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HOUSE BILL NO. 1164

Offered January 10, 2024

Prefiled January 10, 2024

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 22.1-222.7, relating to Education Excellence for All Program established.

Patrons—Scott, P.A., Earley, Garrett and Walker

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 22.1-222.7, as follows:

Article 2.1.

Education Excellence for All Program.

§ 22.1-222.1. Definitions.

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

"Administrative expense" means a dollar amount not to exceed five percent of the education savings account funds to which a qualified student is entitled and that shall be used by the Treasury to offset expenses to establish and administer the program.

"Education Excellence for All Savings Account" or "savings account" means a financial account in the name of a qualified student to which education savings account funds are allocated by the Treasury and administered by the program administrator for use by the parent of a qualified student to pay for qualified expenses to educate the qualified student pursuant to the requirements and conditions set forth in this article.

"Education savings account funds" or "funds" means moneys that are allocated by the state to the qualified student's resident school division from the following sources to fund a qualified student's savings account: (i) applicable Standards of Quality per pupil state funding, including the per pupil share of state sales tax funding in basic aid and (ii) state per pupil share of special education funding for which the qualified student is eligible.

"Education service provider" means a person or organization that receives payments from savings accounts to provide educational goods and services to qualified students.

"IEP" means an individualized education program that has been written for a qualified student and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.), federal regulations promulgated pursuant to IDEA, and regulations of the Board.

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

"Program" means the Education Excellence for All Program.

"Program administrator" means a third party with which the Treasury has contracted to administer the program pursuant to § 22.1-222.3 and that provides an automated savings account system that includes features that offer the parent of a qualified student the maximum flexibility to pay for qualified expenses.

"Qualified expense" means an educational expense permitted pursuant to subdivision C 4 of § 22.1-222.2.

"Qualified student" means a resident of the Commonwealth (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) whose family income is (a) less than or equal to 300 percent of the federal 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 or (b) in the case of a child with a disability who receives special education and related services pursuant to an IEP, less than or equal to 400 percent of such federal poverty guidelines; and (iv) who (a) 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 (b) is entering pre-kindergarten, kindergarten, or first grade for the first time.

"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.

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

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59 "Treasury" means the Department of the Treasury.

60 **§ 22.1-222.2. Education Excellence for All Program established; general requirements.**

61 A. The Education Excellence for All Program is established to provide any parent of a qualified  
62 student with the ability to choose and customize the education of the parent's child, consistent with  
63 § 1-240.1, by directing state funds intended for the child's education to any qualified expense that best  
64 meets the child's needs.

65 B. The Treasury is responsible for implementing and managing the program and shall cost-effectively  
66 adapt existing or develop new policies, procedures, and guidelines that accomplish the following:

67 1. Create a standard application that may be completed and submitted online for the establishment  
68 of eligibility for a savings account by a parent of a qualified student that shall be made readily  
69 available to interested parents pursuant to § 22.1-222.3;

70 2. Provide any interested parent of a qualified student with a written explanation of the allowable  
71 uses of a savings account, the parent's responsibility relating to a savings account, and the duties of the  
72 Treasury and the program administrator relating to a savings account; and

73 3. Annually inform the public of savings accounts, including information regarding eligibility criteria.

74 C. The parent of a qualified student may make an initial application to open a savings account  
75 between April 1 and August 15 of each calendar year. The application for a savings account shall be  
76 renewed annually. An annual renewal application request may be submitted for a qualified student (i)  
77 no earlier than six months after the savings account's initial approval date and (ii) no later than 30  
78 days prior to the application's annual expiration date. Application and renewal processes for a qualified  
79 student shall include a requirement for the parent to sign a written agreement to:

80 1. Provide an education for his child in compliance with § 22.1-254. The signed agreement between  
81 the parent and the Commonwealth shall satisfy the compulsory school attendance requirements;

82 2. Not enroll the qualified student in any resident school division in the Commonwealth in the school  
83 year for which the parent receives disbursement of state funds into the savings account pursuant to  
84 subsection E;

