

HOUSE BILL NO. 1160

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 7, 2024)

(Patron Prior to Substitute--Delegate Scott, P.A.)

A BILL to amend and reenact § 58.1-322.03, as it is currently effective and as it may become effective, of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 1.2, consisting of a section numbered 40.1-28.13, relating to portable benefit accounts; taxable income; deductions.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-322.03, as it is currently effective and as it may become effective, of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 40.1 an article numbered 1.2, consisting of a section numbered 40.1-28.13, as follows:

§ 58.1-322.03. (For contingent expiration date, see Acts 2023, Sp. Sess. I, ch. 1, cl. 22) Virginia taxable income; deductions.

In computing Virginia taxable income pursuant to § 58.1-322, there shall be deducted from Virginia adjusted gross income as defined in § 58.1-321:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount that, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of 18 cents per mile; or

b. Provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return: (i) for taxable years beginning before January 1, 2019, and on and after January 1, 2026, \$3,000 for single individuals and \$6,000 for married persons (one-half of such amounts in the case of a married

27 individual filing a separate return); (ii) for taxable years beginning on and after January 1, 2019, but before
28 January 1, 2022, \$4,500 for single individuals and \$9,000 for married persons (one-half of such amounts
29 in the case of a married individual filing a separate return); and (iii) for taxable years beginning on and
30 after January 1, 2022, but before January 1, 2026, \$8,000 for single individuals and \$16,000 for married
31 persons (one-half of such amounts in the case of a married individual filing a separate return). For purposes
32 of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable
33 year may compute the deduction only with respect to earned income.

34 2. a. A deduction in the amount of \$930 for each personal exemption allowable to the taxpayer for
35 federal income tax purposes.

36 b. Each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be
37 entitled to an additional personal exemption in the amount of \$800.

38 The additional deduction for blind or aged taxpayers allowed under this subdivision shall be
39 allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income
40 tax purposes.

41 3. A deduction equal to the amount of employment-related expenses upon which the federal credit
42 is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services
43 necessary for gainful employment.

44 4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home
45 under permanent foster care placement as defined in § 63.2-908, provided that the taxpayer can also claim
46 the child as a personal exemption under § 151 of the Internal Revenue Code.

47 5. a. A deduction in the amount of \$12,000 for individuals born on or before January 1, 1939.

48 b. A deduction in the amount of \$12,000 for individuals born after January 1, 1939, who have
49 attained the age of 65. This deduction shall be reduced by \$1 for every \$1 that the taxpayer's adjusted
50 federal adjusted gross income exceeds \$50,000 for single taxpayers or \$75,000 for married taxpayers. For
51 married taxpayers filing separately, the deduction shall be reduced by \$1 for every \$1 that the total
52 combined adjusted federal adjusted gross income of both spouses exceeds \$75,000.

53 For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal
54 adjusted gross income minus any benefits received under Title II of the Social Security Act and other
55 benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as
56 amended.

57 6. The amount an individual pays as a fee for an initial screening to become a possible bone marrow
58 donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction
59 for the payment of such fee on his federal income tax return.

60 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
61 during the taxable year for a prepaid tuition contract or college savings trust account entered into with the
62 Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided
63 in subdivision b, the amount deducted on any individual income tax return in any taxable year shall be
64 limited to \$4,000 per prepaid tuition contract or college savings trust account. No deduction shall be
65 allowed pursuant to this subdivision 7 if such payments or contributions are deducted on the purchaser's
66 or contributor's federal income tax return. If the purchase price or annual contribution to a college savings
67 trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years
68 until the purchase price or college savings trust contribution has been fully deducted; however, except as
69 provided in subdivision b, in no event shall the amount deducted in any taxable year exceed \$4,000 per
70 contract or college savings trust account. Notwithstanding the statute of limitations on assessments
71 contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year
72 or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher
73 education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death,
74 disability, or receipt of a scholarship. For the purposes of this subdivision, "purchaser" or "contributor"
75 means the person shown as such on the records of the Virginia College Savings Plan as of December 31
76 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or college savings
77 trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition
78 contract or college savings trust account, including, but not limited to, carryover and recapture of
79 deductions.

