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HOUSE BILL NO. 667

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Freitas)

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.

**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.

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

28 "Program" means the Virginia Education Success Account Program.

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

32 "Qualified expense" means an educational expense permitted pursuant to subdivision C 4 of §  
33 22.1-222.2.

34 "Qualified student" means a resident of the Commonwealth who is eligible to enroll in a public  
35 elementary or secondary school, including a child who is starting kindergarten, and whose family income  
36 is at or below the federal poverty level.

37 "Quarter" means one-fourth of the fiscal year. "Quarter" includes July 1 through September 30,  
38 October 1 through December 31, January 1 through March 31, and April 1 through June 30.

39 "Resident school division" means the participating school division in which a qualified student  
40 resides.

41 "Treasury" means the Department of the Treasury.

42 "Virginia Education Success Account" or "savings account" means the account to which funds are  
43 allocated by the program administrator to the parent of a qualified student to pay for qualified expenses to  
44 educate the qualified student pursuant to the requirements and conditions set forth in this article.

45 **§ 22.1-222.2. Virginia Education Success Account Program established; general**  
46 **requirements.**

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

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

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

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

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

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

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

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

76 4. Use the savings account only to cover the following qualified expenses for the qualified student:  
77 (i) tuition, deposits, fees, or required textbooks for courses at a nonpublic school, associate-degree-

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

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

98 6. Within three days, notify the program administrator of the date on which the parent's student  
99 ceases to reside in the resident school division or does not meet the definition of a qualified student. The  
100 parent shall immediately cease to incur additional qualified expenses for his child and shall, as directed  
101 by the program administrator, reimburse to the Treasury the remaining amount in the savings account. For  
102 savings accounts that have been open for at least one full school year, a savings account containing funds  
103 may remain open and active for up to an additional six-month grace period so that the parent can make  
104 payments from the savings account for qualified expenses that may have been incurred prior to the

105 student's withdrawal from the program but not invoiced by the education service provider at the time of  
106 the parent's notification to the program administrator. If a student who withdraws from the program for  
107 any reason returns to the program during the six-month grace period, payments into the student's existing  
108 savings account may resume if the savings account is still open and active. When no funds remain in the  
109 student's savings account, the program administrator shall close the savings account.

110 D. Each qualified student whose parent has applied for and received a savings account shall be  
111 counted in the March 31 average daily membership or fall membership of the resident school division as  
112 a full-time equivalent student and shall be identified as such for the purpose of the calculation of the state  
113 share to be transferred to the savings account and to the Treasury as the administrative expense. No such  
114 qualified student shall be counted in the resident school division's required effort to meet actual need for  
115 required matching local funds as prescribed by the Standards of Quality. The inclusion of any qualified  
116 student in the average daily membership or fall membership of the resident school division shall impose  
117 no other requirement on the resident school division aside from those set forth in this 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 sales  
122 tax funding in basic aid and any per pupil share of state special education funding to which the qualified  
123 student is eligible and (ii) to the Treasury's administrative expense account an amount that is not more  
124 than one-fourth of five percent of such funds. The Treasury shall not transfer federal funds, the local share  
125 of Standards of Quality per pupil funds, or any portion of such local share to a savings account.

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

130 G. The program administrator shall give written notice to any parent applying for or requesting  
131 renewal of a savings account as to the disposition of the application or renewal request no later than 14

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

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

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

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

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

168 **§ 22.1-222.3. Savings account administration.**

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

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

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

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

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

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

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

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

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

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

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

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

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

207 13. Pursuant to subdivision C 3 of § 22.1-222.2, ensure that parents of students with disabilities  
208 receive notice that participation in the program is a parental placement under 20 U.S.C. § 1412 of the  
209 federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.), along with an



210 explanation of the rights that parentally placed students possess under IDEA and any applicable state laws  
211 and regulations.

212 **§ 22.1-222.4. Policies, processes, and procedures.**

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

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

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

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

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

238 **§ 22.1-222.5. Scope of article.**

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

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

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

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

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

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

257 **§ 22.1-222.6. Responsibilities of public elementary and secondary schools and participating**  
258 **school divisions.**

259 A public elementary or secondary school or participating school division that previously enrolled  
260 a qualified student shall provide a private school that is also an education service provider and that has

261 enrolled a qualified student with a complete copy of the student's school records, while complying with  
262 the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.

263 **§ 22.1-222.7. Legal proceedings.**

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

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

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

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