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HOUSE BILL NO. 851

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 40.1-33.3 through 40.1-33.6 and 58.1-322.03 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 40.1-33.3:1 and 40.1-33.5:1 and by adding in Article 2.1 of Chapter 3 of Title 40.1 a section numbered 40.1-33.7, relating to paid sick leave; penalties; state tax deduction.

Patron—Reid

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-33.3 through 40.1-33.6 and 58.1-322.03 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 40.1-33.3:1 and 40.1-33.5:1 and by adding in Article 2.1 of Chapter 3 of Title 40.1 a section numbered 40.1-33.7 as follows:

§ 40.1-33.3. Definitions.

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

"Employee" means a home health worker who works on average at least 20 hours per week or 90 hours per month. "Employee" does not include an individual who (i) is licensed, registered, or certified by a health regulatory board within the Department of Health Professions; (ii) is employed by a hospital licensed by the Department of Health; and (iii) works, on average, no more than 30 hours per month has the same meaning as provided in § 40.1-2 and includes full-time and part-time employees. "Employee" does not include (i) any independent contractor, (ii) any seasonal employee as defined by 5 C.F.R. § 340.402, and (iii) any direct employee of a carrier subject to the provisions of the federal Railway Labor Act (45 U.S.C. § 151 et seq.).

"Employer" has the same meaning as provided in § 40.1-2. "Employer" does not include any agency of the federal government or any employer with fewer than 25 employees.

"Family member" means:

1. Regardless of age, a biological child, adopted or foster child, stepchild, legal ward, child to whom the employee stands in loco parentis, or individual to whom an employee stood in loco parentis when the individual was a minor;

2. A biological parent, foster parent, stepparent, adoptive parent, legal guardian of an employee or an employee's spouse, or individual who stood in loco parentis to an employee when the employee or employee's spouse was a minor child;

3. An individual to whom an employee is legally married under the laws of any state;

4. A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of an employee or the employee's spouse;

5. An individual for whom an employee is responsible for providing or arranging care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment; or

6. Any other individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

"Home health worker" means an individual who provides personal care, respite, or companion services to an individual who receives consumer-directed services under the state plan for medical assistance services.

"Paid sick leave" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as an employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in § 40.1-33.5; however, such hourly rate shall not be less than the minimum wage amount set forth in § 40.1-28.10 without reduction for any tip credit that the employer would otherwise be permitted to claim.

§ 40.1-33.3:1. Application of article; hardship waiver.

A. The provision of paid sick leave pursuant to § 40.1-33.5 to all full-time employees and to part-time employees who work up to 20 hours per week shall be required by all employers with 25 or more full-time employees. Employers with at least 25 but not more than 49 full-time employees may claim a nonrefundable state tax deduction pursuant to § 58.1-322.03 or § 58.1-402.

B. Any employer that provides, in a form and manner satisfactory to the Department, evidence demonstrating that providing paid sick leave would jeopardize the financial viability of the employer, jeopardize the ability of the employer to sustain operations, significantly degrade the quality of the

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59 employer's business operations, or create a significant negative financial impact on the employer shall
60 receive a hardship waiver exempting such employer from the requirements of this article. The
61 Department shall develop a regulatory framework and process for assessing hardship waiver requests.

62 **§ 40.1-33.4. Provision of paid sick leave.**

63 A. All employees shall accrue a minimum of one hour of paid sick leave for every 30 hours worked.
64 Paid sick leave shall be carried over to the year following the year in which it was accrued. An
65 employee shall not accrue or use more than 40 hours of paid sick leave in a year, unless the employer
66 selects a higher limit. Except for employers who have received approval of a hardship waiver requested
67 pursuant to subsection B of § 40.1-33.3:1, all employers shall provide:

68 1. For existing eligible employees and eligible employees who have been employed by the employer
69 for at least 12 months, 40 hours of paid sick leave prorated to the average number of hours the
70 employee has worked per week over the previous 12 months of employment; and

71 2. For eligible employees who have been employed by the employer for less than 12 months, 20 to
72 40 hours of paid sick leave prorated to the average number of hours the employee is projected by the
73 employer to work during the employee's first 12 months of employment.

