide an education for his child in accordance with § 22.1-254;

93 2. Not enroll his child in any local school division in the Commonwealth in the school year for
94 which the parent of the qualified student receives disbursement of state funds into the savings account;

95 3. If such student receives special education pursuant to an IEP, release the resident school division
96 from all obligations to educate the qualified student in acknowledgment that the receipt of a savings
97 account has the same effect of enrollment of such student by his parent in private school under 20
98 U.S.C. § 1412(a)(10) of the Individuals with Disabilities Education Act;

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

102 5. Use the moneys deposited in the savings account only for qualifying expenses, as defined in
103 § 22.1-222.1;

104 6. Submit a quarterly expense summary, in the form prescribed by the Department and containing
105 such provisions as prescribed by the Department, for qualifying expenses, pursuant to subdivision 5, that
106 were incurred prior to or during such quarter, including all applicable invoices and receipts, to the
107 resident school division prior to receiving a savings account disbursement for the subsequent quarter.
108 Each resident school division shall determine, on the basis of policies and procedures established by the
109 Department pursuant to subsection A of § 22.1-222.5, the appropriateness of such expenses on the basis
110 of such receipts and invoices prior to making a savings account disbursement for the subsequent quarter
111 or renewing the written agreement;

112 7. Notify the resident school division in writing within 30 days of the date on which the qualified
113 student ceases to reside in the resident school division or such student reenrolls full time in a public
114 school and acknowledge that (i) either action shall result in the immediate suspension of payment of
115 additional funds into such student's account and any unused funds remaining in the savings account
116 shall be subject to the conditions set forth in subsection E and (ii) failure to provide written notice
117 within 30 days of the date on which the qualified student ceases to reside in the resident school division
118 or reenrolls in a public school shall result in any unused funds remaining in the savings account
119 reverting to the Commonwealth; and

120 8. Submit to audits of the savings account.

B. No later than 14 calendar days immediately succeeding the approval of an initial or renewal application 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 savings 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 savings account.

C. The Department shall renew the savings account of a qualified student annually if such student's parent submits a renewal application or request prior to the submission deadline established by the Department. A qualified student's savings account shall remain in force and any unused funds shall roll over from quarter to quarter, and upon renewal of the savings account, from year to year. Any unused funds remaining in a qualified student's savings account shall revert to the Commonwealth upon the occurrence of any of the following:

1. The qualified student (i) graduates from high school or receives a high school equivalency certification and does not enroll in an institution of higher education prior to the age of 22 or (ii) graduates from an institution of higher education with an associate's or bachelor's degree or reaches the age of 26, whichever occurs first;

2. The parent of a qualified student (i) closes such student's savings account, (ii) fails to submit a renewal application by the deadline established by the Board, or (iii) fails to provide timely, written notice pursuant to subdivision A 7 after such student reenrolls full time in a public school or ceases to reside in the resident school division; or

3. The Department finds upon review pursuant to the policies and procedures established in subdivision B 5 of § 22.1-222.2 that intentional and substantial fraudulent expenditures were made from the savings account.

D. In the event that the parent provides the resident school division timely, written notice of reenrolling his qualified student full time in a public school or relocating such student to a different school division, pursuant subdivision A 7, any unused funds remaining in such student's savings account shall be subject to the following conditions:

1. If the savings account was open for more than two quarters of a school year, the savings account shall remain active, and the parent may continue to make qualifying expenditures from it until all remaining funds are used, whereupon the Department may close the savings account; or

2. If the savings account was open for two quarters or fewer of the school year, the savings account shall become inactive and any unused funds shall be frozen. However, the savings account shall remain open until the parent of the student either (i) timely submits a renewal application for the immediately succeeding school year reestablishing the student's eligibility as a qualified student, whereupon regular disbursement of funds into the savings account shall resume and any unused funds remaining in such savings account shall roll over or (ii) fails to timely submit a renewal application and the student remains ineligible, whereupon the savings account shall be closed and any unused funds shall revert to the Commonwealth.

