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SENATE BILL NO. 1404

Offered January 22, 2015

A *BILL to amend and reenact §§ 23-38.75, 23-38.76, 23-38.77, 23-38.80, 23-38.81, and 58.1-322 of the Code of Virginia, relating to establishing Achieving a Better Life Experience (ABLE) savings trust accounts to be administered by the Virginia College Savings Plan to assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities.*

Patron—Stosch

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-38.75, 23-38.76, 23-38.77, 23-38.80, 23-38.81, and 58.1-322 of the Code of Virginia are amended and reenacted as follows:

§ 23-38.75. Definitions.

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

"ABLE savings trust account" means an account established pursuant to this chapter to assist individuals and families to save private funds to support individuals with disabilities to maintain health, independence, and quality of life, with such account used to apply distributions for qualified disability expenses for an eligible individual, both as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"Board" means the Board of the Virginia College Savings Plan.

"College savings trust account" means an account established pursuant to this chapter to assist individuals and families to enhance the accessibility and affordability of higher education, with such account used to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"Contributor" means a person who contributes money to a savings trust account established pursuant to this chapter on behalf of a qualified beneficiary and who is listed as the owner of the savings trust account.

"Plan" means the Virginia College Savings Plan.

"Prepaid tuition contract" means the contract entered into by the Board and a purchaser pursuant to this chapter for the advance payment of tuition at a fixed, guaranteed level by the purchaser for a qualified beneficiary to attend any two-year or four-year public institution of higher education in the Commonwealth to which the qualified beneficiary is admitted.

"Purchaser" means a person who makes or is obligated to make advance payments in accordance with a prepaid tuition contract and who is listed as the owner of the prepaid tuition contract.

"Qualified beneficiary" or "beneficiary" means (i) a resident of the Commonwealth, as determined by the Board, who is the beneficiary of a *prepaid tuition* contract and who may apply advance tuition payments to tuition as set forth in this chapter; (ii) a beneficiary of a *prepaid tuition* contract purchased by a resident of the Commonwealth, as determined by the Board, who may apply advance tuition payments to tuition as set forth in this chapter; or (iii) a beneficiary of a savings trust account established pursuant to this chapter.

"Savings trust account" means an account established by a contributor pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law *ABLE savings trust account or a college savings trust account.*

"Savings trust agreement" means the agreement entered into by the Board and a contributor establishing a savings trust account.

"Tuition" means the quarter, semester, or term charges imposed for undergraduate tuition by any two-year or four-year public institution of higher education in the Commonwealth and all mandatory fees required as a condition of enrollment of all students. A beneficiary may apply benefits under a prepaid tuition contract and distributions from a savings trust account toward graduate-level tuition and toward tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the Board in its sole discretion.

§ 23-38.76. Virginia College Savings Plan established; governing board; terms.

A. To enhance the accessibility and affordability of higher education for all citizens of the

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59 Commonwealth, there is hereby established as a body politic and corporate and an independent agency
 60 of the Commonwealth, the Virginia College Savings Plan (the Plan). ~~Moneys~~ *Certain moneys* of the
 61 Plan shall be held in the state treasury in a special nonreverting fund (the Fund), which shall consist of
 62 that are contributions to savings trust accounts made pursuant to this chapter, except as otherwise
 63 authorized or provided in this chapter, shall be deposited as soon as practicable in a separate account
 64 or accounts in banks or trust companies organized under the laws of the Commonwealth, national
 65 banking associations, federal home loan banks, or to the extent then permitted by law, savings
 66 institutions organized under the laws of the Commonwealth or the United States. The savings program
 67 moneys in such accounts shall be paid out on checks, drafts payable on demand, electronic wire
 68 transfers, or other means authorized by officers or employees of the Plan.

69 All other moneys of the Plan, including payments received pursuant to prepaid tuition contracts or
 70 contributions to savings trust accounts made pursuant to this chapter, bequests, endowments or, grants
 71 from the United States government, or its agencies and or instrumentalities, and any other available
 72 sources of funds, public or private, shall be first deposited in the state treasury in a special nonreverting
 73 fund (the Fund). Such moneys then shall be deposited as soon as practicable in a separate account or
 74 accounts in banks or trust companies organized under the laws of the Commonwealth, national banking
 75 associations, federal home loan banks, or to the extent then permitted by law, savings institutions
 76 organized under the laws of the Commonwealth or the United States. Benefits related to prepaid tuition
 77 contracts and Plan operating expenses shall be paid from the Fund. Any moneys remaining in the Fund
 78 at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and
 79 income earned from the investment of such funds shall remain in the Fund and be credited to it.

