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HOUSE BILL NO. 1730
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Governor
on March 24, 2025)

(Patron Prior to Substitute—Delegate Delaney)

A BILL to amend the Code of Virginia by adding a section numbered 8.01-42.6, relating to actions for personal injury; liability of employer for criminal sexual assault committed by employee; vulnerable victim.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-42.6 as follows:

§ 8.01-42.6. Liability of employer for criminal sexual assault by employee.

A. In addition to any other available grounds for the determination of the course and scope of employment, in an action for injury to the person brought by a vulnerable victim against an employee arising out of an act committed by such employee that would constitute criminal sexual assault pursuant to the provisions of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, abuse or neglect of a child pursuant to Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, or malicious wounding pursuant to § 18.2-51.2 of a minor, the finder of fact at trial on the merits shall determine whether an employer shall be vicariously liable for the tortious conduct of such employer's employee based upon a finding that:

1. The employee's tortious conduct occurred while the employee was reasonably likely to be in contact with the vulnerable victim and such conduct proximately causes injury to such vulnerable victim;

2. The employer failed to exercise reasonable care to (i) prevent the employee from intentionally harming such vulnerable victim or (ii) control the employee resulting in an unreasonable risk of a vulnerable victim suffering injury;

3. The employer knew or should have known of the ability to control the employee; and

4. The employer knew or should have known of the necessity and opportunity for exercising such control over the employee.

B. For the purposes of this section, "vulnerable victim" means only any person who is (i) at a substantial disadvantage relative to an employee due to circumstances, including such person's physical or mental condition or characteristics, and (ii) (a) a patient of a health care provider, as defined in § 8.01-581.1; (b) a person under a disability pursuant to § 8.01-2; (c) a resident of an assisted living facility; (d) a passenger of a nonemergency medical transportation carrier, as defined in § 46.2-2000; (e) a business invitee of an esthetics spa, as defined in § 54.1-700, or a business offering massage therapy, as defined in § 54.1-3000; or (f) a vulnerable adult, as defined in § 18.2-369.

C. The determination of the issues pursuant to the provisions of this section shall be questions of fact for which the plaintiff shall bear the burden of proof and shall be subject to any available affirmative defenses.

2. That the provisions of this act shall apply only to a cause of action that accrued on or after July 1, 2025.

HOUSE SUBSTITUTE

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