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1 SENATE BILL NO. 199

2 Offered January 14, 2026

3 Prefiled January 9, 2026

4 A BILL to amend and reenact §§ 40.1-33.3 through 40.1-33.6 of the Code of Virginia and to amend the Code
5 of Virginia by adding sections numbered 40.1-33.5:1 and 40.1-33.5:2 and by adding in Article 2.1 of
6 Chapter 3 of Title 40.1 a section numbered 40.1-33.6:1, relating to employment; paid sick leave; civil
7 penalties.

8 Patron—Favola

9 Referred to Committee on Commerce and Labor

10 Be it enacted by the General Assembly of Virginia:

11 1. That §§ 40.1-33.3 through 40.1-33.6 of the Code of Virginia are amended and reenacted and that the
12 Code of Virginia is amended by adding sections numbered 40.1-33.5:1 and 40.1-33.5:2 and by adding in
13 Article 2.1 of Chapter 3 of Title 40.1 a section numbered 40.1-33.6:1 as follows:

14 § 40.1-33.3. Definitions.

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

16 "Employee" means a home health worker who works on average at least 20 hours per week or 90 hours
17 per month. "Employee" does not include an individual who (i) is licensed, registered, or certified by a health
18 regulatory board within the Department of Health Professions; (ii) is employed by a hospital licensed by the
19 Department of Health; and (iii) works, on average, no more than 30 hours per month.

20 "Domestic violence" has the same meaning as provided in subdivision 7 of § 38.2-508.

21 "Employer" has the same meaning as provided in § 40.1-2, except that for the purposes of this article, (i)
22 beginning July 1, 2027, "employer" means an employer of at least 50 employees; (ii) beginning January 1,
23 2028, "employer" means an employer of at least 25 employees; and (iii) beginning January 1, 2029,
24 "employer" means an employer of at least one employee. Notwithstanding the provisions of § 40.1-2.1,
25 beginning July 1, 2028, "employer" includes the Commonwealth and its agencies, institutions, and political
26 subdivisions. "Employer" does not include any agency of the federal government.

27 "Family member" means:

28 1. Regardless of age, a biological child, adopted or foster child, stepchild, legal ward, child to whom the
29 employee stands in loco parentis, or individual to whom an employee stood in loco parentis when the
30 individual was a minor;31 2. A biological parent, foster parent, stepparent, adoptive parent, legal guardian of an employee or an
32 employee's spouse, or individual who stood in loco parentis to an employee when the employee or
33 employee's spouse was a minor child;

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

35 4. A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of
36 an employee or the employee's spouse;37 5. An individual for whom an employee is responsible for providing or arranging *health or safety-related*
38 care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment
39 or ensuring the person is safe following domestic violence, sexual assault, or stalking; or40 6. Any other individual related by blood or affinity whose close association with an employee is the
41 equivalent of a family relationship.42 "Home health worker" means an individual who provides personal care, respite, or companion services to
43 an individual who receives consumer directed services under the state plan for medical assistance services.44 "Paid sick leave" means leave that is compensated at the same hourly rate and with the same benefits,
45 including health care benefits, as an employee normally earns during hours worked and is provided by an
46 employer to an employee for the purposes described in § 40.1-33.5; however, such hourly rate shall not be
47 less than the minimum wage amount set forth in § 40.1-28.10 without reduction for any tip credit that the
48 employer would otherwise be permitted to claim.49 "Retaliatory action" means a denial of any benefit provided pursuant to this article; any threat, discharge,
50 suspension, demotion, or reduction of hours; or the taking of any other adverse action against an employee
51 as a result of the employee's exercise of any paid sick leave benefits. "Retaliatory action" includes
52 interference with or punishment for in any manner participating in or assisting an investigation, proceeding,
53 or hearing under this article.54 "Sexual assault" means any act prohibited by the provisions of § 18.2-61, 18.2-67.1, 18.2-67.3, or
55 18.2-67.4.

56 "Stalking" means conduct prohibited by the provisions of § 18.2-60.3.

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59 *"Year" means a regular and consecutive 12-month period as determined by the employer.*

60 **§ 40.1-33.4. Accrual of paid sick leave.**

61 A. All employees shall accrue a minimum of one hour of paid sick leave for every 30 hours worked. Paid
62 sick leave shall be carried over to the year following the year in which it was accrued. An employee shall not
63 accrue ~~or~~, use, *or carry over* more than 40 hours of paid sick leave in a year, unless the employer selects a
64 higher limit.