80 B. The Plan shall be administered by an 11-member Board, as follows: the Director of the State
 81 Council of Higher Education for Virginia or his designee; the Chancellor of the Virginia Community
 82 College System or his designee; the State Treasurer or his designee; the State Comptroller or his
 83 designee; and seven nonlegislative citizen members, four to be appointed by the Governor, one to be
 84 appointed by the Senate Committee on Rules and two to be appointed by the Speaker of the House of
 85 Delegates, with significant experience in finance, accounting, law, or investment management.

86 Appointments shall be for terms of four years, except that appointments to fill vacancies shall be for
 87 the unexpired terms. No person shall be appointed to serve for or during more than two successive
 88 four-year terms, but after the expiration of a term of three years or less, or after the expiration of the
 89 remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such
 90 member if appointed thereto. Ex officio members of the Board shall serve terms coincident with their
 91 terms of office.

92 C. Members of the Board shall receive no compensation but shall be reimbursed for actual expenses
 93 incurred in the performance of their duties. The Board shall elect from its membership a chairman and a
 94 vice-chairman annually. A majority of the members of the Board shall constitute a quorum.

95 **§ 23-38.77. Powers and duties of Board.**

96 The Board shall administer the Plan established by this chapter and shall develop and implement
 97 programs for (i) the prepayment of undergraduate tuition, as defined in § 23-38.75, at a fixed,
 98 guaranteed level for application at a two-year or four-year public institution of higher education in the
 99 Commonwealth and; (ii) contributions to college savings trust accounts established pursuant to this
 100 chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward
 101 qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the
 102 Internal Revenue Code of 1986, as amended, or other applicable federal law; and (iii) contributions to
 103 ABLE savings trust accounts established pursuant to this chapter on behalf of a qualified beneficiary in
 104 order to apply distributions from the account toward qualified disability expenses for an eligible
 105 individual, both as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other
 106 applicable federal law. In addition, the Board shall have the power and duty to:

107 1. Invest moneys in the Plan in any instruments, obligations, securities, or property deemed
 108 appropriate by the Board;

109 2. Develop requirements, procedures, and guidelines regarding prepaid tuition contracts and savings
 110 trust accounts, including, but not limited to, residency and other eligibility requirements; the number of
 111 participants in the Plan; the termination, withdrawal, or transfer of payments under a prepaid tuition
 112 contract or savings trust account; time limitations for the use of tuition benefits or savings trust account
 113 distributions; and payment schedules;

114 3. Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting
 115 services and contracts with other states to provide savings trust accounts for residents of contracting
 116 states;

117 4. Procure insurance against any loss in connection with the Plan's property, assets, or activities and
 118 indemnifying Board members from personal loss or accountability from liability arising from any action
 119 or inaction as a Board member;

120 5. Make arrangements with two-year and four-year public institutions in the Commonwealth to fulfill

121 obligations under prepaid tuition contracts and to apply college savings trust account distributions,
122 including, but not limited to, payment from the Plan of the then actual in-state undergraduate tuition cost
123 on behalf of a qualified beneficiary of a prepaid tuition contract to the institution in which the
124 beneficiary is admitted and enrolled and application of such benefits towards graduate-level tuition and
125 towards tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529
126 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the
127 Board in its sole discretion;

128 6. Develop and implement scholarship and/or matching grant programs, as the Board may deem
129 appropriate, to further its goal of making higher education more affordable and accessible to all citizens
130 of the Commonwealth;

131 7. Apply for, accept, and expend gifts, grants, or donations from public or private sources to enable
132 it to carry out its objectives;

133 8. Promulgate regulations and procedures and to perform any act or function consistent with the
134 purposes of this chapter; and

135 9. Reimburse, at its option, all or part of the cost of employing legal counsel and such other costs as
136 are demonstrated to have been reasonably necessary for the defense of any Board member, officer, or
137 employee of the Plan upon the acquittal, dismissal of charges, nolle prosequi, or any other final
138 disposition concluding the innocence of such member, officer or employee who is brought before any
139 regulatory body, summoned before any grand jury, investigated by any law-enforcement agency,
140 arrested, indicted, or otherwise prosecuted on any criminal charge arising out of any act committed in
141 the discharge of his official duties which alleges a violation of state or federal securities laws. The
142 Board shall provide for the payment of such legal fees and expenses out of funds appropriated or
143 otherwise available to the Board.

