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HOUSE BILL NO. 1296

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 Virginia Education Success Account Program established.

Patron—Griffin (By Request)

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.

Virginia Education Success Account Program.

§ 22.1-222.1. Definitions.

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

"Administrative expense" means a dollar amount that does not exceed five percent of a qualified student's applicable Standards of Quality per pupil state funding, including the per pupil share of state sales tax funding in basic aid and any per pupil share of state special education funding for which the qualified student is eligible, and that shall be used by the Treasury to offset expenses to establish and administer the program.

"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 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.

"Participating school division" means a school division in which the school board has, by majority vote, affirmed its participation in the program.

"Program" means the Virginia Education Success Account 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 who is eligible to enroll in a public elementary or secondary school, including a child who is starting kindergarten.

"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 participating school division in which a qualified student resides.

"Treasury" means the Department of the Treasury.

"Virginia Education Success Account" or "savings account" means the account to which funds are allocated by the program administrator to 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.

§ 22.1-222.2. Virginia Education Success Account Program established; general requirements.

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

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

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

2. Provide any interested parent of a qualified student with a written explanation of the allowable uses of a savings account, the parent's responsibility relating to a savings account, and the duties of the

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59 *Treasury and the program administrator relating to a savings account; and*

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

61 *C. The parent of a qualified student may make an initial application or annual renewal application*
62 *for a savings account during enrollment periods throughout the year. The initial application and annual*
63 *renewal process shall include a requirement for the parent to annually sign a one-year, renewable*
64 *written agreement to:*

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

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

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

74 *4. Use the savings account only to cover the following qualified expenses for the qualified student:*

75 *(i) tuition, deposits, fees, or required textbooks for courses at a nonpublic school,*
76 *associate-degree-granting public or private institution of higher education, or baccalaureate public or*
77 *private institution of higher education in the Commonwealth; (ii) educational therapies or services for*
78 *the qualified student from a practitioner or provider, including paraprofessionals, educational aides, and*
79 *providers of occupational, behavioral, speech-language, and audiology therapies; (iii) tutoring services;*
80 *(iv) curriculum; (v) tuition, textbooks, or fees for a private online learning program offered through an*
81 *education service provider; (vi) fees for nationally standardized norm-referenced achievement tests,*
82 *Advanced Placement examinations, or examinations taken to gain admission to an institution of higher*
83 *education; (vii) services that are offered on a fee-for-service basis to the public by a public elementary*
84 *school, secondary school, or specialized after-school or summer school education program, including*
85 *classes and extracurricular activities but excluding after-school care; (viii) such insurance, surety bond*
86 *payments, or fees as may be required for the savings account; (ix) transportation, provided that such*
87 *expense does not exceed 20 percent of the total amount of the annual savings account disbursement; (x)*
88 *computer hardware and software, connectivity devices, and Internet access, provided that such expense*
89 *does not exceed 20 percent of the total amount of the annual savings account disbursement; (xi) school*
90 *uniforms; and (xii) any other education-related goods or services that are necessary for the provision of*
91 *the qualified student's education pursuant to § 22.1-254, provided that such other education-related*
92 *expenses do not exceed 20 percent of the total amount of the annual savings account disbursement;*

93 *5. On a schedule and in a format prescribed by the Treasury and after receiving a savings account*
94 *disbursement for the next reporting period, submit an expense report that enumerates qualified expenses*
95 *pursuant to subdivision 4 that were incurred after the current reporting period; and*

96 *6. Within three days, notify the program administrator of the date on which the parent's student*
97 *ceases to reside in the resident school division or does not meet the definition of qualified student. The*
98 *parent shall immediately cease to incur additional qualified expenses for his child and shall, as directed*
99 *by the program administrator, reimburse to the Treasury the remaining amount in the savings account.*

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

109 *D. Each qualified student whose parent has applied for and received a savings account shall be*
110 *counted in the March 31 average daily membership or fall membership of the resident school division*
111 *as a full-time equivalent student and shall be identified as such for the purpose of the calculation of the*
112 *state share to be transferred to the savings account and to the Treasury as the administrative expense.*
113 *No such qualified student shall be counted in the resident school division's required effort to meet actual*
114 *need for required matching local funds as prescribed by the Standards of Quality. The inclusion of any*
115 *qualified student in the average daily membership or fall membership of the resident school division*
116 *shall impose no other requirement on the resident school division aside from those set forth in this*
117 *article.*