85 3. Release the qualified student's resident school division from all obligations to educate the qualified  
86 student. For qualified students who receive special education pursuant to an IEP, the receipt of a  
87 savings account has the same effect as the enrollment of such qualified student by his parent in private  
88 school under 20 U.S.C. § 1412 of the federal Individuals with Disabilities Education Act (IDEA) (20  
89 U.S.C. § 1400 et seq.);

90 4. Use the savings account only to cover the following qualified expenses for the qualified student:  
91 (i) tuition, deposits, fees, or required textbooks for courses at a nonpublic school,  
92 associate-degree-granting public or private institution of higher education, or baccalaureate public or  
93 private institution of higher education in the Commonwealth; (ii) educational therapies or services for  
94 the qualified student from a practitioner or provider, including paraprofessionals, educational aides, and  
95 providers of occupational, behavioral, speech-language, and audiology therapies; (iii) tutoring services;  
96 (iv) curriculum; (v) tuition, textbooks, or fees for a private online learning program offered through an  
97 education service provider; (vi) fees for nationally standardized norm-referenced achievement tests,  
98 Advanced Placement examinations, or examinations taken to gain admission to an institution of higher  
99 education; (vii) services that are offered on a fee-for-service basis to the public by a public elementary  
100 school, secondary school, or specialized after-school or summer school education program, including  
101 classes and extracurricular activities but excluding after-school care; (viii) public education services  
102 that are extended to private school students or students who receive home instruction on an open  
103 enrollment or fee-for-service basis; (ix) such insurance, surety bond payments, or fees as may be  
104 required for the savings account; (x) transportation, provided that such expense does not exceed 20  
105 percent of the total amount of the annual savings account disbursement; (xi) computer hardware and  
106 software, connectivity devices, and Internet access, provided that such expense does not exceed 20  
107 percent of the total amount of the annual savings account disbursement; (xii) school uniforms; and (xiii)  
108 any other education-related goods or services, such as Internet access, that are necessary for the  
109 provision of the qualified student's education pursuant to § 22.1-254, provided that such other  
110 education-related expenses do not exceed 20 percent of the total amount of the annual savings account  
111 disbursement;

112 5. If the parent receives a savings account disbursement in advance of the next reporting period,  
113 submit on a schedule and in a format prescribed by the Treasury a reconciliation report that  
114 enumerates qualified expenses pursuant to subdivision 4 that were incurred during the current reporting  
115 period and paid for using advanced funds; and

116 6. Within three days, notify the program administrator of the date on which the parent's student  
117 ceases to reside in the resident school division or does not meet the definition of qualified student. The  
118 parent shall immediately cease to incur additional expenditures for qualified expenses for his child and  
119 shall, as directed by the program administrator, reimburse to the Treasury the remaining amount in the  
120 savings account. For savings accounts that have been open for at least one full school year, a savings

121 account containing funds may remain open and active for up to an additional six-month grace period so  
 122 that the parent can make payments from the savings account for qualified expenses that may have been  
 123 incurred prior to the student's withdrawal from the program but not invoiced by the education service  
 124 provider at the time of the parent's notification to the program administrator. If a student who  
 125 withdraws from the program for any reason returns to the program during the six-month grace period,  
 126 payments into the student's existing savings account may resume if the savings account is still open and  
 127 active. When no funds remain in the student's savings account, the program administrator shall close  
 128 the savings account.

129 D. Each qualified student whose parent has applied for and received a savings account shall be  
 130 counted in the March 31 average daily membership or fall membership of the resident school division  
 131 as a full-time equivalent student and shall be identified as such for the purpose of the calculation of the  
 132 state share to be transferred to the savings account and to the Treasury as the administrative expense.  
 133 No such qualified student shall be counted in the resident school division's required effort to meet actual  
 134 need for required matching local funds as prescribed by the Standards of Quality. The inclusion of any  
 135 qualified student in the average daily membership or fall membership of the resident school division  
 136 shall not impose any other requirement on the resident school division aside from those set forth in this  
 137 article.

