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SENATE BILL NO. 558

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 22.1-222.5, relating to school choice educational savings accounts.*

Patrons—DeSteph and Craig

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 22.1-222.5, 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:

1. Tuition or fees at a qualified school or nonpublic online learning program;

2. Tutoring services;

3. Services contracted for and provided by a local school division or public charter or magnet school, including individual classes and extracurricular activities or programs;

4. Textbooks, curriculum, or other instructional materials, including any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

5. School uniforms required by a qualified school;

6. Technological devices and applications, including computer hardware or software, calculators, and other technological equipment or applications that are primarily used to help meet a qualified student's educational needs. Technological devices and applications shall not include any personal entertainment devices, applications, or accessories;

7. Fees associated with (i) courses and associated examinations for credit toward the completion of an undergraduate course, degree, certificate, or credential at an institution of higher education, including Advanced Placement courses and examinations and dual enrollment programs; (ii) nationally standardized, norm-referenced achievement assessments; and (iii) examinations related to admission to an institution of higher education;

8. Tuition, fees, instructional materials, or examination fees at a career or technical school or required for any course or program that leads to the completion of an industry-recognized certificate or credential, including work-based learning programs;

9. For any qualified student whose education is subject to an IEP or otherwise is a student with disabilities, expenses associated with (i) educational services or therapies, including occupational, behavioral, physical, speech-language, and audiology therapies, including and up to any amount not covered by insurance if the expense is partially paid by a health insurance policy for the qualified student (ii) a licensed or professional educational aid, and (iii) additional supplementary aids, services, devices, or accommodations that may be necessary to serve such student's educational needs and provide such student an equal opportunity to participate in advanced coursework, technical and vocational coursework or training, academic classes, and extracurricular school-based activities;

10. Fees for transportation to and from such student's residence and a qualified school in which such student is enrolled, including (i) fees paid to a fee-for-service transportation provider for the student to travel to and from an education service provider and (ii) public transportation services provided by the Commonwealth;

11. Tuition and fees at an institution of higher education, as well as any textbooks required for any course offered at an institution of higher education in which a qualified student is enrolled;

12. Fees for account management paid to a qualified financial institution; or

13. Any other educational expense approved by the Department.

"Qualifying expense" does not include optional expenses payable to a third party.

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59 *"Qualified financial institution" means a financial institution or private financial management firm*
60 *selected pursuant to subdivision B 1 of § 22.1-222.4 that provides a saving account that (i) offers debit*
61 *card payment features that minimize fraud and abuse and (ii) provides the parent of a qualified student*
62 *and the Department with administration and reporting functionality pursuant to their responsibilities*
63 *under this article.*

64 *"Qualified school" means a sectarian or nonsectarian private elementary school or secondary school*
65 *that is located in the Commonwealth and complies with the provisions of 42 U.S.C. § 1981.*

66 *"Qualified student" means any child (i) who is deemed to reside in a school division pursuant to*
67 *subsection A of § 22.1-3; (ii) for whom compulsory attendance is required pursuant to subsection A of*
68 *§ 22.1-254; (iii) is eligible to enroll in a public elementary or secondary school in the Commonwealth;*
69 *and (iv) meets at least one of the following criteria:*

70 1. *For the 2024-2025 through 2025-2026 school years, (i) identifies as a student having a disability*
71 *under the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.); (ii) is*
72 *considered homeless pursuant to the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431(a)(2));*
73 *(iii) is currently or formerly a foster child; or (iv) is a dependent of a member of the Armed Forces of*
74 *the United States or the Virginia National Guard who is on active duty, was killed in the line of duty,*
75 *became missing in action, or became a prisoner of war;*

76 2. *For the 2026-2027 through the 2027-2028 school years (i) meets any of the criteria identified in*
77 *subdivision 1; (ii) is the child of a veteran of the Armed Forces of the United States or the Virginia*
78 *National Guard; or (iii) whose family meets the income eligibility requirements for free or reduced-price*
79 *school lunch pursuant to 42 U.S.C. § 1751 et seq.;*

80 3. *For the 2028-2029 school year and each year thereafter, is entering kindergarten or was enrolled*
81 *at and attended a public elementary or secondary school in the Commonwealth during the two semesters*
82 *immediately preceding the semester for which the child's parent initially applies for a savings account.*

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

84 *"Retained savings" means an amount that is equivalent to 10 percent of all applicable Standards of*
85 *Quality per pupil state funds appropriated for public school purposes and apportioned to the school*
86 *division in which a qualified student resides, including the per pupil share of state sales tax funding in*
87 *basic aid and any state per pupil share of any weighted funding for which a qualified student is eligible.*