80 b. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who
81 has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000
82 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be
83 allowed a deduction for the full amount paid for the contract or contributed to a college savings trust
84 account, less any amounts previously deducted.

85 8. The total amount an individual actually contributed in funds to the Virginia Public School
86 Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1,
87 provided that the individual has not claimed a deduction for such amount on his federal income tax return.

88 9. An amount equal to 20 percent of the tuition costs incurred by an individual employed as a
89 primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1
90 to attend continuing teacher education courses that are required as a condition of employment; however,
91 the deduction provided by this subdivision shall be available only if (i) the individual is not reimbursed
92 for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition
93 costs on his federal income tax return.

94 10. The amount an individual pays annually in premiums for long-term health care insurance,
95 provided that the individual has not claimed a deduction for federal income tax purposes, or, for taxable
96 years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on and
97 after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the
98 individual during the taxable year shall be allowed if the individual has claimed a federal income tax
99 deduction for such taxable year for long-term health care insurance premiums paid by him.

100 11. Contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses,
101 as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such
102 payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

103 a. If the payment is received in installment payments, then the recognized gain may be subtracted
104 in the taxable year immediately following the year in which the installment payment is received.

105 b. If the payment is received in a single payment, then 10 percent of the recognized gain may be
106 subtracted in the taxable year immediately following the year in which the single payment is received.
107 The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

108 12. An amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-
109 600 et seq.), not to exceed \$500 in each taxable year, in purchasing for his own use the following items of
110 tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size
111 refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the U.S.
112 Environmental Protection Agency and the U.S. Department of Energy; (ii) any fuel cell that (a) generates
113 electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than
114 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a
115 coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat
116 pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a
117 heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least
118 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5;
119 (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced
120 oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace
121 with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

122 13. The lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living
123 tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12
124 months of such donation, provided that the donor has not taken a medical deduction in accordance with
125 the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in
126 the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

127 14. For taxable years beginning on and after January 1, 2013, the amount an individual age 66 or
128 older with earned income of at least \$20,000 for the year and federal adjusted gross income not in excess
129 of \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the
130 individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a
131 deduction for such premiums under federal income tax laws. As used in this subdivision, "earned income"

132 means the same as that term is defined in § 32(c) of the Internal Revenue Code. The deduction shall not
133 be allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b)
134 claimed a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another
135 provision of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to
136 this chapter.

137 15. Business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code:

138 a. For taxable years beginning on and after January 1, 2018, but before January 1, 2022, 20 percent
139 of such disallowed business interest;

140 b. For taxable years beginning on and after January 1, 2022, but before January 1, 2024, 30 percent
141 of such disallowed business interest;

142 c. For taxable years beginning on and after January 2, 2024, 50 percent of such disallowed business
143 interest.

144 For purposes of subdivision 15, "business interest" means the same as that term is defined under §
145 163(j) of the Internal Revenue Code.

146 16. For taxable years beginning on and after January 1, 2019, the actual amount of real and personal
147 property taxes imposed by the Commonwealth or any other taxing jurisdiction not otherwise deducted
148 solely on account of the dollar limitation imposed on individual deductions by § 164(b)(6)(B) of the
149 Internal Revenue Code.

150 17. For taxable years beginning before January 1, 2021, up to \$100,000 of the amount that is not
151 deductible when computing federal adjusted gross income solely on account of the portion of subdivision
152 B 10 of § 58.1-301 related to Paycheck Protection Program loans.