138 E. Beginning no later than 21 calendar days immediately succeeding the approval of an application  
 139 or renewal request, the Treasury shall periodically make warrant for and disburse (i) to the appropriate  
 140 savings account state funds in an amount that is equivalent to one-fourth of 95 percent of all applicable  
 141 then-current annual Standards of Quality per pupil state funds, including the per pupil share of state  
 142 sales tax funding in basic aid and any per pupil share of state special education funding to which the  
 143 qualified student is eligible and (ii) to the Treasury's administrative expense account an amount that is  
 144 not more than one-fourth of five percent of such funds. The Treasury shall not transfer federal funds,  
 145 the local share of Standards of Quality per pupil funds, or any portion of such local share to a savings  
 146 account.

147 F. The Treasury shall use the administrative expense account set-aside to reimburse the following  
 148 costs in the following order: (i) costs incurred to establish program policies, processes, and procedures;  
 149 (ii) costs to administer the program; and (iii) costs relating to other public elementary and secondary  
 150 school purposes for which the Commonwealth is authorized to disburse funds.

151 G. The program administrator shall give written notice to any parent applying for or requesting  
 152 renewal of a savings account as to the disposition of the application or renewal request no later than  
 153 14 calendar days immediately following such application or renewal request. The program administrator  
 154 may send the parent a written notice requesting any additional information that is necessary to  
 155 determine the final disposition of the application or renewal request. Such parent shall submit the  
 156 requested information to the program administrator no later than 30 calendar days immediately  
 157 following such request for additional information. If the requested information is not received within  
 158 such time, the program administrator may deny the application or renewal request. Upon receipt of  
 159 requested information, the program administrator shall notify the parent within 14 calendar days of its  
 160 final application or renewal request disposition determination. If the application or renewal request is  
 161 denied, the parent may appeal such denial no later than 30 calendar days immediately following receipt  
 162 of the notice of denial to a hearing officer chosen from the list maintained by the Executive Secretary of  
 163 the Supreme Court pursuant to § 2.2-4024. The costs of an appeal before such a hearing officer shall be  
 164 apportioned among the parties by the hearing officer in a manner consistent with his findings. If the  
 165 parent prevails in such an appeal, the application or renewal request shall immediately be approved,  
 166 effective on the date on which it was first submitted.

167 H. No later than November 1 of each year, the Treasury shall certify and report to the  
 168 Superintendent the number of qualified students whose parents have received a savings account and the  
 169 amount of funds transferred to each such savings account and the administrative expense account. No  
 170 later than December 15 of each year, the Superintendent shall report to the Governor and the Chairmen  
 171 of the House Committee on Appropriations and Senate Committee on Finance and Appropriations the  
 172 number of qualified students whose parents have received a savings account and the total Standards of  
 173 Quality state funding transferred to savings accounts and the administrative expense account.

174 I. Any entity that receives funds from a savings account shall refund, rebate, or otherwise remit any  
 175 such funds when such refund, rebate, or remission is required pursuant to policies, processes, and  
 176 procedures established by the Treasury pursuant to subsection A of § 22.1-222.4, and any such refund,  
 177 rebate, or remission shall be credited directly to the qualified student's savings account, but no such  
 178 entity shall refund, rebate, or otherwise remit any such funds to a parent or qualified student in any  
 179 manner.

180 J. Except as otherwise provided in this article, a savings account shall remain in force, any unused  
 181 funds shall roll over from quarter to quarter and from year to year, and the Treasury shall continue to

182 *make deposits into the savings account, until (i) a determination is made that the student is no longer a*  
 183 *qualified student; (ii) a determination is made pursuant to subsection C of § 22.1-222.4; (iii) the parent*  
 184 *or qualified student withdraws from the program; (iv) the qualified student enrolls full time in a public*  
 185 *school pursuant to § 22.1-254; or (v) the qualified student graduates from high school, passes a high*  
 186 *school equivalency examination, matriculates at an institution of higher education as a full-time student,*  
 187 *or reaches the age of 22, whichever occurs first.*

188 *K. Funds in a savings account received by a parent pursuant to this article do not constitute state*  
 189 *taxable income to the parent.*

190 **§ 22.1-222.3. Savings account administration.**

191 *The Treasury shall contract with a program administrator to establish and manage the day-to-day*  
 192 *financial administration of savings accounts in compliance with the provisions of this article. Costs that*  
 193 *are associated with the establishment and ongoing administration of the program are chargeable against*  
 194 *the administrative expense. The program administrator shall:*