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

69 C. *Employees who are employed and compensated on a fee-for-service basis shall accrue paid sick leave
70 in accordance with regulations adopted by the Commissioner. The Commissioner shall promulgate such
71 regulations, which shall provide for the accrual of paid sick leave for such employees that is consistent with
72 the provisions of this section.*

73 D. Paid sick leave as provided in this section shall begin to accrue at the commencement of employment.
74 An employer may provide all paid sick leave that an employee is expected to accrue in a year at the
75 beginning of the year.

76 D. E. Any employer with a paid leave policy, such as a paid time off policy, that provides an employee an
77 amount of paid leave sufficient to meet the requirements of this section and that may be used for the same
78 purposes and under the same conditions as paid sick leave under this article shall not be required to provide
79 additional paid sick leave to any employee that is eligible for paid leave under the policy.

80 E. F. Any employer that has entered into a bona fide collective bargaining agreement that requires the
81 employer to provide an amount of paid leave sufficient to meet the requirements of this section and that may
82 be used for the same purposes and under the same conditions as paid sick leave under this article shall not be
83 required to provide additional paid sick leave to any employee covered by such collective bargaining
84 agreement.

85 G. *Nothing in this section shall be construed as requiring financial or other reimbursement to an
86 employee from an employer upon the employee's termination, resignation, retirement, or other separation
87 from employment for accrued paid sick leave that has not been used.*

88 H. *If an employee is transferred to a separate division, entity, or location but remains employed by the
89 same employer, the employee is entitled to all paid sick leave accrued at the prior division, entity, or location
90 and is entitled to use all paid sick leave as provided in this section. If an employee is separated from
91 employment with an employer and the employee is rehired within 12 months of separation by the same
92 employer, previously accrued paid sick leave that had not been used shall be reinstated. Further, the
93 employee shall be entitled to use accrued paid sick leave and accrue additional paid sick leave at the
94 recommencement of employment.*

95 I. *If a different employer succeeds or takes the place of an existing employer, each employee of the
96 original employer who remains employed by the successor employer is entitled to all paid sick leave accrued
97 while employed by the original employer and to use any such paid sick leave previously accrued.*

98 J. *An employer may loan paid sick leave to an employee in advance of accrual of paid sick leave by such
99 employee.*

100 K. *Nothing in this article shall be construed to (i) discourage or prohibit an employer from the adoption
101 or retention of a more generous paid sick leave policy than outlined herein; (ii) preempt, limit, or otherwise
102 affect the applicability of any other law, regulation, requirement, policy, or standard that provides for
103 greater accrual or use by employees of paid sick leave or that extends other protections to employees; or (iii)
104 diminish the rights of public employees regarding paid sick leave or the use of paid sick leave as provided
105 under any applicable law.*

106 **§ 40.1-33.5. Use of paid sick leave.**

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

108 1. An employee's mental or physical illness, injury, or health condition; an employee's need for medical
109 diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need
110 for preventive medical care; ~~or~~

111 2. Care of a family member with a mental or physical illness, injury, or health condition; care of a family
112 member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health
113 condition; or care of a family member who needs preventive medical care; ~~or~~

114 3. *Absence due to domestic violence, sexual assault, or stalking, provided that the leave is to allow the
115 employee to seek or obtain medical care, mental health care, counseling, legal services, relocation or
116 securing of an existing home, or other victim services for the employee or the employee's family member.*

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

120 C. When the use of paid sick leave is foreseeable, the employee shall make a good faith effort to provide

121 notice of the need for such leave to the employer in advance of the use of the paid sick leave and shall make a
 122 reasonable effort to schedule the use of paid sick leave in a manner that does not unduly disrupt the
 123 operations of the employer.

