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SENATE BILL NO. 967

Offered January 8, 2025

Prefiled January 6, 2025

A BILL to amend and reenact §§ 40.1-28.12, 40.1-29, 40.1-29.2, and 40.1-29.3 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:12, relating to minimum wage and overtime pay; warehouse distribution center employees and employers; civil action; civil penalty.

Patron—Carroll Foy

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-28.12, 40.1-29, 40.1-29.2, and 40.1-29.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:12 as follows:

§ 40.1-28.7:12. Warehouse employer requirements.

A. As used in this section:

"Warehouse distribution center" means a business establishment that corresponds to any of the following North American Industry Classification System (NAICS) codes: general warehousing and storage (NAICS 493110); merchant wholesalers, durable goods (NAICS 423000); merchant wholesalers, nondurable goods (NAICS 424000); electronic shopping and mail-order houses (NAICS 454110); and couriers and express delivery services (NAICS 492100).

"Warehouse employee" means an employee performing work or based at a warehouse distribution center.

"Warehouse employer" means an employer that operates a warehouse distribution center.

B. A warehouse employer shall provide to each warehouse employee, within 30 days after hiring such employee, a written description of (i) each performance standard, including any quota, stacked ranking system, or time-off-task requirement, to which such employee is subject and (ii) any potential adverse employment action that may result from such employee's failure to meet such performance standard. If a warehouse employer changes or adds a performance standard, such employer shall provide an updated written description of such performance standard at least two business days before such change or addition. A warehouse employer that takes adverse action against a warehouse employee for such employee's failure to meet a performance standard shall provide such employee with a written description of such failure. No warehouse employer shall take adverse employment action against a warehouse employee for such employee's use of a bathroom facility, including reasonable travel time to and from such facility. Nothing in this subsection shall be construed to require an employer to use a performance standard or to monitor employee work-speed data, and any employer that does not use performance standards or monitor such data is exempt from the provisions of this subsection.

C. Warehouse employees shall have the right to request orally or in writing from their employer, or a direct supervisor or other representative designated by the employer, and the employer shall provide within four business days: (i) a written description of each quota to which the employee is subject, (ii) a copy of the most recent 90 days of the employee's own personal employee work speed data, and (iii) a copy of the most recent 90 days of aggregated employee work speed data for similar employees at the same work site. The written description of each quota must be provided in a manner understandable to the employee. A warehouse employee may make a request under this subsection no more than four times per year.

D. Any warehouse employer that fails to comply with the requirements of subsection B shall be subject to a civil penalty not to exceed \$5,000 for each violation.

E. In addition to being subject to any other penalty provided by the provisions of this section, any warehouse employer that discharges, retaliates against, or adversely affects the compensation of a warehouse employee in violation of subsection B shall be liable for the payment of all wages due, and an additional equal amount as liquidated damages, plus interest at an annual rate of eight percent accruing from the date the wages were due.

F. In addition to any civil penalty provided by this section, and without regard to any exhaustion of alternative administrative remedies provided for in this section, if a warehouse employer fails to comply with the requirements of subsection B, the employee may bring an action, individually, jointly, with other aggrieved employees, or on behalf of similarly situated employees as a collective action consistent with the collective action procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b), against the warehouse employer to order compliance with the requirements of subsection B, and the court shall award injunctive relief and liquidated damages of \$1,000 for each violation of the requirements of subsection B. If the court

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59 *finds that the employer knowingly retaliated against a warehouse employee for bathroom facility use in*
 60 *violation of subsection B, the court shall award the employee an amount equal to triple the amount of wages*
 61 *due and reasonable attorney fees and costs. An action under this subsection shall be commenced within three*
 62 *years after the cause of action accrued.*

63 *G. As used in this section, a person acts "knowingly" if the person, with respect to information, (i) has*
 64 *actual knowledge of the information, (ii) acts in deliberate ignorance of the truth or falsity of the information,*
 65 *or (iii) acts in reckless disregard of the truth or falsity of the information. Establishing that a person acted*
 66 *knowingly shall not require proof of specific intent to defraud.*