144 **§ 23-38.80. Standard of care; investment and administration of Plan.**

145 A. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the
146 benefit of the Plan, the Board, and any person, investment manager, or committee to whom the Board
147 delegates any of its investment authority, shall act as trustee and shall exercise the judgment of care
148 under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise
149 in the management of their own affairs, not in regard to speculation but to the permanent disposition of
150 funds, considering the probable income as well as the probable safety of their capital. If the annual
151 accounting and audit required by § 23-38.85 reveal that there are insufficient funds to ensure the
152 actuarial soundness of the Plan, the Board shall be authorized to adjust the terms of subsequent prepaid
153 tuition contracts, arrange refunds for current purchasers to ensure actuarial soundness, or take such other
154 action the Board deems appropriate.

155 B. The assets of the Plan shall be preserved, invested, and expended solely pursuant to and for the
156 purposes of this chapter and shall not be loaned or otherwise transferred or used by the Commonwealth
157 for any other purpose. Within the standard prescribed in subsection A of this section, the Board, and any
158 person, investment manager, or committee to whom the Board delegates any of its investment authority,
159 is authorized to acquire and retain every kind of property and every kind of investment, specifically
160 including but not limited to (i) debentures and other corporate obligations of foreign or domestic
161 corporations; (ii) common or preferred stocks traded on foreign or domestic stock exchanges; (iii) not
162 less than all of the stock or 100 percent ownership of a corporation or other entity organized by the
163 Board under the laws of the Commonwealth for the purposes of acquiring and retaining real property
164 that the Board is authorized under this chapter to acquire and retain; and (iv) securities of any open-end
165 or closed-end management type investment company or investment trust registered under the federal
166 Investment Company Act of 1940, as amended, including such investment companies or investment
167 trusts which, in turn, invest in the securities of such investment companies or investment trusts, which
168 persons of prudence, discretion, and intelligence acquire or retain for their own account. Within the
169 limitations of the foregoing standard, the Board may retain property properly acquired, without time
170 limitation and without regard to its suitability for original purchase. This section shall not be construed
171 to prohibit the investment of the Plan, by purchase or otherwise, in bonds, notes, or other obligations of
172 the Commonwealth or its agencies and instrumentalities.

173 All provisions of this subsection shall apply to the portion of the Plan assets attributable to savings
174 trust account contributions and the earnings thereon.

175 C. The selection of services related to the operation and administration of the Plan, including, but not
176 limited to, contracts or agreements for the management, purchase, or sale of authorized investments or
177 actuarial, ~~record-keeping~~ recordkeeping, or consulting services, shall be governed by the foregoing
178 standard and shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et
179 seq.).

180 D. No Board member nor any person, investment manager, or committee to whom the Board
181 delegates any of its investment authority who acts within the standard of care set forth in subsection A

182 shall be held personally liable for losses suffered by the Plan on investments made pursuant to this
183 chapter.

184 E. To the extent necessary to lawfully administer the Plan and in order to comply with federal, state,
185 and local tax reporting requirements, the Plan may obtain all necessary social security account or tax
186 identification numbers *and such other data as the Plan deems necessary for such purposes, whether*
187 *from a contributor or purchaser or from another state agency.*

188 **§ 23-38.81. Prepaid tuition contracts and college and ABLE savings trust agreements; terms;**
189 **termination; etc.**

190 A. Each prepaid tuition contract made pursuant to this chapter shall include the following terms and
191 provisions:

192 1. The amount of payment or payments and the number of payments required from a purchaser on
193 behalf of a qualified beneficiary;

194 2. The terms and conditions under which purchasers shall remit payments, including the dates of
195 such payments;

196 3. Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties;