74 B. An eligible employee shall not be provided or use more than 40 hours of paid sick leave in a
75 year, unless the employer selects a higher limit. Paid sick leave remaining unused at the end of the year
76 shall be carried over to the subsequent year. However, any carried-over sick leave shall count toward
77 the 40-hour limit on paid sick leave provided for in subsection A, unless the employer selects a higher
78 limit.

79 C. Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the
80 federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., ~~will~~ shall be assumed to work 40 hours in
81 each workweek for purposes of the provision of paid sick leave ~~accrual~~ unless their normal workweek is
82 less than 40 hours, in which case paid sick leave ~~accrues~~ is provided on the basis of that normal
83 workweek.

84 ~~C. Paid~~ D. For all eligible employees, paid sick leave as provided in this section shall ~~begin to~~
85 ~~accrue~~ be available to use at the commencement of employment, following any initial training or
86 waiting period. An initial training or waiting period shall not exceed 90 calendar days. An employer
87 may provide all paid sick leave that an employee is expected to accrue in a year at the beginning of the
88 year.

89 ~~D. E.~~ E. All employers subject to the provisions of this article shall implement appropriate human
90 resources policies and guidelines to address employee questions related to paid sick leave, calculation of
91 paid sick leave, and potential misuse of paid sick leave.

92 F. Any employer with a paid leave policy, such as a paid time off policy, that provides an employee
93 an amount of paid leave sufficient to meet the requirements of this section and that may be used for the
94 same purposes and under the same conditions as paid sick leave under this article shall not be required
95 to provide additional paid sick leave to any employee ~~that~~ who is eligible for paid leave under the
96 policy.

97 ~~E. G.~~ G. Any employer that has entered into a bona fide collective bargaining agreement that requires
98 the employer to provide an amount of paid leave sufficient to meet the requirements of this section and
99 that may be used for the same purposes and under the same conditions as paid sick leave under this
100 article shall not be required to provide additional paid sick leave to any employee covered by such
101 collective bargaining agreement.

102 **§ 40.1-33.5. Use of paid sick leave.**

103 A. Paid sick leave shall be provided to an employee by an employer for:

104 1. An employee's mental or physical illness, injury, or health condition; an employee's need for
105 medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an
106 employee's need for preventive medical care; or

107 2. Care of a family member with a mental or physical illness, injury, or health condition; care of a
108 family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury,
109 or health condition; or care of a family member who needs preventive medical care.

110 B. Paid sick leave shall be provided upon the request of an employee. Such request may be made
111 orally, in writing, by electronic means, or by any other means acceptable to the employer. When
112 possible, the request shall include the expected duration of the absence.

113 C. When the use of paid sick leave is foreseeable, the employee shall make a good faith effort to
114 provide notice of the need for such leave to the employer in advance of the use of the paid sick leave
115 and shall make a reasonable effort to schedule the use of paid sick leave in a manner that does not
116 unduly disrupt the operations of the employer.

117 D. An employer that requires notice of the need to use paid sick leave shall provide a written policy
118 that contains procedures for its employees to provide notice. An employer that has not provided to an
119 employee a copy of its written policy for providing such notice shall not deny paid sick leave to the
120 employee based on noncompliance with such a policy.

E. An employer shall not require, as a condition of an employee's taking paid sick leave, that an employee search for or find a replacement worker to cover the hours during which the employee is using paid sick leave. An employer shall not require an employee to work an alternate shift to make up for the use of sick leave.

F. *Upon mutual consent by the eligible employee and the employer, an eligible employee may work additional hours or shifts to compensate for hours or shifts during which the eligible employee was absent from work without using paid sick leave for the hours or shifts missed. However, the employer may not require the eligible employee to work additional hours or shifts authorized by this subsection. If the eligible employee works additional hours or shifts, the employer shall comply with any applicable federal, state, or local laws regarding overtime pay.*

G. *Eligible employees may donate paid sick leave to another employee if the other employee uses the donated paid sick leave for the purpose specified in this section and the employer has a policy that allows an eligible employee to donate paid sick leave to another employee for the purpose specified in this section.*

H. *For paid sick leave of three or more consecutive work days, or if the employer has reason to believe that an employee has misused his paid sick leave, an employer may require reasonable documentation that the paid sick leave has been used for a purpose for which such leave is required to be provided as set forth in subsection A. If an employer has evidence suggesting that an employee has misused his paid sick leave in violation of the provisions of this section, the employer may pursue disciplinary measures as appropriate through an internal disciplinary process.*

§ 40.1-33.5:1. Notice by employer.