67 **§ 40.1-28.12. Employee's remedies.**

68 Any employer ~~who~~ that violates the minimum wage requirements of this law article shall be liable to the
 69 an impacted employee or employees affected in the amount of the unpaid minimum wages, plus interest at
 70 eight per centum per annum upon such unpaid wages as may be due the plaintiff, said interest to be awarded
 71 from the date or dates said wages were due the employee or employees. The court may, in addition to any
 72 judgment awarded to the employee or employees, require defendant to pay reasonable attorney's fees incurred
 73 by the employee or employees for the applicable remedies, damages, or other relief available in an action
 74 brought pursuant to the provisions of subsection J of § 40.1-29.

75 **§ 40.1-29. Time and medium of payment; withholding wages; written statement of earnings;**
 76 **agreement for forfeiture of wages; proceedings to enforce compliance; penalties.**

77 A. All employers operating a business or engaging an individual to perform domestic service shall
 78 establish regular pay periods and rates of pay for employees except executive personnel. All such employers
 79 shall pay salaried employees at least once each month and employees paid on an hourly rate at least once
 80 every two weeks or twice in each month, except that (i) a student who is currently enrolled in a work-study
 81 program or its equivalent administered by any secondary school, institution of higher education, or trade
 82 school, and (ii) employees whose weekly wages total more than 150 percent of the average weekly wage of
 83 the Commonwealth as defined in § 65.2-500, upon agreement by each affected employee, may be paid once
 84 each month if the institution or employer so chooses. Upon termination of employment an employee shall be
 85 paid all wages or salaries due him for work performed prior thereto; such payment shall be made on or before
 86 the date on which he would have been paid for such work had his employment not been terminated.

87 B. Payment of wages or salaries shall be (i) in lawful money of the United States, (ii) by check payable at
 88 face value upon demand in lawful money of the United States, (iii) by electronic automated fund transfer in
 89 lawful money of the United States into an account in the name of the employee at a financial institution
 90 designated by the employee, or (iv) by credit to a prepaid debit card or card account from which the employee
 91 is able to withdraw or transfer funds with full written disclosure by the employer of any applicable fees and
 92 affirmative consent thereto by the employee. However, an employer that elects not to pay wages or salaries in
 93 accordance with clause (i) or (ii) to an employee who is hired after January 1, 2010, shall be permitted to pay
 94 wages or salaries by credit to a prepaid debit card or card account in accordance with clause (iv), even though
 95 such employee has not affirmatively consented thereto, if the employee fails to designate an account at a
 96 financial institution in accordance with clause (iii) and the employer arranges for such card or card account to
 97 be issued through a network system through which the employee shall have the ability to make at least one
 98 free withdrawal or transfer per pay period, which withdrawal may be for any sum in such card or card
 99 account as the employee may elect, using such card or card account at financial institutions participating in
 100 such network system.

101 C. No employer shall withhold any part of the wages or salaries of any employee except for payroll, wage
 102 or withholding taxes or in accordance with law, without the written and signed authorization of the employee.
 103 On each regular pay date, each employer, other than an employer engaged in agricultural employment
 104 including agribusiness and forestry, shall provide to each employee a written statement, by a paystub or
 105 online accounting, that shows the name and address of the employer; the number of hours worked during the
 106 pay period if the employee is paid on the basis of (i) the number of hours worked or (ii) a salary that is less
 107 than the standard salary level adopted by regulation of the U.S. Department of Labor pursuant to § 13(a)(1) of
 108 the federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), as amended, establishing an exemption from the
 109 Act's overtime premium pay requirements; the rate of pay; the gross wages earned by the employee during
 110 the pay period; and the amount and purpose of any deductions therefrom. The paystub or online accounting
 111 shall include sufficient information to enable the employee to determine how the gross and net pay were
 112 calculated. An employer engaged in agricultural employment including agribusiness and forestry, upon
 113 request of its employee, shall furnish the employee a written statement of the gross wages earned by the
 114 employee during any pay period and the amount and purpose of any deductions therefrom.