197 4. The name and date of birth of the qualified beneficiary on whose behalf the contract is made;

198 5. Terms and conditions for a substitution for the qualified beneficiary originally named;

199 6. Terms and conditions for termination of the contract, including any refunds, withdrawals, or
200 transfers of tuition prepayments, and the name of the person or persons entitled to terminate the
201 contract;

202 7. The time period during which the qualified beneficiary must claim benefits from the Plan;

203 8. The number of credit hours or quarters, semesters, or terms contracted for by the purchaser;

204 9. All other rights and obligations of the purchaser and the trust; and

205 10. Any other terms and conditions which the Board deems necessary or appropriate, including those
206 necessary to conform the contract with the requirements of Internal Revenue Code § 529, as amended,
207 which specifies the requirements for qualified state tuition programs.

208 B. Each *college* savings trust agreement made pursuant to this chapter shall include the following
209 terms and provisions:

210 1. The maximum and minimum contribution allowed on behalf of each qualified beneficiary for the
211 payment of qualified higher education expenses at eligible institutions, both as defined in § 529 of the
212 Internal Revenue Code of 1986, as amended, or other applicable federal law;

213 2. Provisions for withdrawals, refunds, transfers, and any penalties;

214 3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust
215 account is opened;

216 4. Terms and conditions for a substitution for the qualified beneficiary originally named;

217 5. Terms and conditions for termination of the account, including any refunds, withdrawals, or
218 transfers, and applicable penalties, and the name of the person or persons entitled to terminate the
219 account;

220 6. The time period during which the qualified beneficiary must use benefits from the savings trust
221 account;

222 7. All other rights and obligations of the contributor and the Plan; and

223 8. Any other terms and conditions which the Board deems necessary or appropriate, including those
224 necessary to conform the savings trust account with the requirements of § 529 of the Internal Revenue
225 Code of 1986, as amended, or other applicable federal law.

226 C. *Each ABLE savings trust agreement made pursuant to this chapter shall include the following*
227 *terms and provisions:*

228 1. *The maximum and minimum annual contribution and maximum account balance allowed on behalf*
229 *of each qualified beneficiary for the payment of qualified disability expenses, as defined in § 529A of the*
230 *Internal Revenue Code of 1986, as amended, or other applicable federal law;*

231 2. *Provisions for withdrawals, refunds, transfers, return of excess contributions, and any penalties;*

232 3. *The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust*
233 *account is opened;*

234 4. *Terms and conditions for a substitution for the qualified beneficiary originally named;*

235 5. *Terms and conditions for termination of the account, including any transfers to the state upon the*
236 *death of the qualified beneficiary, refunds, withdrawals, transfers, applicable penalties, and the name of*
237 *the person or persons entitled to terminate the account;*

238 6. *The time period during which the qualified beneficiary must use benefits from the savings trust*
239 *account;*

240 7. *All other rights and obligations of the contributor and the Plan; and*

241 8. *Any other terms and conditions that the Board deems necessary or appropriate, including those*
242 *necessary to conform the savings trust account with the requirements of § 529A of the Internal Revenue*
243 *Code of 1986, as amended, or other applicable federal law.*

244 D. In addition to the provisions required by subsection A of this section, each prepaid tuition
 245 contract shall include provisions for the application of tuition prepayments (i) at accredited, nonprofit,
 246 independent institutions of higher education located in Virginia, including actual interest and income
 247 earned on such prepayments and (ii) at public and at accredited, nonprofit, independent institutions of
 248 higher education located in other states, including principal and reasonable return on such principal as
 249 determined by the Board. Payments authorized for accredited, nonprofit, independent institutions located
 250 in Virginia may not exceed the projected highest payment made for tuition at a public institution of
 251 higher education in Virginia in the same academic year, less a fee to be determined by the Board.
 252 Payments authorized for public and for accredited, nonprofit, independent institutions of higher education
 253 located in other states may not exceed the projected average payment made for tuition at a public
 254 institution of higher education in Virginia in the same academic year, less a fee to be determined by the
 255 Board.

256 D. E. All prepaid tuition contracts and savings trust agreements shall specifically provide that, if after
 257 a specified period of time the contract or savings trust agreement has not been terminated nor the
 258 qualified beneficiary's rights exercised, the Board, after making reasonable effort to contact the purchaser
 259 or contributor and the qualified beneficiary or their agents, shall report such unclaimed moneys to the
 260 State Treasurer pursuant to § 55-210.12.

