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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

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

D. Each qualified student whose parent has applied for and received a savings 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 savings account and to the Treasury as the administrative expense. 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. The inclusion of any qualified student in the average daily membership or fall membership of the resident school division shall not impose any other requirement on the resident school division aside from those set forth in this article.

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

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

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

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

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

J. Except as otherwise provided in this article, a savings account shall remain in force, any unused 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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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