A. *Employers shall provide written notice of the following information to each employee at the commencement of employment or by January 1, 2023, whichever is later:*

1. *That eligible employees are entitled to paid sick leave and the amount of paid sick leave provided;*
2. *The terms of the use of paid sick leave provided under this article;*
3. *That retaliatory personnel action against eligible employees who request or use paid sick leave is prohibited;*

4. *That each eligible employee has the right to file a complaint or bring a civil action if paid sick leave as required by this article is denied by the employer or the eligible employee is subjected to retaliatory personnel action for requesting or taking paid sick leave; and*

5. *Contact information for the Department where questions about rights and responsibilities under this article can be answered.*

B. *The notice required by subsection A shall be in English, Spanish, and any language that is the first language spoken by at least 10 percent of the employer's workforce.*

§ 40.1-33.6. Retaliatory action prohibited.

No employer shall discharge, discipline, threaten, discriminate against, or penalize an employee, or take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges of employment, because the employee (i) has requested or exercised the benefits provided for in this article or (ii) has alleged a violation of this article. *An employer shall not be held in violation of this section if the employee's absence exceeds the amount of paid sick leave available for use pursuant to § 40.1-33.4 or if the employer's circumstances change during such employee's absence in a way that makes not discharging the employee impossible or unreasonable.*

§ 40.1-33.7. Enforcement; penalties.

A. *Prior to filing a complaint with the Department, an aggrieved employee shall pursue recourse through the human resources department of his employer. The provisions of subsection B through E shall become available to any aggrieved employee who has first attempted to resolve the dispute regarding a violation of the provisions of this article through his employer's human resources department.*

B. *Any employee who has satisfied the requirements of subsection A and is alleging a violation of this article shall have the right to file a complaint with the Department within one year of the date the employee knew or should have known of the alleged violation. If the Commissioner believes that a violation has occurred, he shall issue to the offending person or employer a notice of violation and the relief required of the offending person or employer. The Department shall prescribe the form and wording of such notices of violation, including any method of appealing a decision of the Commissioner.*

C. *The Commissioner shall notify by certified mail any employer alleged to have violated any provision of this article. Such notice shall contain a description of the alleged violation. Within 15 days of receipt of notice of the alleged violation, the employer may request an informal conference with the Commissioner regarding such violation.*

D. *Any such employer who knowingly violates this article shall be subject to a civil penalty not to exceed \$150 for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed \$300 for the second violation and not to exceed \$500 for each*

182 successive violation. In determining the amount of any civil penalty to be imposed, the Commissioner
183 shall consider the size of the business of the employer charged and the gravity of the violation. The
184 decision of the Commissioner shall be final.

185 E. The Commissioner, with the written and signed consent of an employee, may institute a
186 proceeding in a court of competent jurisdiction on behalf of an employee to enforce compliance with
187 this article and to collect the following amounts from the employer that violated this article, which
188 amounts shall be paid to the employee entitled thereto:

189 1. In each instance of paid sick leave taken by an employee but unlawfully not compensated by the
190 employer, for three times the wages that should have been paid under this article;

191 2. In each instance of paid sick leave requested by an eligible employee but unlawfully denied by the
192 employer and not taken by the eligible employee or unlawfully conditioned upon searching for or
193 finding a replacement worker, for \$250;

194 3. In each instance of unlawful retaliation not including discharge from employment, for full
195 compensation including wages and benefits lost, an additional amount of at least \$500, and equitable
196 relief as appropriate; and

197 4. In each instance of unlawful discharge from employment, for full compensation including wages
198 and benefits lost, an additional amount of \$1,500, and equitable relief, including reinstatement, as
199 appropriate.