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

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

132 F. *Paid sick leave shall be used in hourly increments unless the employer allows paid sick leave to be
 133 taken in smaller increments.*

134 G. *An employer shall not require disclosure of details of health information about an employee or an
 135 employee's family member or details of domestic violence, sexual assault, or stalking as a condition of
 136 providing paid sick leave under this article. Unless otherwise required by law, an employer who possesses
 137 health, domestic violence, sexual assault, or stalking information about an employee or an employee's family
 138 member shall treat such information as confidential and shall not disclose such information except to the
 139 employee or with the consent of the employee.*

140 H. For paid sick leave of three or more consecutive work days, an employer may require reasonable
 141 documentation that the paid sick leave has been used for a purpose for which such leave is required to be
 142 provided as set forth in subsection A. *For the use of paid sick leave related to subdivision A 1 or 2,
 143 documentation signed by a health care professional indicating that paid sick leave is necessary shall be
 144 considered reasonable documentation for purposes of this subsection. For the use of paid sick leave related
 145 to subdivision A 3, (i) a police report indicating domestic violence, sexual assault, or stalking; (ii) a court
 146 document indicating the employee is involved in legal action related to domestic violence, sexual assault, or
 147 stalking; (iii) documentation from a victim services advocate, the employee's attorney, a member of the
 148 clergy, or a health care professional that the employee is or was receiving services related to domestic
 149 violence, sexual assault, or stalking; or (iv) the employee's written statement that the use of paid sick leave is
 150 for one of the purposes described in subdivision A 3 shall be considered reasonable documentation for
 151 purposes of this subsection.*

152 **§ 40.1-33.5:1. Certain health care workers; waiver; exception.**

153 A. An employee who (i) is licensed, registered, or certified by a health regulatory board within the
 154 Department of Health Professions; (ii) is employed by a hospital licensed by the Department of Health; and
 155 (iii) works, on average, no more than 30 hours per month may waive the right to accrue and use paid sick
 156 leave under the provisions of this article. Such waiver shall be in writing and signed by the employee and the
 157 employer. If an employee waives his rights in accordance with this subsection, the employer shall be deemed
 158 to have satisfied the provisions of this article with respect to such employee.

159 B. Notwithstanding the provisions of this article, an employer shall not be required to provide paid sick
 160 leave under the provisions of this article to any employee who is employed on a pro re nata, or as-needed,
 161 basis, regardless of the number of hours worked in the month and who is (i) licensed, registered, or certified
 162 by a health regulatory board within the Department of Health Professions; (ii) employed by a facility
 163 licensed by the Department of Health; (iii) employed by the University of Virginia Medical Center or
 164 Virginia Commonwealth University Health System Authority; or (iv) employed by any agency licensed by the
 165 Department of Behavioral Health and Developmental Services.

166 **§ 40.1-33.5:2. Notice and recordkeeping; regulations.**

167 The Commissioner shall promulgate regulations for employee notice and employer recordkeeping,
 168 including the following requirements for employers:

169 1. To notify employees of their rights under this article, both in writing and through required posting,
 170 including their right to file a complaint or bring a civil action for violations of this article;

171 2. To establish and maintain recordkeeping systems regarding the use and accrual of paid sick leave,
 172 including the requirement to retain records for three years; and

173 3. To ensure the confidentiality of any protected health information or information regarding domestic
 174 violence, sexual assault, or stalking that the employer possesses about an employee or an employee's family
 175 member.

176 **§ 40.1-33.6. Retaliatory action prohibited.**

177 A. No employer shall discharge, discipline, threaten, discriminate against, or penalize an employee, or
 178 take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges
 179 of employment, because the employee (i) has requested or exercised the benefits provided for in this article
 180 or; (ii) has alleged a violation of this article; (iii) has participated in an investigation, hearing, or proceeding
 181 or cooperated with or assisted the Commissioner in investigations of any alleged violation of this article; or
 182 (iv) has informed any individual of such individual's potential benefits under this article.

183 B. Neither an employer nor any other person shall interfere with, restrain, deny the exercise of, or deny
184 the attempt to exercise any benefit provided pursuant to this article. An employer's absence control policy
185 shall not count paid sick leave taken under this article as an absence that may lead to or result in discipline,
186 discharge, demotion, suspension, or any other adverse action. Protections of this section shall apply to any
187 person who mistakenly but in good faith alleges a violation of the provisions of this article.

188 **§ 40.1-33.6:1. Enforcement; civil penalties; civil actions.**

189 A. The Commissioner shall promulgate regulations for implementation and enforcement of this article.

190 B. In enforcing the provisions of this article, the Commissioner shall establish a system utilizing multiple
191 means of communication to receive complaints regarding noncompliance with this article and to investigate
192 complaints received by the Commissioner in a timely manner.

