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SENATE BILL NO. 1276
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 20, 2025)
(Patron Prior to Substitute—Senator DeSteph)

A *BILL to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 1.2, consisting of a section numbered 40.1-28.13, relating to portable benefit accounts.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 40.1 an article numbered 1.2, consisting of a section numbered 40.1-28.13, as follows:

Article 1.2.

Portable Benefit Accounts.

§ 40.1-28.13. Portable benefit accounts.

A. As used in this section:

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

"Portable benefit account" means an account offered through and administered by a portable benefit account provider that provides for the payment of (i) health insurance premiums, copays, deductibles, coinsurance, or other costs related to maintaining health insurance coverage; (ii) coverage for or the direct purchase of prescription drugs; (iii) fees or costs related to a health care sharing ministry arrangement; (iv) fees or costs related to a direct primary care agreement; or (v) other benefits including income replacement insurance, life insurance, or retirement benefits.

"Portable benefit account provider" means a bank as defined in § 6.2-800, investment management firm, or technology provider or program manager that offers services through a bank or investment management firm.

B. *An individual who is a resident of the Commonwealth and has worked, been hired, or contracted as an independent contractor during the current calendar year may open and contribute to a portable benefit account for the use of the individual, the individual's spouse, and any dependents in the household. Distributions from a portable benefit account shall be limited to those items specified in the definition of a portable benefit account.*

C. *A public or private entity, including an Internet or application-based company, may voluntarily contribute funds to a portable benefit account as a form of compensation to a sole proprietor or independent contractor. Contributions to a portable benefit account may be made using the funds of a hiring party or a percentage of funds withheld from the compensation owed to a sole proprietor or independent contractor. Contributions using withheld funds shall only be made if (i) withheld compensation is expressly agreed to in writing; (ii) such agreement is clear, unambiguous, and prominently displayed in the work contract or a separate notice; (iii) such withholdings are voluntary and require a sole proprietor or independent contractor to opt in; and (iv) a sole proprietor or independent contractor may elect to opt out of such withholdings at any time.*

D. *Contributions to a portable benefit account shall not be used as criterion for determining a worker's employment classification under the provisions of § 40.1-28.7:7 or 40.1-28.9, subsection C of § 60.2-212, Title 65.2, or any other classification determination under statutory or common law.*

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

SENATE SUBSTITUTE

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