115 D. No employer shall require any employee, except executive personnel, to sign any contract or
 116 agreement which provides for the forfeiture of the employee's wages for time worked as a condition of
 117 employment or the continuance therein, except as otherwise provided by law.

118 E. An employer ~~who~~ that willfully and with intent to defraud fails or refuses to pay wages in accordance
 119 with this section or § 40.1-29.3, unless the failure to pay was because of a bona fide dispute between the

120 employer and its employee:

121 1. To an employee or employees is guilty of a Class 1 misdemeanor if the value of the wages earned and
122 not paid by the employer is less than \$10,000; and

123 2. To an employee or employees is guilty of a Class 6 felony (i) if the value of the wages earned and not
124 paid is \$10,000 or more or (ii) regardless of the value of the wages earned and not paid, if the conviction is a
125 second or subsequent conviction under this section or § 40.1-29.3.

126 For purposes of this section, the determination as to the "value of the wages earned" shall be made by
127 combining all wages the employer failed or refused to pay pursuant to this section and § 40.1-29.3.

128 F. The Commissioner may require a written complaint of the violation of this section and, with the written
129 and signed consent of an employee, may institute proceedings on behalf of an employee to enforce
130 compliance with this section, and to collect any moneys unlawfully withheld from such employee that shall
131 be paid to the employee entitled thereto. In addition, following the issuance of a final order by the
132 Commissioner or a court, the Commissioner may engage private counsel, approved by the Attorney General,
133 to collect any moneys owed to the employee or the Commonwealth. Upon entry of a final order of the
134 Commissioner, or upon entry of a judgment, against the employer, the Commissioner or the court shall assess
135 attorney fees of one-third of the amount set forth in the final order or judgment.

136 G. In addition to being subject to any other penalty provided by the provisions of this section, any
137 employer ~~who~~ that fails to make payment of wages in accordance with subsection A shall be liable for the
138 payment of all wages due, and an additional equal amount as liquidated damages, plus interest at an annual
139 rate of eight percent accruing from the date the wages were due.

140 H. Any employer ~~who~~ that knowingly fails to make payment of wages in accordance with subsection A or
141 § 40.1-29.3 shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner
142 shall notify any employer that the Commissioner alleges has violated any provision of this section or § 40.1-
143 29.3 by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days of
144 receipt of notice of the alleged violation, the employer may request an informal conference regarding such
145 violation with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner
146 shall consider the size of the business of the employer charged and the gravity of the violation. The decision
147 of the Commissioner shall be final. Civil penalties owed under this section shall be paid to the Commissioner
148 for deposit into the general fund of the State Treasurer. The Commissioner shall prescribe procedures for the
149 payment of proposed assessments of penalties that are not contested by employers. Such procedures shall
150 include provisions for an employer to consent to abatement of the alleged violation and pay a proposed
151 penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such
152 alleged violation.

153 I. Final orders of the Commissioner, the general district courts, or the circuit courts may be recorded,
154 enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the
155 Commissioner or the court as appropriate.

156 J. In addition to any civil or criminal penalty provided by this section, and without regard to any
157 exhaustion of alternative administrative remedies provided for in this section, if an employer fails to pay
158 wages to an employee in accordance with this section, *the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.),*
159 *or § 40.1-29.2 or 40.1-29.3,* the employee may bring an action, individually, jointly, with other aggrieved
160 employees, or on behalf of similarly situated employees as a collective action consistent with the collective
161 action procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b), against the employer in a court of
162 competent jurisdiction to recover payment of the wages, and the court shall award the wages owed, an
163 additional equal amount as liquidated damages, plus prejudgment interest thereon as provided in subsection G
164 , and reasonable attorney fees and costs. If the court finds that the employer knowingly failed to pay wages to
165 an employee in accordance with this section, *the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), or § 40.1-*
166 *29.2 or 40.1-29.3,* the court shall award the employee an amount equal to triple the amount of wages due and
167 reasonable attorney fees and costs.