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

89 *"School choice educational savings account" or "savings account" means a bank account at a*
90 *qualified financial institution in the name of a qualified student and into which only funds from the*
91 *Commonwealth may be deposited as provided in § 22.1-222.3 for expenditure by the parent of the*
92 *qualified student for such student's benefit.*

93 **§ 22.1-222.2. School choice educational savings accounts; established; eligibility and application**
94 **conditions and limitations.**

95 A. *School choice educational savings accounts are established for the purpose of providing parents*
96 *in the Commonwealth with resources and options for the education of their children, consistent with*
97 *§ 1-240.1.*

98 B. *The parent of a qualified student shall be eligible to receive a savings account for the benefit of*
99 *the student if the parent submits an initial application or annual renewal application for such savings*
100 *account to the resident school division in compliance with the application procedures and deadlines*
101 *established by the Department pursuant to subdivision A 1 a of § 22.1-222.4 and signs an annual,*
102 *renewable agreement to:*

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

104 2. *Not enroll his child in any local school division in the Commonwealth in the school year for*
105 *which the parent of the qualified student receives disbursement of state funds into the savings account.*
106 *This subdivision does not require a qualified student to withdraw from a local school division before*
107 *applying for a savings account provided that such student withdraws after receiving notice that his*
108 *application has been accepted and prior to any disbursements being made into his savings account;*

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

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

116 5. *Use the moneys deposited in the savings account only for qualifying expenses;*

117 6. *Submit to the Department for review a quarterly expense summary of any qualifying expenses,*
118 *including all applicable invoices and receipts, incurred prior to or during such quarter prior to receipt*
119 *of the subsequent quarterly disbursement into his savings account;*

120 7. *Notify the resident school division in writing within 30 days of the date on which the qualified*

student ceases to reside in the resident school division or such student re-enrolls full time in a public school and acknowledge that (i) either action shall result in the immediate suspension of payment of additional funds into such student's account and any unused funds remaining in the savings account shall be subject to the conditions set forth in subsection D of § 22.1-222.3 and (ii) failure to provide written notice within 30 days of the date on which the qualified student ceases to reside in the resident school division or re-enrolls in a public school shall result in any unused funds remaining in the savings account reverting to the Commonwealth;

8. Submit to an annual audit of the savings account pursuant to subdivision A 1 b of § 22.1-222.4; and

9. The terms and conditions relating to the renewal and closure of a savings account and the subsequent treatment of remaining funds in any savings account in accordance with subsection C of § 22.1-222.3.

§ 22.1-222.3. School choice educational savings accounts; disbursement and funds; conditions and limitations.

A. The Department shall make warrant for and disburse the first quarterly installment of funds into a qualified student's savings account no later than 14 calendar days immediately succeeding the approval of an initial or renewal application or submission of a quarterly expense summary.

B. The total amount that the Department shall deposit into the savings account of each qualified student, in quarterly installments, shall be 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.

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 qualified student's savings account will be closed and any unused funds remaining shall revert to the Commonwealth upon the occurrence of any of the following:

1. The qualified student (i) graduates from an institution of higher education or (ii) graduates from high school or receives a high school equivalency certification and does not enroll in an institution of higher education within four consecutive years after graduating from high school or receiving a high school equivalency certification;

2. The parent of a qualified student (i) closes such student's savings account or (ii) fails to provide timely, written notice pursuant to subdivision B 7 of § 22.1-222.2 after such student re-enrolls full time in a public school or ceases to reside in the resident school division;

3. The parent of a qualified student does not renew such student's saving's account for a period of three academic years and, upon receiving notice from the Department that if no action is taken such savings account will be closed in 60 calendar days, fails to renew or take any action to renew such student's savings account; or

4. In accordance with the policies and procedures established in subdivisions A 1 c of § 22.1-222.4, the Department determines, upon conducting its quarterly review or annual audit pursuant to subdivision A 1 b of § 22.1-222.4 or receiving a report pursuant to subdivision A 3 of § 22.1-222.4, that the parent of a qualified student engaged in intentional and substantial misrepresentation, fraud, or other failure to comply with the terms and conditions relating to qualified expenditures from a qualified student's savings account.

D. In the event that, in accordance with subdivision B 7 of § 22.1-222.2, the parent provides the resident school division timely, written notice of re-enrolling his qualified student full time in a public school or relocating such student to a different school division, any unused funds remaining in such student's savings account shall be subject to the following conditions:

1. If the savings account has been open for at least one full academic year, the savings account shall remain open and active for the parent to 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 has been open for less than one full academic 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.