118 *E. Beginning no later than 21 calendar days immediately succeeding the approval of an application*
119 *or renewal request, the Treasury shall periodically make warrant for and disburse (i) to the appropriate*
120 *savings account state funds in an amount that is equivalent to one-fourth of 95 percent of all applicable*

121 then-current annual Standards of Quality per pupil state funds, including the per pupil share of state
 122 sales tax funding in basic aid and any per pupil share of state special education funding to which the
 123 qualified student is eligible and (ii) to the Treasury's administrative expense account an amount that is
 124 not more than one-fourth of five percent of such funds. The Treasury shall not transfer federal funds,
 125 the local share of Standards of Quality per pupil funds, or any portion of such local share to a savings
 126 account.

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

131 G. The program administrator shall give written notice to any parent applying for or requesting
 132 renewal of a savings account as to the disposition of the application or renewal request no later than
 133 14 calendar days immediately following such application or renewal request. The program administrator
 134 may send the parent a written notice requesting any additional information that is necessary to
 135 determine the final disposition of the application or renewal request. Such parent shall submit the
 136 requested information to the program administrator no later than 30 calendar days immediately
 137 following such request for additional information. If the requested information is not received within
 138 such time, the program administrator may deny the application or renewal request. Upon receipt of
 139 requested information, the program administrator shall notify the parent within 14 calendar days of its
 140 final application or renewal request disposition determination. If the application or renewal request is
 141 denied, the parent may appeal such denial no later than 30 calendar days immediately following receipt
 142 of the notice of denial to a hearing officer chosen from the list maintained by the Executive Secretary of
 143 the Supreme Court pursuant to § 2.2-4024. The costs of an appeal before such a hearing officer shall be
 144 apportioned among the parties by the hearing officer in a manner consistent with his findings. If the
 145 parent prevails in such an appeal, the application or renewal request shall immediately be approved,
 146 effective on the date on which it was first submitted.

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

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

160 J. Except as otherwise provided in this article, a savings account shall remain in force, any unused
 161 funds shall roll over from quarter to quarter and from year to year, and the Treasury shall continue to
 162 make deposits into the savings account, until (i) a determination is made that the student is no longer a
 163 qualified student; (ii) a determination is made pursuant to subsection C of § 22.1-222.4; (iii) the parent
 164 or qualified student withdraws from the program; (iv) the qualified student enrolls full time in a public
 165 school pursuant to § 22.1-254; or (v) the qualified student graduates from high school, passes a high
 166 school equivalency examination, matriculates at an institution of higher education as a full-time student,
 167 or reaches the age of 22, whichever occurs first.

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

170 **§ 22.1-222.3. Savings account administration.**

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

175 1. Provide an automated system that provides maximum flexibility to parents by facilitating direct
 176 payments to education service providers as well as requests for preapproval of and reimbursements for
 177 qualified expenses;

178 2. Eliminate opportunities for parents to make nonqualified expenses;

179 3. Provide the parent of a qualified student with an account balance and a history of qualified
 180 expenses;

181 4. Meet state-specified security requirements, including certification as service organization control

182 (SOC) 2 Type II;

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

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

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

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

194 9. Establish the procedures for creating, pre-approving, approving, maintaining, amending, and
195 updating a list of education service providers and ensure that the list is publicly available through
196 various sources, including the Internet. The Treasury shall require a surety bond for education service
197 providers receiving more than \$100,000 in annual payments through the program;

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

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

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

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

214 **§ 22.1-222.4. Policies, processes, and procedures.**

215 A. Pursuant to §§ 22.1-222.2 and 22.1-222.3, the Treasury shall establish policies, processes, and
216 procedures for application, periodic expense summary administration, renewal, and appeal. To the
217 extent practicable, such policies, processes, and procedures shall take advantage of existing Treasury
218 policies, processes, and procedures and third-party automated solutions to minimize cost and improve
219 effectiveness.

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

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

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

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

240 **§ 22.1-222.5. Scope of article.**

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

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

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

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

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

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

259 **§ 22.1-222.6. Responsibilities of public elementary and secondary schools and participating school**
 260 **divisions.**

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

265 **§ 22.1-222.7. Legal proceedings.**

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

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

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