261 E. F. Notwithstanding any provision of law to the contrary, money in the Plan shall be exempt from
 262 creditor process and shall not be liable to attachment, garnishment, or other process, nor shall it be
 263 seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any
 264 debt or liability of any purchaser, contributor or beneficiary, *provided, however, that the state of*
 265 *residence of the beneficiary of an ABLE savings trust account shall be a creditor of such account in the*
 266 *event of the death of the beneficiary.*

267 F. G. No contract or savings trust account shall be assigned for the benefit of creditors, used as
 268 security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge,
 269 encumbrance, or charge.

270 G. H. The Board's decision on any dispute, claim, or action arising out of or related to a prepaid
 271 tuition contract or savings trust agreement made or entered into pursuant to this chapter or benefits
 272 thereunder shall be considered a case decision as defined in § 2.2-4001 and all proceedings related
 273 thereto shall be conducted pursuant to Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.
 274 Judicial review shall be exclusively provided pursuant to Article 5 (§ 2.2-4025 et seq.) of the
 275 Administrative Process Act.

276 **§ 58.1-322. Virginia taxable income of residents.**

277 A. The Virginia taxable income of a resident individual means his federal adjusted gross income for
 278 the taxable year, which excludes combat pay for certain members of the Armed Forces of the United
 279 States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications
 280 specified in this section.

281 B. To the extent excluded from federal adjusted gross income, there shall be added:

282 1. Interest, less related expenses to the extent not deducted in determining federal income, on
 283 obligations of any state other than Virginia, or of a political subdivision of any such other state unless
 284 created by compact or agreement to which Virginia is a party;

285 2. Interest or dividends, less related expenses to the extent not deducted in determining federal
 286 taxable income, on obligations or securities of any authority, commission or instrumentality of the
 287 United States, which the laws of the United States exempt from federal income tax but not from state
 288 income taxes;

289 3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

290 4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum
 291 distribution allowance and any amount excludable for federal income tax purposes that is excluded from
 292 federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions
 293 under § 402 of the Internal Revenue Code;

294 5 through 8. [Repealed.]

295 9. The amount required to be included in income for the purpose of computing the partial tax on an
 296 accumulation distribution pursuant to § 667 of the Internal Revenue Code; and

297 10. For taxable years beginning on and after January 1, 2014, any loss for the taxable year that was
 298 deducted as a capital loss for federal income tax purposes by an account holder attributable to such
 299 person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of
 300 Title 55. For purposes of this subdivision, "account holder" and "first-time home buyer savings account"
 301 mean the same as those terms are defined in § 55-555.

302 C. To the extent included in federal adjusted gross income, there shall be subtracted:

303 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States
 304 and on obligations or securities of any authority, commission or instrumentality of the United States to

305 the extent exempt from state income taxes under the laws of the United States including, but not limited
306 to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,
307 interest on equipment purchase contracts, or interest on other normal business transactions.

308 2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth
309 or of any political subdivision or instrumentality of the Commonwealth.

310 3. [Repealed.]

311 4. Benefits received under Title II of the Social Security Act and other benefits subject to federal
312 income taxation solely pursuant to § 86 of the Internal Revenue Code.

313 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed
314 under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on
315 the basis of permanent and total disability and who is a qualified individual as defined in § 22(b)(2) of
316 the Internal Revenue Code; however, any person who claims a deduction under subdivision D 5 may not
317 also claim a subtraction under this subdivision.

318 4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as
319 defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction
320 under subdivision D 5 may not also claim a subtraction under this subdivision.

321 5. The amount of any refund or credit for overpayment of income taxes imposed by the
322 Commonwealth or any other taxing jurisdiction.

323 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not
324 deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

325 7, 8. [Repealed.]

326 9. [Expired.]

327 10. Any amount included therein less than \$600 from a prize awarded by the Virginia Lottery.

328 11. The wages or salaries received by any person for active and inactive service in the National
329 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar
330 days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of
331 O3 and below shall be entitled to the deductions specified herein.