153 18. For taxable years beginning on and after January 1, 2022, but before January 1, 2025, the lesser
154 of \$500 or the actual amount paid or incurred for eligible educator qualifying expenses. For purposes of
155 this subdivision, "eligible educator" means an individual who for at least 900 hours during the taxable
156 year in which the credit under this section is claimed served as a teacher licensed pursuant to Chapter 15
157 (§ 22.1-289.1 et seq.) of Title 22.1, instructor, student counselor, principal, special needs personnel, or
158 student aide serving accredited public or private primary and secondary school students in Virginia, and

159 "qualifying expenses" means 100 percent of the amount paid or incurred by an eligible educator during
160 the taxable year for participation in professional development courses and the purchase of books, supplies,
161 computer equipment (including related software and services), other educational and teaching equipment,
162 and supplementary materials used directly in that individual's service to students as an eligible educator,
163 provided that such purchases were neither reimbursed nor claimed as a deduction on the eligible educator's
164 federal income tax return for such taxable year.

165 19. For taxable years beginning on or after January 1, 2024, but before January 1, 2026, the amount
166 of the contributions made to a portable benefit account by an independent contractor, as those terms are
167 defined in § 40.1-28.13, during the taxable year. The Department shall prorate such deduction among
168 taxpayers who properly claim it to prevent revenue loss as a result of the deduction from exceeding \$5
169 million.

170 **§ 58.1-322.03. (For contingent effective date, see Acts 2023, Sp. Sess. I, ch. 1, cl. 22) Virginia**
171 **taxable income; deductions.**

172 In computing Virginia taxable income pursuant to § 58.1-322, there shall be deducted from
173 Virginia adjusted gross income as defined in § 58.1-321:

174 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
175 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
176 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on
177 such federal return and increased by an amount that, when added to the amount deducted under § 170 of
178 the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes
179 at a rate of 18 cents per mile; or

180 b. Provided that the taxpayer has not itemized deductions for the taxable year on his federal income
181 tax return: (i) for taxable years beginning before January 1, 2019, and on and after January 1, 2026, \$3,000
182 for single individuals and \$6,000 for married persons (one-half of such amounts in the case of a married
183 individual filing a separate return); (ii) for taxable years beginning on and after January 1, 2019, but before
184 January 1, 2022, \$4,500 for single individuals and \$9,000 for married persons (one-half of such amounts
185 in the case of a married individual filing a separate return); (iii) for taxable years beginning on and after

186 January 1, 2022, but before January 1, 2024, \$8,000 for single individuals and \$16,000 for married persons
187 (one-half of such amounts in the case of a married individual filing a separate return); and (iv) for taxable
188 years beginning on and after January 1, 2024, but before January 1, 2026, \$8,500 for single individuals
189 and \$17,000 for married persons (one-half of such amounts in the case of a married individual filing a
190 separate return). For purposes of this section, any person who may be claimed as a dependent on another
191 taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

192 2. a. A deduction in the amount of \$930 for each personal exemption allowable to the taxpayer for
193 federal income tax purposes.

194 b. Each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be
195 entitled to an additional personal exemption in the amount of \$800.

196 The additional deduction for blind or aged taxpayers allowed under this subdivision shall be
197 allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income
198 tax purposes.

199 3. A deduction equal to the amount of employment-related expenses upon which the federal credit
200 is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services
201 necessary for gainful employment.

202 4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home
203 under permanent foster care placement as defined in § 63.2-908, provided that the taxpayer can also claim
204 the child as a personal exemption under § 151 of the Internal Revenue Code.

205 5. a. A deduction in the amount of \$12,000 for individuals born on or before January 1, 1939.

206 b. A deduction in the amount of \$12,000 for individuals born after January 1, 1939, who have
207 attained the age of 65. This deduction shall be reduced by \$1 for every \$1 that the taxpayer's adjusted
208 federal adjusted gross income exceeds \$50,000 for single taxpayers or \$75,000 for married taxpayers. For
209 married taxpayers filing separately, the deduction shall be reduced by \$1 for every \$1 that the total
210 combined adjusted federal adjusted gross income of both spouses exceeds \$75,000.