168 K. As used in this section, a person acts "knowingly" if the person, with respect to information, (i) has
169 actual knowledge of the information, (ii) acts in deliberate ignorance of the truth or falsity of the information,
170 or (iii) acts in reckless disregard of the truth or falsity of the information. Establishing that a person acted
171 knowingly shall not require proof of specific intent to defraud.

172 L. An action under this section shall be commenced within three years after the cause of action accrued.
173 The period for filing is tolled upon the filing of an administrative action under subsection F until the
174 employee has been informed that the action has been resolved or until the employee has withdrawn the
175 complaint, whichever is sooner.

176 **§ 40.1-29.2. Employer liability.**

177 Any employer that violates the overtime pay requirements of the federal Fair Labor Standards Act of
178 1938, 29 U.S.C. § 201 et seq., as amended, and any regulations, guidance, or rules adopted pursuant to the
179 overtime pay provisions of such federal act or any related governing case law shall be liable to the employee
180 for the applicable remedies, damages, or other relief available ~~under the federal Fair Labor Standards Act in~~

181 an action brought pursuant to ~~the process in~~ subsection J of § 40.1-29. ~~For the purposes of this section,~~
182 ~~"employer" and "employee" shall have the meanings ascribed to them under the federal Fair Labor Standards~~
183 ~~Act and all applicable exemptions, overtime calculation methods, methods of overtime payment, or other~~
184 ~~overtime provisions within the federal Fair Labor Standards Act and any attendant regulations, guidance, or~~
185 ~~rules shall apply. Any action brought pursuant to this section shall accrue according to the applicable~~
186 ~~limitations set forth in the federal Fair Labor Standards Act.~~

187 **§ 40.1-29.3. Overtime for certain employees.**

188 A. As used in this section:

189 "Carrier" means an air carrier that is subject to the provisions of the federal Railway Labor Act, 45 U.S.C.
190 § 181 et seq.

191 "Derivative carrier" means a carrier that meets the two-part test used by the federal National Mediation
192 Board to determine if a carrier is considered a derivative carrier.

193 "Employee" means an individual employed by a derivative carrier.

194 B. An employer shall pay each employee an overtime premium at a rate not less than one and one-half
195 times the employee's regular rate for any hours worked by an employee in excess of 40 hours in any one
196 workweek. An employee's regular rate shall be calculated as the employee's hourly rate of pay plus any other
197 non-overtime wages paid or allocated for that workweek, excluding any amounts that would be excluded
198 from the regular rate by the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., and its implementing
199 regulations for an individual covered by such federal act, divided by the total number of hours worked in that
200 workweek.

201 C. If an employer fails to pay overtime wages to an employee in accordance with this section, the
202 employee may bring an action against the employer in a court of competent jurisdiction to recover payment
203 of the overtime wages, and the court shall award the overtime wages owed, an additional equal amount as
204 liquidated damages, and reasonable attorney fees and costs; however, if the employer shows to the
205 satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had
206 reasonable grounds for believing that his act or omission was not a violation of this section, the court may, in
207 its discretion, award no liquidated damages or award any amount thereof not to exceed the amount of the
208 unpaid overtime wages.

209 D. An action under this section shall be commenced within two years after the cause of action accrued,
210 except that a cause of action arising out of a willful violation may be commenced within three years after the
211 cause of action accrued ~~employer shall be liable to such employee for the applicable remedies, damages, or~~
212 ~~other relief available in an action brought pursuant to the provisions of subsection J of § 40.1-29.~~