332 12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for
333 information provided to a law-enforcement official or agency, or to a nonprofit corporation created
334 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of
335 perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee
336 of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which
337 the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

338 13. [Repealed.]

339 14. [Expired.]

340 15, 16. [Repealed.]

341 17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research
342 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
343 deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be
344 available to partners, shareholders of S corporations, and members of limited liability companies to the
345 extent and in the same manner as other deductions may pass through to such partners, shareholders, and
346 members.

347 18. [Repealed.]

348 19. For taxable years beginning on and after January 1, 1996, any income received during the taxable
349 year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the
350 Internal Revenue Code, an individual retirement account or annuity established under § 408 of the
351 Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue
352 Code, or any federal government retirement program, the contributions to which were deductible from
353 the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or
354 program were subject to taxation under the income tax in another state.

355 20. For taxable years beginning on and after January 1, 1997, any income attributable to a
356 distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the
357 Virginia College Savings Plan, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The
358 subtraction for any income attributable to a refund shall be limited to income attributable to a refund in
359 the event of a beneficiary's death, disability, or receipt of a scholarship.

360 21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the
361 extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted
362 under this section, earned by military personnel while serving by order of the President of the United
363 States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated
364 as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

365 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
366 exchange of real property or the sale or exchange of an easement to real property which results in the

367 real property or the easement thereto being devoted to open-space use, as that term is defined in
 368 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
 369 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
 370 shall be allowed for three years following the year in which the subtraction is taken.

371 23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic
 372 pay for military service personnel on extended active duty for periods in excess of 90 days; however,
 373 the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military
 374 basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or
 375 exceeds \$30,000.

376 24. Effective for all taxable years beginning on and after January 1, 2000, the first \$15,000 of salary
 377 for each federal and state employee whose total annual salary from all employment for the taxable year
 378 is \$15,000 or less.

379 25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

380 26. For taxable years beginning on and after January 1, 2001, any amount received as military
 381 retirement income by an individual awarded the Congressional Medal of Honor.

382 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a
 383 result of (i) the "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco
 384 Grower Settlement Trust dated July 19, 1999, by (a) tobacco farmers; (b) any person holding a tobacco
 385 marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or
 386 (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the
 387 extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.

388 28. For taxable years beginning on and after January 1, 2000, items of income attributable to,
 389 derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an
 390 individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other
 391 consideration received by a victim or target of Nazi persecution to compensate such individual for
 392 performing labor against his will under the threat of death, during World War II and its prelude and
 393 direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with
 394 the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II
 395 and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this
 396 subdivision shall only apply to an individual who was the first recipient of such items of income and
 397 who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of
 398 such victim.

399 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by
 400 the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of any act or
 401 omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct
 402 aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi
 403 persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during
 404 World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include
 405 any individual forced into labor against his will, under the threat of death, during World War II and its
 406 prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi
 407 Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any
 408 other neutral European country or area in Europe under the influence or threat of Nazi invasion.

409 29, 30. [Repealed.]

410 31. Effective for all taxable years beginning on or after January 1, 2001, the military death gratuity
 411 payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line
 412 of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the subtraction amount
 413 shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross
 414 income in accordance with § 134 of the Internal Revenue Code.

415 32. Effective for all taxable years beginning on or after January 1, 2007, the death benefit payments
 416 from an annuity contract that are received by a beneficiary of such contract provided that (i) the death
 417 benefit payment is made pursuant to an annuity contract with an insurance company and (ii) the death
 418 benefit payment is paid solely by lump sum. The subtraction under this subdivision shall be allowed
 419 only for that portion of the death benefit payment that is included in federal adjusted gross income.

420 33. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of
 421 launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended
 422 to provide individuals the training or experience of a launch, without performing an actual launch. To
 423 qualify for a deduction under this subdivision, launch services must be performed in Virginia or
 424 originate from an airport or spaceport in Virginia.

425 34. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of
 426 resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the
 427 Commercial Orbital Transportation Services division of the National Aeronautics and Space

428 Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or
429 spaceport in Virginia.