200 **§ 58.1-322.03. Virginia taxable income; deductions.**

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

203 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
204 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
205 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
206 on such federal return and increased by an amount that, when added to the amount deducted under
207 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
208 such purposes at a rate of 18 cents per mile; or

209 b. Provided that the taxpayer has not itemized deductions for the taxable year on his federal income
210 tax return: (i) for taxable years beginning before January 1, 2019, and on and after January 1, 2026,
211 \$3,000 for single individuals and \$6,000 for married persons (one-half of such amounts in the case of a
212 married individual filing a separate return) and (ii) for taxable years beginning on and after January 1,
213 2019, but before January 1, 2026, \$4,500 for single individuals and \$9,000 for married persons (one-half
214 of such amounts in the case of a married individual filing a separate return). For purposes of this
215 section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year
216 may compute the deduction only with respect to earned income.

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

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

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

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

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

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

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

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

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

242 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
243 during the taxable year for a prepaid tuition contract or college savings trust account entered into with

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

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

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

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

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

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

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

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

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

305 rating of 85; and (x) programmable thermostats.

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

312 14. For taxable years beginning on and after January 1, 2013, the amount an individual age 66 or
313 older with earned income of at least \$20,000 for the year and federal adjusted gross income not in
314 excess of \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy
315 covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers
316 may claim a deduction for such premiums under federal income tax laws. As used in this subdivision,
317 "earned income" means the same as that term is defined in § 32(c) of the Internal Revenue Code. The
318 deduction shall not be allowed for any portion of such premiums paid for which the individual has (a)
319 been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed a deduction or
320 subtraction under another provision of this section, or (d) claimed a federal income tax credit or any
321 income tax credit pursuant to this chapter.

322 15. For taxable years beginning on and after January 1, 2018, 20 percent of business interest
323 disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For purposes of this
324 subdivision, "business interest" means the same as that term is defined under § 163(j) of the Internal
325 Revenue Code.

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

330 17. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to
331 \$100,000 of the amount that is not deductible when computing federal adjusted gross income solely on
332 account of the portion of subdivision B 10 of § 58.1-301 related to Paycheck Protection Program loans.

333 18. *For taxable years beginning on and after January 1, 2023, 120 percent of the value of any paid*
334 *sick leave provided by an employer of at least 25 but not more than 49 full-time employees to an*
335 *employee, in accordance with § 40.1-33.3:1. The deduction provided by this subdivision shall be claimed*
336 *only by the employer and not by the employee.*

337 **§ 58.1-402. Virginia taxable income.**

338 A. For purposes of this article, Virginia taxable income for a taxable year means the federal taxable
339 income and any other income taxable to the corporation under federal law for such year of a corporation
340 adjusted as provided in subsections B, C, D, E, G, and H.

341 For a regulated investment company and a real estate investment trust, such term means the
342 "investment company taxable income" and "real estate investment trust taxable income," respectively, to
343 which shall be added in each case any amount of capital gains and any other income taxable to the
344 corporation under federal law which shall be further adjusted as provided in subsections B, C, D, E, G,
345 and H.

346 B. There shall be added to the extent excluded from federal taxable income:

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

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

354 3. [Repealed.]

355 4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which
356 are based on, measured by, or computed with reference to net income, imposed by the Commonwealth
357 or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

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

359 6. [Repealed.]

360 7. The amount required to be included in income for the purpose of computing the partial tax on an
361 accumulation distribution pursuant to § 667 of the Internal Revenue Code;

362 8. a. For taxable years beginning on and after January 1, 2004, the amount of any intangible
363 expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or
364 indirectly with one or more direct or indirect transactions with one or more related members to the
365 extent such expenses and costs were deductible or deducted in computing federal taxable income for
366 Virginia purposes. This addition shall not be required for any portion of the intangible expenses and

costs if one of the following applies:

(1) The corresponding item of income received by the related member is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government that has entered into a comprehensive tax treaty with the United States government;