195 *1. Provide an automated system that provides parents with maximum flexibility by (i) facilitating*  
 196 *direct reimbursement of existing, pre-approved qualified expenses and (ii) approving or rejecting*  
 197 *parental requests for reimbursement of expenses that are not existing, pre-approved qualified expenses.*  
 198 *The reimbursement of existing, pre-approved qualified expenses shall be made within 30 days of the*  
 199 *request for such reimbursement. The approval or rejection of a parental request for reimbursement of*  
 200 *expenses that are not existing, pre-approved qualified expenses shall be made within 21 calendar days*  
 201 *of such request;*

202 *2. Eliminate opportunities for parents to make nonqualified expenses;*

203 *3. Provide the parent of a qualified student with an account balance and a history of qualified*  
 204 *expenses;*

205 *4. Meet state-specified security requirements, including certification as service organization control*  
 206 *(SOC) 2 Type II;*

207 *5. Provide parents with timely, on-demand technical assistance, including via telephone and via live*  
 208 *agent interaction on the Internet;*

209 *6. Provide the Treasury with real-time detailed reporting of expenditures, including breakdown by*  
 210 *type of qualified expense and with administrative functionality pursuant to its responsibilities under this*  
 211 *article;*

212 *7. Provide a parent-friendly system for publicly rating, reviewing, and sharing information about*  
 213 *education service providers, ideally as part of the automated system provided pursuant to subdivision 1;*

214 *8. On a schedule and in a format prescribed by the Treasury, (i) provide a report for all accounts*  
 215 *that summarizes the status of the account (active, inactive, or closed); (ii) for active accounts, provide*  
 216 *the account's accrued qualified expenses; and (iii) on the basis of account status, authorize all savings*  
 217 *account disbursements;*

218 *9. Establish the procedures for creating, pre-approving, approving, maintaining, amending, and*  
 219 *updating a list of education service providers and ensure that the list is publicly available through*  
 220 *various sources, including the Internet. The Treasury shall (i) require a surety bond for education*  
 221 *service providers receiving more than \$100,000 in annual payments through the program and (ii)*  
 222 *require education service providers to extend to parents payment terms of within 45 days of the receipt*  
 223 *of services;*

224 *10. Pursuant to subdivision B 1 of § 22.1-222.2, coordinate with the Treasury to create, maintain,*  
 225 *and update a standard savings account application form that parents can submit to establish and renew*  
 226 *their student's eligibility for the program and ensure that the application is publicly available and may*  
 227 *be submitted through various sources, including the Internet;*

228 *11. Pursuant to subsection C of § 22.1-222.2, (i) accept applications on a schedule that optimizes*  
 229 *enrollment and minimizes cost and upon which the Treasury and the program administrator mutually*  
 230 *agree and (ii) coordinate with the Treasury to approve applications in an expeditious manner if the*  
 231 *requirements of subsection C of § 22.1-222.2 are met;*

232 *12. Pursuant to subsection B of § 22.1-222.2, provide parents with a written explanation of the*  
 233 *allowable uses of savings account funds, the responsibilities of parents, and the duties of the program*  
 234 *administrator in the administration of the program; and*

235 *13. Pursuant to subdivision C 3 of § 22.1-222.2, ensure that parents of students with disabilities*  
 236 *receive notice that participation in the program is a parental placement under 20 U.S.C. § 1412 of the*  
 237 *Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.), along with an explanation*  
 238 *of the rights that parentally placed students possess under IDEA and any applicable state laws and*  
 239 *regulations.*

240 **§ 22.1-222.4. Policies, processes, and procedures.**

241 *A. Pursuant to § 22.1-222.2, the Treasury shall establish policies, processes, and procedures for*  
 242 *application, periodic expense summary administration, renewal, and appeal. To the extent practicable,*  
 243 *such policies, processes, and procedures shall take advantage of existing Treasury policies, processes,*

244 and procedures and third-party automated solutions to minimize cost and improve effectiveness.

