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1 **HOUSE BILL NO. 238**

2 Offered January 14, 2026

3 Prefiled January 8, 2026

4 *A BILL to amend and reenact §§ 11-4.6, 40.1-28.7:7, 40.1-28.12, 40.1-29, 40.1-29.2, and 40.1-29.3 of the*
5 *Code of Virginia, relating to labor and employment; payment of wages; minimum wage and overtime*
6 *wages; misclassification of workers; civil actions.*

7 Patron—Lopez

8 Committee Referral Pending

9 **Be it enacted by the General Assembly of Virginia:**10 **1. That §§ 11-4.6, 40.1-28.7:7, 40.1-28.12, 40.1-29, 40.1-29.2, and 40.1-29.3 of the Code of Virginia are**
11 **amended and reenacted as follows:**12 **§ 11-4.6. Required contract provisions in construction contracts.**

13 A. As used in this section, unless the context requires a different meaning:

14 "Construction contract" means a contract for the construction, alteration, repair, or maintenance of a
15 building, structure, or appurtenance thereto, including moving, demolition, and excavation connected
16 therewith, or any provision contained in any contract relating to the construction of projects other than
17 buildings, except for contracts awarded solely for professional services as that term is defined in § 2.2-4301.18 "Contractor" or "general contractor" means the same as that term is defined in § 54.1-1100, except that
19 such term shall not include persons solely furnishing materials.20 "Owner" means a person or entity, other than a public body as defined in § 2.2-4301, responsible for
21 contracting with a general contractor for the procurement of a construction contract.

22 "Subcontractor" means the same as that term is defined in § 2.2-4347.

23 B. 1. In any construction contract between an owner and a general contractor, the parties shall include a
24 provision that requires the owner to pay such general contractor within 60 days of the receipt of an invoice
25 following satisfactory completion of the portion of the work for which the general contractor has invoiced.
26 An owner shall not be liable for amounts otherwise reducible due to the general contractor's noncompliance
27 with the terms of the contract. However, in the event that an owner withholds all or a part of the amount
28 invoiced by the general contractor under the terms of the contract, the owner shall notify the general
29 contractor within 45 days of the receipt of such invoice, in writing, of his intention to withhold all or part of
30 the general contractor's payment with the reason for nonpayment, specifically identifying the contractual
31 noncompliance and the dollar amount being withheld. Failure of an owner to make timely payment as
32 provided in this subdivision shall result in interest penalties consistent with § 2.2-4355. Nothing in this
33 subdivision shall be construed to apply to or prohibit the inclusion of any retainage provisions in a
34 construction contract.35 2. Any construction contract in which there is at least one general contractor and one subcontractor shall
36 be deemed to include a provision under which any general contractor is liable to any subcontractor with
37 whom the general contractor contracts for satisfactory performance of the subcontractor's duties under the
38 contract. Such contract shall require such general contractor to pay such subcontractor within the earlier of (i)
39 60 days of the receipt of an invoice following satisfactory completion of the portion of the work for which the
40 subcontractor has invoiced or (ii) seven days after receipt of amounts paid by the owner to the general
41 contractor or by the contractor to the subcontractor for work performed by a subcontractor pursuant to the
42 terms of the contract. Such contractors shall not be liable for amounts otherwise reducible due to the
43 subcontractor's noncompliance with the terms of the contract. However, in the event that a contractor
44 withholds all or a part of the amount invoiced by any subcontractor under the contract, the contractor shall
45 notify the subcontractor within 50 days of the receipt of such invoice, in writing, of his intention to withhold
46 all or a part of the subcontractor's payment with the reason for nonpayment, specifically identifying the
47 contractual noncompliance, the dollar amount being withheld, and the subcontractor responsible for the
48 contractual noncompliance. Payment by the party contracting with the contractor shall not be a condition
49 precedent to payment to any subcontractor, regardless of that contractor's receiving payment for amounts
50 owed to that contractor, unless the party contracting with the contractor is insolvent or a debtor in bankruptcy
51 as defined in § 50-73.79. Any provision in a contract contrary to this section shall be unenforceable. Failure
52 of a contractor to make timely payment as provided in this subdivision shall result in interest penalties
53 consistent with § 2.2-4355. Nothing in this subdivision shall be construed to apply to or prohibit the inclusion
54 of any retainage provisions in a construction contract. Every subcontract between a subcontractor and a
55 lower-tier subcontractor or supplier, of any tier, shall contain the identical payment, notice, and interest
56 requirements as those provided in this subdivision if (i) such construction contract is related to a project other
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59 than a single-family residential project and (ii) the value of the project, or an aggregate of projects under such
60 construction contract, is greater than \$500,000.