(2) The related member derives at least one-third of its gross revenues from the licensing of intangible property to parties who are not related members, and the transaction giving rise to the expenses and costs between the corporation and the related member was made at rates and terms comparable to the rates and terms of agreements that the related member has entered into with parties who are not related members for the licensing of intangible property; or

(3) The corporation can establish to the satisfaction of the Tax Commissioner that the intangible expenses and costs meet both of the following: (i) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and (ii) the transaction giving rise to the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

b. A corporation required to add to its federal taxable income intangible expenses and costs pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this article for such taxable year including tax upon any amount of intangible expenses and costs required to be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the transaction or transactions between the corporation and a related member or members that resulted in the corporation's taxable income being increased, as required under subdivision a, for such intangible expenses and costs.

If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing evidence, that the transaction or transactions between the corporation and a related member or members resulting in such increase in taxable income pursuant to subdivision a had a valid business purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner shall permit the corporation to file an amended return. For purposes of such amended return, the requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation within one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related member of the corporation that subtracted from taxable income amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and costs without making the adjustment under subdivision a.

The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under § 58.1-446;

9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members to the extent such expenses and costs were deductible or deducted in computing federal taxable income for Virginia purposes. This addition shall not be required for any portion of the interest expenses and costs, if:

(1) The related member has substantial business operations relating to interest-generating activities, in which the related member pays expenses for at least five full-time employees who maintain, manage, defend or are otherwise responsible for operations or administration relating to the interest-generating activities; and

(2) The interest expenses and costs are not directly or indirectly for, related to or in connection with the direct or indirect acquisition, maintenance, management, sale, exchange, or disposition of intangible property; and

(3) The transaction giving rise to the expenses and costs between the corporation and the related member has a valid business purpose other than the avoidance or reduction of taxation and payments between the parties are made at arm's length rates and terms; and

(4) One of the following applies:

(i) The corresponding item of income received by the related member is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government that has entered into a comprehensive tax treaty with the United States government;

(ii) Payments arise pursuant to a pre-existing contract entered into when the parties were not related members provided the payments continue to be made at arm's length rates and terms;

(iii) The related member engages in transactions with parties other than related members that generate revenue in excess of \$2 million annually; or

(iv) The transaction giving rise to the interest payments between the corporation and a related member was done at arm's length rates and terms and meets any of the following: (a) the related member uses funds that are borrowed from a party other than a related member or that are paid, incurred or passed-through to a person who is not a related member; (b) the debt is part of a regular and systematic funds management or portfolio investment activity conducted by the related member, whereby the funds of two or more related members are aggregated for the purpose of achieving economies of scale, the internal financing of the active business operations of members, or the benefit of centralized management of funds; (c) financing the expansion of the business operations; or (d) restructuring the debt of related members, or the pass-through of acquisition-related indebtedness to related members.

b. A corporation required to add to its federal taxable income interest expenses and costs pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this article for such taxable year including tax upon any amount of interest expenses and costs required to be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the transaction or transactions between the corporation and a related member or members that resulted in the corporation's taxable income being increased, as required under subdivision a, for such interest expenses and costs.

If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing evidence, that the transaction or transactions between the corporation and a related member or members resulting in such increase in taxable income pursuant to subdivision a had a valid business purpose other than the avoidance or reduction of the tax due under this chapter and that the related payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall permit the corporation to file an amended return. For purposes of such amended return, the requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or reduction of the tax due under this chapter and that the related payments between the parties were made at arm's length rates and terms. Such amended return shall be filed by the corporation within one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related member of the corporation that subtracted from taxable income amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related interest expenses and costs without making the adjustment under subdivision a.

The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under § 58.1-446.

d. For purposes of subdivision B 9:

"Arm's-length rates and terms" means that (i) two or more related members enter into a written agreement for the transaction, (ii) such agreement is of a duration and contains payment terms substantially similar to those that the related member would be able to obtain from an unrelated entity, (iii) the interest is at or below the applicable federal rate compounded annually for debt instruments under § 1274(d) of the Internal Revenue Code that was in effect at the time of the agreement, and (iv)

the borrower or payor adheres to the payment terms of the agreement governing the transaction or any amendments thereto.