430 35. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital
431 gain for federal income tax purposes, or any income taxed as investment services partnership interest
432 income (otherwise known as investment partnership carried interest income) for federal income tax
433 purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an
434 investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business
435 approved by the Secretary of Technology, provided the business has its principal office or facility in the
436 Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To
437 qualify for a subtraction under this subdivision, the investment shall be made between the dates of April
438 1, 2010, and June 30, 2015. No taxpayer who has claimed a tax credit for an investment in a "qualified
439 business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an
440 investment in the same business.

441 36. For taxable years beginning on and after January 1, 2014, any income of an account holder for
442 the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's
443 first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55
444 and (ii) interest income or other income for federal income tax purposes attributable to such person's
445 first-time home buyer savings account.

446 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction
447 taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys
448 or funds withdrawn from the first-time home buyer savings account were used for any purpose other
449 than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under
450 § 55-558. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable
451 year that was used for other than the payment of eligible costs, computed by multiplying the amount
452 withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in
453 the account at the time of the withdrawal to the total balance in the account at such time.

454 However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i)
455 withdrawn by reason of the qualified beneficiary's death or disability, (ii) a disbursement of assets of the
456 account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101
457 through 1330, or (iii) transferred from an account established pursuant to Chapter 32 (§ 55-555 et seq.)
458 of Title 55 into another account established pursuant to such chapter for the benefit of another qualified
459 beneficiary.

460 For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings
461 account," and "qualified beneficiary" mean the same as those terms are defined in § 55-555.

462 D. In computing Virginia taxable income there shall be deducted from Virginia adjusted gross
463 income as defined in § 58.1-321:

464 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
465 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
466 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
467 on such federal return and increased by an amount which, when added to the amount deducted under
468 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
469 such purposes at a rate of 18 cents per mile; or

470 b. Three thousand dollars for single individuals and \$6,000 for married persons (one-half of such
471 amounts in the case of a married individual filing a separate return) for taxable years beginning on and
472 after January 1, 2005; provided that the taxpayer has not itemized deductions for the taxable year on his
473 federal income tax return. For purposes of this section, any person who may be claimed as a dependent
474 on another taxpayer's return for the taxable year may compute the deduction only with respect to earned
475 income.

476 2. a. A deduction in the amount of \$900 for taxable years beginning on and after January 1, 2005,
477 but before January 1, 2008; and \$930 for taxable years beginning on and after January 1, 2008, for each
478 personal exemption allowable to the taxpayer for federal income tax purposes.

479 b. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined
480 under § 63(f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the
481 amount of \$800.

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

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

488 4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under
489 permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim the child

490 as a personal exemption under § 151 of the Internal Revenue Code.

491 5. a. For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000
492 for individuals born on or before January 1, 1939.

493 b. For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000
494 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be
495 reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds \$50,000
496 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the
497 deduction will be reduced by \$1 for every \$1 the total combined adjusted federal adjusted gross income
498 of both spouses exceeds \$75,000.

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

502 6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee
503 for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed
504 for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal
505 income tax return.

506 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
507 during the taxable year for a prepaid tuition contract or *college* savings trust account entered into with
508 the Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. *Contributors*
509 *to ABLE savings trust accounts entered into with the Virginia College Savings Plan shall be allowed*
510 *such deduction beginning with taxable year 2016 and under the same conditions set forth in this*
511 *subdivision and subdivision 7 c that apply to contributors to college savings trust accounts, mutatis*
512 *mutandis. Except as provided in subdivision 7 c, the amount deducted on any individual income tax*
513 *return in any taxable year shall be limited to \$4,000 per prepaid tuition contract or savings trust account.*
514 *No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on*
515 *the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to*
516 *a savings trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future*
517 *taxable years until the purchase price or savings trust contribution has been fully deducted; however,*
518 *except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed*
519 *\$4,000 per contract or savings trust account. Notwithstanding the statute of limitations on assessments*
520 *contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year*
521 *or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher*
522 *education expenses, as defined in § 529 of the Internal Revenue Code or; (ii) to pay qualified disability*
523 *expenses, as defined in § 529A of the Internal Revenue Code; (iii) the disability of a beneficiary of a*
524 *prepaid tuition contract or a college savings trust account; or (iv) the beneficiary's death, disability, or*
525 *receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor"*
526 *means the person shown as such on the records of the Virginia College Savings Plan as of December 31*
527 *of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust*
528 *account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition*
529 *contract or savings trust account, including, but not limited to, carryover and recapture of deductions.*

530 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January
531 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,
532 1998, and shall be subject to the limitations set out in subdivision 7 a.