211 For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal
212 adjusted gross income minus any benefits received under Title II of the Social Security Act and other

213 benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as
214 amended.

215 6. The amount an individual pays as a fee for an initial screening to become a possible bone marrow
216 donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction
217 for the payment of such fee on his federal income tax return.

218 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
219 during the taxable year for a prepaid tuition contract or college savings trust account entered into with the
220 Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided
221 in subdivision b, the amount deducted on any individual income tax return in any taxable year shall be
222 limited to \$4,000 per prepaid tuition contract or college savings trust account. No deduction shall be
223 allowed pursuant to this subdivision 7 if such payments or contributions are deducted on the purchaser's
224 or contributor's federal income tax return. If the purchase price or annual contribution to a college savings
225 trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years
226 until the purchase price or college savings trust contribution has been fully deducted; however, except as
227 provided in subdivision b, in no event shall the amount deducted in any taxable year exceed \$4,000 per
228 contract or college savings trust account. Notwithstanding the statute of limitations on assessments
229 contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year
230 or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher
231 education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death,
232 disability, or receipt of a scholarship. For the purposes of this subdivision, "purchaser" or "contributor"
233 means the person shown as such on the records of the Virginia College Savings Plan as of December 31
234 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or college savings
235 trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition
236 contract or college savings trust account, including, but not limited to, carryover and recapture of
237 deductions.

238 b. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who
239 has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000

240 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be
241 allowed a deduction for the full amount paid for the contract or contributed to a college savings trust
242 account, less any amounts previously deducted.

243 8. The total amount an individual actually contributed in funds to the Virginia Public School
244 Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1,
245 provided that the individual has not claimed a deduction for such amount on his federal income tax return.

246 9. An amount equal to 20 percent of the tuition costs incurred by an individual employed as a
247 primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1
248 to attend continuing teacher education courses that are required as a condition of employment; however,
249 the deduction provided by this subdivision shall be available only if (i) the individual is not reimbursed
250 for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition
251 costs on his federal income tax return.

252 10. The amount an individual pays annually in premiums for long-term health care insurance,
253 provided that the individual has not claimed a deduction for federal income tax purposes, or, for taxable
254 years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on and
255 after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the
256 individual during the taxable year shall be allowed if the individual has claimed a federal income tax
257 deduction for such taxable year for long-term health care insurance premiums paid by him.

258 11. Contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses,
259 as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such
260 payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

261 a. If the payment is received in installment payments, then the recognized gain may be subtracted
262 in the taxable year immediately following the year in which the installment payment is received.

263 b. If the payment is received in a single payment, then 10 percent of the recognized gain may be
264 subtracted in the taxable year immediately following the year in which the single payment is received.

265 The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

266 12. An amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-
267 600 et seq.), not to exceed \$500 in each taxable year, in purchasing for his own use the following items of
268 tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size
269 refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the U.S.
270 Environmental Protection Agency and the U.S. Department of Energy; (ii) any fuel cell that (a) generates
271 electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than
272 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a
273 coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat
274 pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a
275 heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least
276 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5;
277 (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced
278 oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace
279 with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

280 13. The lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living
281 tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12
282 months of such donation, provided that the donor has not taken a medical deduction in accordance with
283 the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in
284 the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

285 14. For taxable years beginning on and after January 1, 2013, the amount an individual age 66 or
286 older with earned income of at least \$20,000 for the year and federal adjusted gross income not in excess
287 of \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the
288 individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a
289 deduction for such premiums under federal income tax laws. As used in this subdivision, "earned income"
290 means the same as that term is defined in § 32(c) of the Internal Revenue Code. The deduction shall not
291 be allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b)
292 claimed a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another

293 provision of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to
294 this chapter.

295 15. Business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code:

296 a. For taxable years beginning on and after January 1, 2018, but before January 1, 2022, 20 percent
297 of such disallowed business interest;

298 b. For taxable years beginning on and after January 1, 2022, but before January 1, 2024, 30 percent
299 of such disallowed business interest;

300 c. For taxable years beginning on and after January 2, 2024, 50 percent of such disallowed business
301 interest.