"Valid business purpose" means one or more business purposes that alone or in combination constitute the motivation for some business activity or transaction, which activity or transaction improves, apart from tax effects, the economic position of the taxpayer, as further defined by regulation.

10. a. For taxable years beginning on and after January 1, 2009, the amount of dividends deductible under §§ 561 and 857 of the Internal Revenue Code by a Captive Real Estate Investment Trust (REIT). For purposes of this subdivision, a REIT is a Captive REIT if:

(1) It is not regularly traded on an established securities market;

(2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a single entity that is (i) a corporation or an association taxable as a corporation under the Internal Revenue Code; and (ii) not exempt from federal income tax pursuant to § 501(a) of the Internal Revenue Code; and

(3) More than 25 percent of its income consists of rents from real property as defined in § 856(d) of the Internal Revenue Code.

b. For purposes of applying the ownership test of subdivision 10 a (2), the following entities shall not be considered a corporation or an association taxable as a corporation:

(1) Any REIT that is not treated as a Captive REIT;

(2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT subsidiary of a Captive REIT;

(3) Any Listed Australian Property Trust, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting or value of the beneficial interests or shares of such trust; and

(4) Any Qualified Foreign Entity.

c. For purposes of subdivision B 10, the constructive ownership rules prescribed under § 318(a) of the Internal Revenue Code, as modified by § 856(d)(5) of the Internal Revenue Code, shall apply in determining the ownership of stock, assets, or net profits of any person.

d. For purposes of subdivision B 10:

"Listed Australian Property Trust" means an Australian unit trust registered as a Management Investment Scheme, pursuant to the Australian Corporations Act, in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market.

"Qualified Foreign Entity" means a corporation, trust, association or partnership organized outside the laws of the United States and that satisfies all of the following criteria:

(1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in § 856(c)(5)(B) of the Internal Revenue Code, thereby including shares or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government securities;

(2) The entity is not subject to a tax on amounts distributed to its beneficial owners, or is exempt from entity level tax;

(3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest;

(4) The shares or certificates of beneficial interest of such entity are regularly traded on an established securities market or, if not so traded, not more than 10 percent of the voting power or value in such entity is held directly, indirectly, or constructively by a single entity or individual; and

(5) The entity is organized in a country that has a tax treaty with the United States.

e. For taxable years beginning on or after January 1, 2016, for purposes of subdivision B 10, any voting power or value of the beneficial interests or shares in a REIT that is held in a segregated asset account of a life insurance corporation as described in § 817 of the Internal Revenue Code shall not be taken into consideration when determining if such REIT is a Captive REIT.

11. For taxable years beginning on or after January 1, 2016, to the extent that tax credit is allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.

C. There shall be subtracted to the extent included in and not otherwise subtracted from federal taxable income:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,

551 interest on equipment purchase contracts, or interest on other normal business transactions.
552 2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth
553 or of any political subdivision or instrumentality of this Commonwealth.
554 3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the
555 Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding
556 year, or the last year in which such corporation has income, under the provisions of the income tax laws
557 of the Commonwealth.
558 4. The amount of any refund or credit for overpayment of income taxes imposed by this
559 Commonwealth or any other taxing jurisdiction.
560 5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue
561 Code (foreign dividend gross-up).
562 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not
563 deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.
564 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F
565 income) or, for taxable years beginning on and after January 1, 2018, § 951A of the Internal Revenue
566 Code (Global Intangible Low-Taxed Income).
567 8. Any amount included therein which is foreign source income as defined in § 58.1-302.
568 9. [Repealed.]
569 10. The amount of any dividends received from corporations in which the taxpaying corporation
570 owns 50 percent or more of the voting stock.
571 11. [Repealed.]
572 12, 13. [Expired.]
573 14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research
574 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
575 deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code.
576 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
577 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
578 (§ 22.1-175.1 et seq.) of Title 22.1.
579 16. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain
580 derived from the sale or exchange of real property or the sale or exchange of an easement to real
581 property which results in the real property or the easement thereto being devoted to open-space use, as
582 that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a
583 subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating
584 land for its preservation shall be allowed for three years following the year in which the subtraction is
585 taken.
586 17. For taxable years beginning on and after January 1, 2001, any amount included therein with
587 respect to § 58.1-440.1.
588 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
589 "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower
590 Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a
591 tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of
592 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.
593 19, 20. [Repealed.]
594 21. For taxable years beginning on and after January 1, 2004, any amount of intangible expenses and
595 costs or interest expenses and costs added to the federal taxable income of a corporation pursuant to
596 subdivision B 8 or B 9 shall be subtracted from the federal taxable income of the related member that
597 received such amount if such related member is subject to Virginia income tax on the same amount.
598 22. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of
599 launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended
600 to provide individuals the training or experience of a launch, without performing an actual launch. To
601 qualify for a deduction under this subdivision, launch services must be performed in Virginia or
602 originate from an airport or spaceport in Virginia.
603 23. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of
604 resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the
605 Commercial Orbital Transportation Services division of the National Aeronautics and Space
606 Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or
607 spaceport in Virginia.
608 24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital
609 gain for federal income tax purposes, or any income taxed as investment services partnership interest
610 income (otherwise known as investment partnership carried interest income) for federal income tax
611 purposes. To qualify for a subtraction under this subdivision, such income must be attributable to an
612 investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business