533 c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained
534 age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000 per
535 prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed a
536 deduction for the full amount paid for the contract or contributed to a savings trust account, less any
537 amounts previously deducted.

538 8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually
539 contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in
540 Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for
541 such amount on his federal income tax return.

542 9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the
543 tuition costs incurred by an individual employed as a primary or secondary school teacher licensed
544 pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses
545 that are required as a condition of employment; however, the deduction provided by this subsection shall
546 be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has
547 not claimed a deduction for the payment of such tuition costs on his federal income tax return.

548 10. For taxable years beginning on or after January 1, 2000, the amount an individual pays annually
549 in premiums for long-term health care insurance, provided the individual has not claimed a deduction for
550 federal income tax purposes, or, for taxable years beginning before January 1, 2014, a credit under

551 § 58.1-339.11. For taxable years beginning on or after January 1, 2014, no such deduction for long-term
552 health care insurance premiums paid by the individual during the taxable year shall be allowed if the
553 individual has claimed a federal income tax deduction for such taxable year for long-term health care
554 insurance premiums paid by him.

555 11. For taxable years beginning on and after January 1, 2006, contract payments to a producer of
556 quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation
557 Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant
558 to subsection D of § 58.1-402, as follows:

559 a. If the payment is received in installment payments, then the recognized gain, including any gain
560 recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year
561 in which the installment payment is received.

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

565 12. For taxable years beginning on and after January 1, 2007, an amount equal to 20 percent of the
566 sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.), not to exceed \$500 in each taxable
567 year, in purchasing for his own use the following items of tangible personal property: (i) any clothes
568 washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the
569 applicable energy star efficiency requirements developed by the United States Environmental Protection
570 Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity using
571 an electrochemical process, (b) has an electricity-only generation efficiency greater than 35 percent, and
572 (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of
573 performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot
574 water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating
575 system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0;
576 (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii)
577 any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced
578 oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace
579 with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

580 13. For taxable years beginning on or after January 1, 2007, the lesser of \$5,000 or the amount
581 actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket
582 expenses directly related to the donation that arose within 12 months of such donation, provided the
583 donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal
584 Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation
585 is made or the taxable year in which the 12-month period expires.

586 14. For taxable years beginning on or after January 1, 2013, the amount an individual age 66 or
587 older with earned income of at least \$20,000 for the year and federal adjusted gross income not in
588 excess of \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy
589 covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers
590 may claim a deduction for such premiums under federal income tax laws. "Earned income" means the
591 same as that term is defined in § 32(c) of the Internal Revenue Code of 1954, as amended or
592 renumbered. The deduction shall not be allowed for any portion of such premiums paid for which the
593 individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed
594 a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax
595 credit or any income tax credit pursuant to this chapter.

596 E. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the
597 individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined
598 under § 58.1-361.

599 F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as
600 transitional modifications.

601 G. Effective for all taxable years beginning on or after January 1, 2007, to the extent included in
602 federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income by a
603 shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise
604 tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year
605 begins, the shareholder's allocable share of the income or gain of such electing small business
606 corporation (S corporation), and (ii) added back to federal adjusted gross income such that, federal
607 adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S
608 corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for
609 the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or
610 deductions of such electing small business corporation (S corporation).

611 Effective for all taxable years beginning on or after January 1, 2007, to the extent excluded from
612 federal adjusted gross income, there shall be added to federal adjusted gross income by a shareholder of

613 an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed
614 under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the
615 value of any distribution paid or distributed to the shareholder by such electing small business
616 corporation (S corporation).

617 H. Notwithstanding any other provision of law, the income from any disposition of real property
618 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or
619 business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after
620 January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method
621 described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer
622 disposition of the property has been made on or before the due date prescribed by law (including
623 extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in
624 which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or
625 conditions established by the Department, which shall be set forth in guidelines developed by the
626 Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of
627 such income under certain circumstances. The development of the guidelines shall be exempt from the
628 Administrative Process Act (§ 2.2-4000 et seq.).