193 C. Any person alleging a violation of this article shall have the right to file a complaint with the
194 Commissioner within one year after the date the person knew or should have known of the alleged violation.
195 The Commissioner shall encourage reporting pursuant to this section by keeping confidential, to the
196 maximum extent permitted by applicable laws, the name and other identifying information of the employee or
197 other person reporting the violation, provided, however, that with the authorization of such person, the
198 Commissioner may disclose the person's name and identifying information as necessary to enforce this article
199 or for other appropriate purposes.

200 D. Upon receiving a complaint alleging a violation of this article, the Commissioner shall investigate
201 such complaint and attempt to resolve it through mediation between the complainant and the subject of the
202 complaint or other means. The Commissioner shall keep the complainant notified regarding the status of his
203 complaint and any resultant investigation. If the Commissioner believes that a violation has occurred, he
204 shall issue to the offending person or employer a notice of violation and the relief required of the offending
205 person or entity. The Commissioner shall prescribe the form and wording of such notices of violation,
206 including any method of appealing a decision of the Commissioner.

207 E. The Commissioner shall notify any employer that he alleges has violated any provision of this article
208 by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days of receipt of
209 notice of the alleged violation, the employer may request an informal conference with the Commissioner
210 regarding such violation.

211 F. Any such employer that knowingly violates this article shall be subject to a civil penalty not to exceed
212 \$150 for the first violation and, for subsequent violations that occur within two years of any previous
213 violation, not to exceed \$300 for the second violation and not to exceed \$500 for each successive violation. In
214 determining the amount of any civil penalty to be imposed, the Commissioner shall consider the size of the
215 business of the employer charged and the gravity of the violation. The decision of the Commissioner shall be
216 final.

217 G. The Commissioner, with the written and signed consent of an employee, may institute proceedings on
218 behalf of an employee to enforce compliance with this article, to grant equitable relief as appropriate and
219 permitted by law, and to collect the amount of any uncompensated sick leave that shall be paid to the
220 employee entitled thereto. Upon entry of a final order of the Commissioner, or upon entry of a judgment
221 against the employer, the Commissioner or the court shall assess attorney fees of one-third the amount set
222 forth in the final order or judgment.

223 H. In addition to any civil penalties provided by this section, and without regard to any exhaustion of
224 alternative administrative remedies provided for in this section, an employee who alleges a violation of this
225 article may bring a civil action in a court of competent jurisdiction against an employer violating this article.
226 Such action may be brought by a person aggrieved by a violation of this article without first filing an
227 administrative complaint. Upon prevailing in an action brought pursuant to this section, the court shall order
228 as a remedy to the employee (i) twice the amount of any uncompensated sick leave; (ii) twice the amount of
229 any actual damages suffered as the result of an employer's violation of this article; (iii) injunctive relief as
230 appropriate to restrain continued violation of this article; (iv) such legal or equitable relief as may be
231 appropriate to remedy the violation, including the reinstatement of the employee to the same position held
232 before the retaliatory action or to an equivalent position; and (v) compensation for any lost wages, benefits,
233 and other remuneration, together with interest thereon and reasonable attorney fees and costs. The statute of
234 limitations for a civil action brought pursuant to this section shall be for a period of two years from the date
235 the alleged violation occurred or the date the aggrieved employee knew or should have known of the
236 violation.

237 I. Civil penalties owed under this article shall be paid to the Commissioner for deposit into the general
238 fund. The Commissioner shall prescribe procedures for the payment of proposed assessments of civil
239 penalties that are not contested by employers. Such procedures shall include provisions for an employer to
240 consent to abatement of the alleged violation and to pay a proposed civil penalty or a negotiated sum in lieu
241 of such civil penalty without admission of any civil liability arising from such alleged violation.

242 2. That the provisions of the first enactment of this act shall become effective on July 1, 2027.

243 3. That by July 1, 2027, the Commissioner of Labor and Industry shall adopt regulations pursuant to
244 § 40.1-33.6:1 of the Code of Virginia, as created by this act, for the implementation and enforcement of

245 Article 2.1 (§ 40.1-33.3 et seq.) of Chapter 3 of Title 40.1 of the Code of Virginia, as amended by this
246 act.

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