61 C. 1. Any construction contract between a general contractor and its subcontractor and any lower tier
62 additional subcontract entered into on or after July 1, 2020 2026, shall be deemed to include a provision
63 under which the general contractor, and its subcontractor, and the additional subcontractor at any lower tier
64 are jointly and severally liable to pay the employees of any additional the subcontractor at any lower tier the
65 greater of (i) all wages due to a the subcontractor's employees or to the lower tier subcontractor's employees
66 at such rate and upon such terms as shall be provided in the employment agreement between the
67 subcontractor and its employees or (ii) the amount of wages that the subcontractor or any lower tier
68 subcontractor is required to pay to its employees under the provisions of applicable law, including the
69 provisions of §§ 40.1-28.7:7 and 40.1-29, the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), and the
70 federal Fair Labor Standards Act (29 U.S.C. § 201 et seq.).

71 2. A general contractor shall be deemed to be the employer of any subcontractor's employees for purposes
72 of § 40.1-29. If the wages due to the subcontractor's employees under the terms of the employment agreement
73 between a subcontractor and its employees are not paid, the general contractor shall be subject to all
74 penalties, criminal and civil, to which an employer that fails or refuses to pay wages is subject under
75 § 40.1-29. Any liability of a general contractor pursuant to § 40.1-29 shall be joint and several with the
76 subcontractor that failed or refused to pay the wages to its employees.

77 3. Except as otherwise provided in a contract between the general contractor and the subcontractor, the
78 subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorney
79 fees owed as a result of the subcontractor's failure to pay wages to the subcontractor's employees as provided
80 in subdivision 1, unless the subcontractor's failure to pay the wages was due to the general contractor's failure
81 to pay moneys due to the subcontractor in accordance with the terms of their construction contract.

82 4. The provisions of this subsection shall only apply if (i) it can be demonstrated that the general
83 contractor knew or should have known that the subcontractor was not paying his employees all wages due,
84 (ii) the construction contract is related to a project other than a single family residential project; and (iii) the
85 value of the project, or an aggregate of projects under one construction contract, is greater than \$500,000. As
86 evidence a general contractor or any subcontractor may offer a written certification, under oath, from the
87 subcontractor in direct privity of contract with the general contractor or subcontractor stating that (a) the
88 subcontractor and each of his sub-subcontractors has paid all employees all wages due for the period during
89 which the wages are claimed for the work performed on the project and (b) to the subcontractor's knowledge
90 all sub-subcontractors below the subcontractor have similarly paid their employees all such wages. Any
91 person who falsely signs such certification shall be personally liable to the general contractor or subcontractor
92 for fraud and any damages the general contractor or subcontractor may incur.

§ 40.1-28.7:7. Misclassification of workers.

93 A. An individual who has not been properly classified as an employee may bring a civil action for
94 damages against his employer for failing to properly classify the employee if the employer had knowledge of
95 the individual's misclassification. An individual's representative may bring the action on behalf of the
96 individual. If the court finds that the employer has not properly classified the individual as an employee, the
97 court may award the individual damages in the amount of any wages, salary, employment benefits, including
98 expenses incurred by the employee that would otherwise have been covered by insurance, or other
99 compensation lost to the individual, a reasonable attorney fee, and the costs incurred by the individual in
100 bringing the action. *In addition, any employer that violates this section shall be liable to the aggrieved*
101 *individual for the applicable remedies, damages, or other relief available in an action brought pursuant to*
102 *subsection J of § 40.1-29. Any action brought pursuant to this subsection shall commence within three years*
103 *after the accrual of the cause of action.*

104 B. In a proceeding under subsection A, an individual who performs services for a person for remuneration
105 shall be presumed to be an employee of the person that paid such remuneration, and the person that paid such
106 remuneration shall be presumed to be the employer of the individual who was paid for performing the
107 services, unless it is shown that the individual is an independent contractor as determined under the Internal
108 Revenue Service guidelines.