245 B. Upon finding that a parent made a knowing misrepresentation relating to any qualified expense  
 246 from a savings account for a qualified student or otherwise materially breached the written savings  
 247 account agreement, the Treasury shall rescind the written agreement, reclaim the remaining funds in the  
 248 savings account, and declare such parent ineligible for renewal of the written savings account  
 249 agreement. The parent may appeal such decision as provided in subsection G of § 22.1-222.2.

250 C. Upon finding that an education service provider has (i) materially misrepresented information; (ii)  
 251 failed to refund an overpayment in a timely manner; (iii) routinely failed to provide qualified students  
 252 with promised educational goods and services; or (iv) materially breached contractual agreements  
 253 between qualified students, parents, or the Commonwealth, the Treasury may bar the education service  
 254 provider from further receiving payments pursuant to the program in accordance with a written  
 255 debarment procedure established pursuant to § 2.2-4321. If the Treasury so bars an education service  
 256 provider, it shall notify parents and qualified students of its decision within seven calendar days.  
 257 Education service providers may appeal the Treasury's decision to bar them from receiving payments in  
 258 accordance with the written debarment procedure.

259 D. The Treasury may refer to the appropriate agency of the Commonwealth for investigation any  
 260 incident in which it finds evidence of fraudulent use of funds in a savings account by a parent, the  
 261 program administrator, an education service provider, or another third-party provider.

262 E. If any education-related expense from a savings account for a qualified student is determined to  
 263 be invalid, the Treasury shall direct the program administrator to withhold subsequent disbursements  
 264 until the parent reimburses the expense that was determined to be invalid.

265 **§ 22.1-222.5. Scope of article.**

266 A. The scope of this article applies to qualified students whose parents elect to withdraw them from  
 267 public school and elect to receive a savings account.

268 B. Nothing in this article shall be construed to permit any agency of the Commonwealth to exercise  
 269 control or supervision over any private school, program of home instruction, or any other education  
 270 service provider.

271 C. Education service providers shall be given maximum freedom to provide for the educational needs  
 272 of a qualified student without government control. Nothing in this article shall be deemed to (i) make an  
 273 education service provider an agent of the state or federal government; (ii) limit the independence or  
 274 autonomy of an education service provider; (iii) make the actions of an education service provider the  
 275 actions of the state government; or (iv) expand the regulatory authority of the state, its officers, or any  
 276 local school division to impose any additional regulation on education service providers beyond that  
 277 necessary to enforce the requirements of the program.

278 D. No education service provider shall be required to alter its creed, practices, admissions policies,  
 279 or curriculum to receive funds from a savings account pursuant to this article.

280 E. If any qualified expense from a savings account for a qualified student is held to be invalid, such  
 281 holding shall not affect the validity of any other qualified expense of a qualified student.

282 F. Nothing in this article shall be deemed to prohibit a parent or qualified student from making  
 283 qualified expenses from a source other than a savings account, including personal funds.

284 G. Nothing in this article shall be construed to require a qualified student to be enrolled, full time or  
 285 part time, in either a private school or nonpublic online school.

286 **§ 22.1-222.6. Responsibilities of public elementary and secondary schools and local school**  
 287 **divisions.**

288 A public elementary or secondary school or local school division that previously enrolled a qualified  
 289 student shall provide a private school that is also an education service provider and that has enrolled a  
 290 qualified student with a complete copy of the student's school records, while complying with the federal  
 291 Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.

292 **§ 22.1-222.7. Legal proceedings.**

293 A. In any legal proceeding challenging the application of this article to an education service  
 294 provider, the Commonwealth bears the burden of establishing that the law is necessary and does not  
 295 impose any undue burden on the education service provider.

296 B. No liability shall arise on the part of the program administrator, the Commonwealth, or any  
 297 public elementary or secondary school or local school division based on the award of or use of a  
 298 savings account pursuant to this article.

299 C. If any provision of this article is challenged in a state court as violating either the Constitution of  
 300 the United States or the Constitution of Virginia, parents of qualified students shall be permitted to  
 301 intervene as of right in such lawsuit for the purposes of defending the constitutionality of such  
 302 provision. However, for the purposes of judicial administration, a court may require that all such  
 303 parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named  
 304 state defendant.