302 For purposes of subdivision 15, "business interest" means the same as that term is defined under §
303 163(j) of the Internal Revenue Code.

304 16. For taxable years beginning on and after January 1, 2019, the actual amount of real and personal
305 property taxes imposed by the Commonwealth or any other taxing jurisdiction not otherwise deducted
306 solely on account of the dollar limitation imposed on individual deductions by § 164(b)(6)(B) of the
307 Internal Revenue Code.

308 17. For taxable years beginning before January 1, 2021, up to \$100,000 of the amount that is not
309 deductible when computing federal adjusted gross income solely on account of the portion of subdivision
310 B 10 of § 58.1-301 related to Paycheck Protection Program loans.

311 18. For taxable years beginning on and after January 1, 2022, but before January 1, 2025, the lesser
312 of \$500 or the actual amount paid or incurred for eligible educator qualifying expenses. For purposes of
313 this subdivision, "eligible educator" means an individual who for at least 900 hours during the taxable
314 year in which the credit under this section is claimed served as a teacher licensed pursuant to Chapter 15
315 (§ 22.1-289.1 et seq.) of Title 22.1, instructor, student counselor, principal, special needs personnel, or
316 student aide serving accredited public or private primary and secondary school students in Virginia, and
317 "qualifying expenses" means 100 percent of the amount paid or incurred by an eligible educator during
318 the taxable year for participation in professional development courses and the purchase of books, supplies,
319 computer equipment (including related software and services), other educational and teaching equipment,

320 and supplementary materials used directly in that individual's service to students as an eligible educator,
321 provided that such purchases were neither reimbursed nor claimed as a deduction on the eligible educator's
322 federal income tax return for such taxable year.

323 19. For taxable years beginning on or after January 1, 2024, but before January 1, 2026, the amount
324 of the contributions made to a portable benefit account by an independent contractor, as those terms are
325 defined in § 40.1-28.13, during the taxable year. The Department shall prorate such deduction among
326 taxpayers who properly claim it to prevent revenue loss as a result of the deduction from exceeding \$5
327 million.

328 Article 1.2.

329 Portable Benefit Accounts.

330 **§ 40.1-28.13. Portable benefit accounts.**

331 A. As used in this section:

332 "Independent contractor" means a person hired or contracted to perform work as an independent
333 contractor as determined by the most recent version of the guidelines published by the Internal Revenue
334 Service, including its interpretation of common law doctrine on independent contractors and any
335 regulations that the Internal Revenue Service has promulgated regarding determining whether an
336 employee is an independent contractor, including 26 C.F.R. § 31.3121(d)-1.

337 "Portable benefit account" means an account offered through and administered by a bank, credit
338 union, or other depository institution that provides for the payment of (i) health insurance premiums,
339 copays, deductibles, coinsurance, or other costs related to maintaining health insurance coverage; (ii)
340 coverage for or the direct purchase of prescription drugs; (iii) fees or costs related to a health care sharing
341 ministry arrangement; (iv) fees or costs related to a direct primary care agreement; or (v) other health care
342 costs related to insurance coverage, alternative care, or direct-pay or cash-pay services and is assigned to
343 an individual beneficiary and is not associated with a specific employer or hiring party.

344 B. An individual who is a resident of the Commonwealth and has worked, been hired, or contracted
345 as an independent contractor during the current tax year may open and contribute to a portable benefit
346 account for the use of the individual, the individual's spouse, and any dependents in the household.

347 Distributions from a portable benefit account shall be limited to those items specified in the definition of
348 a portable benefit account.

349 The beneficiary of a portable benefit account shall retain ownership and control of the account in
350 the event that the work or contract has been completed or otherwise terminated. The individual may
351 continue to make contributions to such account and take distributions from such account regardless of the
352 individual's status as an independent contractor.

353 #