109 C. As used in this section, "Internal Revenue Service guidelines" means the most recent version of the
110 guidelines published by the Internal Revenue Service for evaluating independent contractor status, including
111 its interpretation of common law doctrine on independent contractors, and any regulations that the Internal
112 Revenue Service may promulgate regarding determining whether an employee is an independent contractor,
113 including 26 C.F.R. § 31.3121(d)-1.

114 D. In a proceeding under subsection A, a hiring party providing an individual with personal protective
115 equipment in response to a disaster caused by a communicable disease of public health threat for which a
116 state of emergency has been declared pursuant to § 44-146.17 shall not be considered in any determination
117 regarding whether such individual is an employee or independent contractor. For the purposes of this
118 subsection, the terms "communicable disease of public health threat," "disaster," and "state of emergency"
119 have the same meaning as provided in § 44-146.16.

121 **§ 40.1-28.12. Employee's remedies.**

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

129 **§ 40.1-29. Time and medium of payment; withholding wages; written statement of earnings;
 130 agreement for forfeiture of wages; proceedings to enforce compliance; penalties.**

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

141 B. Payment of wages ~~or salaries~~ shall be (i) in lawful money of the United States, (ii) by check payable at
 142 face value upon demand in lawful money of the United States, (iii) by electronic automated fund transfer in
 143 lawful money of the United States into an account in the name of the employee at a financial institution
 144 designated by the employee, or (iv) by credit to a prepaid debit card or card account from which the employee
 145 is able to withdraw or transfer funds with full written disclosure by the employer of any applicable fees and
 146 affirmative consent thereto by the employee. However, an employer that elects not to pay wages ~~or salaries~~ in
 147 accordance with clause (i) or (ii) to an employee who is hired after January 1, 2010, shall be permitted to pay
 148 wages ~~or salaries~~ by credit to a prepaid debit card or card account in accordance with clause (iv), even though
 149 such employee has not affirmatively consented thereto, if the employee fails to designate an account at a
 150 financial institution in accordance with clause (iii) and the employer arranges for such card or card account to
 151 be issued through a network system through which the employee shall have the ability to make at least one
 152 free withdrawal or transfer per pay period, which withdrawal may be for any sum in such card or card
 153 account as the employee may elect, using such card or card account at financial institutions participating in
 154 such network system.

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

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

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

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

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

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

182 F. The Commissioner may require a written complaint of the violation of this section ~~an employer's~~

183 *failure to pay wages* and, with the written and signed consent of an employee, may institute proceedings on
184 behalf of an employee to ~~enforce compliance with this section~~ require payment, and to collect any ~~moneys~~
185 wages unlawfully withheld from such employee that shall be paid to the employee entitled thereto. In
186 addition, following the issuance of a final order by the Commissioner or a court, the Commissioner may
187 engage private counsel, approved by the Attorney General, to collect any ~~moneys~~ wages owed to the
188 employee or the Commonwealth. Upon entry of a final order of the Commissioner, or upon entry of a
189 judgment, against the employer, the Commissioner or the court shall assess attorney fees of one-third of the
190 amount set forth in the final order or judgment.

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

195 H. Any employer who knowingly fails to make payment of wages ~~in accordance with subsection A or~~
196 ~~§ 40.1-29.3~~ shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner
197 shall notify any employer that the Commissioner alleges has violated any provision of this section ~~or~~
198 ~~§ 40.1-29.3~~ by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days
199 of receipt of notice of the alleged violation, the employer may request an informal conference regarding such
200 violation with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner
201 shall consider the size of the business of the employer charged and the gravity of the violation. The decision
202 of the Commissioner shall be final. Civil penalties owed under this section shall be paid to the Commissioner
203 for deposit into the general fund of the State Treasurer. The Commissioner shall prescribe procedures for the
204 payment of proposed assessments of penalties that are not contested by employers. Such procedures shall
205 include provisions for an employer to consent to abatement of the alleged violation and pay a proposed
206 penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such
207 alleged violation.