182 *E. Funds disbursed in any qualified student's savings account shall not constitute taxable income to*
183 *or be claimed as credit, deduction, exemption, or rebate for the parent of the qualified student. No*
184 *individual or entity that receives funds from a savings account to cover qualified expenses shall refund*
185 *to, rebate to, or share with in any manner a qualified student or the student's parent such funds. Any*
186 *refund or rebate for goods or services purchased with savings account funds disbursed pursuant to this*
187 *article shall be credited directly to the student's savings account.*

188 **§ 22.1-222.4. Duties and responsibilities of the Department; administration of savings account;**
189 **audit.**

190 *A. The Department shall establish and administer, with the assistance of each local school board, the*
191 *school choice educational savings accounts. In establishing and administering the savings accounts, the*
192 *Department shall:*

193 *1. Develop policies and procedures:*

194 *a. Relating to application submission, review, and approval, including the development of (i) a*
195 *standard savings account application form, (ii) participation timelines and deadlines that maximize*
196 *qualified student participation, and (iii) an official process by which the parent of a qualified student*
197 *may appeal and request review of a denial of his application for a savings account;*

198 *b. For conducting quarterly reviews of quarterly expense summaries and random annual audits of*
199 *each savings account pursuant to subdivisions B 6 and 8 of § 22.1-222.2 and subsection C; and*

200 *c. In accordance with subdivision C 4 of § 22.1-222.3 for addressing any incident in which there is*
201 *evidence of intentional and substantial misrepresentation, fraud, or other failure to comply with the*
202 *terms and conditions relating to qualified expenditures from a qualified student's savings account,*
203 *including establishing (i) a fair process for investigation of any report and evidence of any such*
204 *incident; (ii) upon determination that such misrepresentation, misuse, or other failure to comply did*
205 *occur, a process for providing timely notice to the parent informing him that he has 15 days to respond*
206 *and take corrective action and that if such parent fails to do so, such student shall be declared*
207 *ineligible for a savings account, the savings account shall be closed, any remaining funds shall revert to*
208 *the Commonwealth, and the parent shall be required to reimburse the expense that was determined*
209 *fraudulent; and (iii) a fair process by which the parent of any student who has been declared ineligible*
210 *for a savings account as a result of clause (ii) can appeal the declaration of ineligibility;*

211 *2. Develop and make readily available and accessible to any potentially interested parents*
212 *informational materials and guidelines relating to the savings accounts, including guidelines (i) relating*
213 *to establishing a student's eligibility for participation; (ii) explaining the qualified expenses for which a*
214 *savings account can be used; and (iii) explaining the responsibilities and duties of the parent, the*
215 *Department, and the resident school division in the administration, maintenance, and use of savings*
216 *accounts;*

217 *3. Establish a process by which anonymous reports may be made to the Department, or such other*
218 *authority as the Department may deem appropriate, of intentional and substantial misrepresentation,*
219 *fraud, or other failure to comply with the terms and conditions relating to qualified expenditures from a*
220 *qualified student's savings account, including the establishment of an anonymous telephone hotline;*

221 *4. Disburse retained savings for the following purposes and in the following order: (i) establishing*
222 *policies, processes, and procedures for managing and administering savings accounts; (ii) managing and*
223 *administering savings accounts; and (iii) other public elementary and secondary school purposes for*
224 *which the Department is authorized to disburse funds; and*

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

227 *B. The Department may:*

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

233 *2. Adopt policies requiring a surety bond or insurance for savings account holders.*

234 *C. Each local school division shall comply with such policies and procedures and may establish*
235 *additional policies and procedures for the implementation of the savings accounts, to the extent that they*
236 *are consistent with the policies and procedures established by the Department.*

237 *D. The Auditor of Public Accounts shall include in the specifications published pursuant to*
238 *§ 15.2-2511 for audits of all localities that contain a local school division a requirement that the*
239 *independent certified public accountant who conducts the audit of the locality include in such audit tests*
240 *of compliance with subdivisions B 4 and 5 of § 22.1-222.2. Any such adjustment to such specifications is*
241 *exempt from the Administrative Process Act (§ 2.2-4000 et seq.).*

242 **§ 22.1-222.5. Construction; scope.**

243 *Notwithstanding any provision of law to the contrary:*

244 1. *Nothing in this article shall be construed to permit any agency of the Commonwealth to exercise*
245 *control or supervision over any private school or program of home instruction; and*
246 2. *No qualified school receiving moneys from a savings account pursuant to this article shall be (i)*
247 *considered an agent of the state or federal government or (ii) required to alter its practices, admissions,*
248 *policies, or curriculum in order to receive moneys from a savings account pursuant to this article.*

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