E. The savings accounts shall be subject to the following limitations and conditions:

1. No individual or entity that receives funds from a savings 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. Any refund or rebate for goods or services purchased with savings account funds disbursed pursuant to this article shall be credited directly to the student's savings account.

2. Any parent may make payments for the costs of educational goods and services not covered by the funds in his child's savings account, provided, however, that no personal deposits are made into such savings account.

3. Funds deposited in a savings account do not constitute taxable income to the qualified student or the qualified student's parent.

§ 22.1-222.4. Policies and procedures; audit.

A. The Department shall establish policies and procedures for application, quarterly expense summary administration, and renewal pursuant to § 22.1-222.2. Each local school division shall comply with such policies and procedures and may establish additional policies and procedures for the implementation of the savings accounts, to the extent that they are consistent with the policies and procedures established by the Department.

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

182 of compliance with subdivisions A 4 and 5 of § 22.1-222.3. Any such adjustment to such specifications
183 is exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

184 C. Upon finding that a parent of a qualified student made a knowing misrepresentation relating to
185 any education-related expense from a savings account for a qualified student in breach of the
186 requirements set forth in subdivision A 6 of § 22.1-222.3 or otherwise materially breached the written
187 savings account agreement, the resident school division may rescind the written agreement, reclaim the
188 remaining moneys in the savings account, and declare such parent ineligible for renewal of the written
189 savings account agreement, pursuant to the policies and procedures developed in subdivision B 5 of §
190 22.1-222.2.

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

194 E. If any education-related expense from a savings account for a qualified student is determined to
195 be fraudulent, the resident school division shall direct the qualified financial institution to withhold
196 subsequent disbursements until the parent of the qualified student reimburses the expense that was
197 determined to be fraudulent.

198 **§ 22.1-222.5. Administration of savings accounts; duties and responsibilities of the Department.**

199 A. In the administration of the Program and the savings accounts, the Department shall:

200 1. Contract through scholarship foundations or with one or more qualified financial institutions to
201 establish and require such scholarship foundations or qualified financial institutions to manage savings
202 accounts that comply with the provisions of this article. Department-approved costs associated with the
203 ongoing administration of the savings account and compliance with this article are allowable account
204 fees that may be passed to the savings account holder;

205 2. Ensure that to the extent practicable any policies, processes, and procedures developed relating to
206 the application and administration of the savings accounts, including the audit and expense review
207 process, take advantage of existing Department and resident school division policies, processes, and
208 procedures and third-party automated solutions to minimize costs and improve effectiveness; and

209 3. Disburse retained savings for the following purposes and in the following order: (i) establishing
210 policies, processes, and procedures for managing and administering savings accounts; (ii) managing and
211 administering savings accounts, including managing Department expenditures and third-party
212 expenditures to qualified financial institutions, auditors as specified in subsection B of § 22.1-222.4, and
213 other organizations; and (iii) other public elementary and secondary school purposes for which the
214 Department is authorized to disburse funds.

215 B. In addition to the duties and responsibilities of the Department in the administration of the
216 Program, the Department may:

217 1. Develop instructional resources to be available in an online or print format to assist parents of
218 qualified students in completing the application process for, establishing eligibility for, and complying
219 with the terms and conditions of the savings accounts; and

220 2. Maintain a list on the Department's official website of accredited private schools and nonpublic
221 online learning programs for which funds in the savings accounts may be used.

222 **§ 22.1-222.6. Construction; scope.**

223 A. Nothing in this article shall be construed to:

224 1. Require a qualified student with a savings account to be enrolled, full time or part time, in either
225 a private school or nonpublic online learning program; or

226 2. Permit any agency of the Commonwealth to exercise control or supervision over any private
227 school or program of home instruction.

228 B. No qualified school receiving moneys from a savings account pursuant to this article shall be
229 considered an agent of the state or federal government.

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