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

211 J. In addition to any civil or criminal penalty provided by this section, and without regard to any
212 exhaustion of alternative administrative remedies provided for in this section, if an employer fails to pay
213 wages to an employee in accordance with this section *or violates any provision of § 40.1-28.7:7, 40.1-29.2,*
or 40.1-29.3 or the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), the employee may bring an action,
214 individually, jointly, with other aggrieved employees, or on behalf of similarly situated employees as a
215 collective action consistent with the collective action procedures of the Fair Labor Standards Act, 29 U.S.C. §
216(b), against the employer in a court of competent jurisdiction to recover payment of the wages, and the
217 court shall award the wages owed, an additional equal amount as liquidated damages, plus prejudgment
218 interest thereon as provided in subsection G, and reasonable attorney fees and costs. If the court finds that the
219 employer knowingly failed to pay wages to an employee ~~in accordance with this section~~, the court shall
220 award the employee an amount equal to triple the amount of wages due and reasonable attorney fees and
221 costs. *No provision of this subsection shall be construed to replace or limit the availability of any other class*
or collective action available in a court of competent jurisdiction or other tribunal.

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

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

230 M. As used in this section, "wages" includes any remuneration an employer owes to an employee,
231 including hourly wages, piece rate wages, day rates, salaries, overtime wages, legally required prevailing
232 wages, commissions, bonuses, severance, accrued vacation or sick leave pay pursuant to an employment
233 policy or agreement, and damages available due to the misclassification of an employee in violation of
234 § 40.1-28.7:7.

235 N. The Attorney General may investigate any alleged violation of this section, § 2.2-4321.3 or
236 40.1-28.7:7, the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), or the Virginia Overtime Wage Act
237 (§ 40.1-29.2 et seq.) and may cause an action to be brought in the circuit court of the city or county in which
238 such a violation has occurred for the issuance of an injunction to enjoin and restrain the continuance of such
239 violation. In conducting such investigation, the Attorney General may require an individual or entity to
240 submit a sworn statement or report regarding any information the Attorney General deems relevant, examine
241 under oath any person with knowledge of the alleged violation, and issue subpoenas. If it appears to the
242 satisfaction of the court that the defendant has, in fact, violated such provision, the Attorney General shall be
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245 entitled to reasonable attorney fees and costs, any applicable statutory penalties, equitable relief as may be
 246 appropriate, and, on behalf of impacted employees, the payment of back wages unlawfully withheld and any
 247 other applicable damages. The Attorney General shall not, in any action brought pursuant to this subsection,
 248 recover wages or other damages already recovered by an employee.

249 **§ 40.1-29.2. Employer liability.**

250 Any employer that violates the overtime pay requirements of the federal Fair Labor Standards Act of
 251 1938, 29 U.S.C. § 201 et seq., as amended, and any regulations, guidance, or rules adopted pursuant to the
 252 overtime pay provisions of such federal act or any related governing case law shall be liable to the employee
 253 for the applicable remedies, damages, or other relief available under the federal Fair Labor Standards Act in
 254 an action brought pursuant to the process in subsection J of § 40.1-29. For the purposes of this section,
 255 "employer" and "employee" shall have the meanings ascribed to them under the federal Fair Labor Standards
 256 Act and all applicable exemptions, overtime calculation methods, methods of overtime payment, or other
 257 overtime provisions within the federal Fair Labor Standards Act and any attendant regulations, guidance, or
 258 rules shall apply. Any action brought pursuant to this section shall accrue according to the applicable
 259 limitations set forth in the federal Fair Labor Standards Act.

260 **§ 40.1-29.3. Overtime for certain employees.**

261 A. As used in this section:

262 "Carrier" means an air carrier that is subject to the provisions of the federal Railway Labor Act, 45 U.S.C.
 263 § 181 et seq.

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

266 "*Direct support services*" means personal care services that assist participants with instrumental
 267 activities of daily living, including grooming, toileting, bathing, eating, dressing, monitoring health status
 268 and physical condition, and assisting with housekeeping activities, and other in-home, long-term services and
 269 supports provided to an elderly person or person with a disability to meet such person's daily living needs
 270 and ensure that such person may adequately function at home and have safe access to the community.

271 "Employee" means an individual employed by a derivative carrier or an individual who is employed by a
 272 home care agency or other third-party provider to provide direct support services.

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

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

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