approved by the Secretary of Administration, provided the business has its principal office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment must be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

25. a. Income, including investment services partnership interest income (otherwise known as investment partnership carried interest income), attributable to an investment in a Virginia venture capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this subdivision for an investment in a company that is owned or operated by an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C 24 for the same investment.

b. As used in this subdivision 25:

"Qualified portfolio company" means a company that (i) has its principal place of business in the Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or service other than the management or investment of capital; and (iii) provides equity in the company to the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company" does not include a company that is an individual or sole proprietorship.

"Virginia venture capital account" means an investment fund that has been certified by the Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital account, the operator of the investment fund shall register the investment fund with the Department prior to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to, an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study. The Department may require an investment fund to provide documentation of the investor's training, education, or experience as deemed necessary by the Department to determine substantial equivalency. If the Department determines that the investment fund employs at least one investor with the experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital account at such time as the investment fund actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies.

26. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C 24 or 25 for the same investment.

b. As used in this subdivision 26:

"Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of § 2.2-115.

"Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3 of § 2.2-115.

"Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C. § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If the Department determines that the trust satisfies the preceding criteria, the Department shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed.

27. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking of real property by condemnation proceedings.

28. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to \$100,000 of all grant funds received by the taxpayer under the Rebuild Virginia program established by the Governor and administered by the Department of Small Business and Supplier Diversity.

29. For taxable years beginning on and after January 1, 2023, 120 percent of the value of any paid sick leave provided by an employer of at least 25 but not more than 49 full-time employees to an employee, in accordance with § 40.1-33.3:1. The deduction provided by this subdivision shall be claimed only by the employer and not by the employee.

674 D. For taxable years beginning on and after January 1, 2006, there shall be subtracted from federal
675 taxable income contract payments to a producer of quota tobacco or a tobacco quota holder as provided
676 under the American Jobs Creation Act of 2004 (P.L. 108-357) as follows:

677 1. If the payment is received in installment payments, then the recognized gain, including any gain
678 recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year
679 in which the installment payment is received.

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

683 E. Adjustments to federal taxable income shall be made to reflect the transitional modifications
684 provided in § 58.1-315.

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

697 G. For taxable years beginning on and after January 1, 2018, there shall be deducted to the extent
698 included in and not otherwise subtracted from federal taxable income 20 percent of business interest
699 disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For purposes of this
700 subsection, "business interest" means the same as that term is defined under § 163(j) of the Internal
701 Revenue Code.

702 H. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, there shall
703 be deducted to the extent not otherwise subtracted from federal taxable income up to \$100,000 of the
704 amount that is not deductible when computing federal taxable income solely on account of the portion
705 of subdivision B 10 of § 58.1-301 related to Paycheck Protection Program loans.

706 **2. That the provisions of this act shall become effective on January 1, 2023.**