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HOUSE BILL NO. 5  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Joint Conference Committee  
on \_\_\_\_\_)

(Patron Prior to Substitute—Delegate Convirs-Fowler)

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 2.1:1, consisting of sections numbered 40.1-33.6:1 through 40.1-33.6:7, relating to employment; paid sick leave; civil penalties; civil actions.

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 2.1:1, consisting of sections numbered 40.1-33.6:1 through 40.1-33.6:7, as follows:

Article 2.1:1.

Paid Sick Leave.

§ 40.1-33.6:1. Definitions.

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

"Domestic partner" means a person not younger than 18 years of age who (i) is dependent upon an employee for support as shown by either unilateral dependence or mutual interdependence that is evidenced by a nexus of factors, including (a) common ownership of real or personal property, (b) common householding, (c) children in common, (d) signs of intent to marry, (e) shared budgeting, and (f) the length of the personal relationship with the employee, or (ii) has registered as the domestic partner of the employee with any registry of domestic partnerships maintained by the employer of either party, or in any state, county, city, town, or village in the United States.

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

"Employee" has the same meaning as provided in § 40.1-2, except that for the purposes of this article, "employee" does not include an employee as that term is defined in § 40.1-33.3.

"Employer" has the same meaning as provided in § 40.1-2, except that for the purposes of this article, (i) beginning July 1, 2027, "employer" means an employer of at least 50 employees; (ii) beginning January 1, 2028, "employer" means an employer of at least 25 employees; and (iii) beginning January 1, 2029, "employer" means an employer of at least one employee. Notwithstanding the provisions of § 40.1-2.1, "employer" includes the Commonwealth and its agencies, institutions, and political subdivisions. However, to the extent that any conflict exists between this article and Chapter 11 (§ 51.1-1100 et seq.) of Title 51.1, the provisions of such chapter shall control.

"Family member" means:

1. Regardless of age, a biological child, adopted or foster child, stepchild, legal ward, child to whom the employee stands in loco parentis, or individual to whom an employee stood in loco parentis when the individual was a minor;

2. A biological parent, foster parent, stepparent, adoptive parent, legal guardian of an employee or an employee's spouse, or individual who stood in loco parentis to an employee when the employee or employee's spouse was a minor child;

3. An individual to whom an employee is married or domestically partnered;

4. A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of an employee or the employee's spouse or domestic partner;

5. An individual for whom an employee is responsible for providing or arranging health or safety-related care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment or ensuring the person is safe following domestic violence, sexual assault, or stalking; or

6. Any other individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

"Paid sick leave" means leave that is compensated at the employer's regular rate as defined in subdivision B of § 40.1-29.3 and is provided by an employer to an employee for the purposes described in § 40.1-33.6:3; however, such hourly rate shall not be less than the minimum wage amount set forth in § 40.1-28.10 without reduction for any tip credit that the employer would otherwise be permitted to claim.

"Retaliatory action" means a denial of any benefit provided pursuant to this article; any threat, discharge, suspension, demotion, or reduction of hours; or the taking of any other adverse action against an employee as a result of the employee's exercise of any paid sick leave benefits. "Retaliatory action" includes interference with or punishment for in any manner participating in or assisting an investigation, proceeding, or hearing under this article.

"Sexual assault" means any act prohibited by the provisions of § 18.2-61, 18.2-67.1, 18.2-67.3, or 18.2-67.4.

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

HOUSE SUBSTITUTE

HB5H1

3/13/26 11:17

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

61 **§ 40.1-33.6:2. Accrual of paid sick leave.**

62 A. All employees shall accrue a minimum of one hour of paid sick leave for every 30 hours worked. Paid  
63 sick leave shall be carried over to the year following the year in which it was accrued. An employee shall not  
64 accrue or use more than 40 hours of paid sick leave in a year, unless the employer selects a 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 covered by 29 C.F.R. § 825.801 shall be assumed to work 40 hours in each workweek for  
70 purposes of paid sick leave accrual.

71 D. Paid sick leave as provided in this section shall begin to accrue at the commencement of employment.  
72 An employer may elect to provide all paid sick leave that an employee is expected to accrue in a year at the  
73 beginning of the year. An employer that elects to provide 40 hours of sick leave at the beginning of a year  
74 shall be considered to have satisfied the provisions of subsection A.

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

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

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

87 H. If an employee is transferred to a separate division, entity, or location but remains employed by the  
88 same employer, the employee is entitled to all paid sick leave accrued at the prior division, entity, or location  
89 and is entitled to use all paid sick leave as provided in this section. If an employee is separated from  
90 employment with an employer and the employee is rehired within 12 months of separation by the same  
91 employer, previously accrued paid sick leave that had not been used shall be reinstated unless the employer  
92 pays the employee for such accrued leave upon separation at the rate required by this article. Further, the  
93 employee shall be entitled to use accrued paid sick leave and accrue additional paid sick leave at the  
94 commencement of employment. If an employee is separated from employment for more than 12 months, the  
95 employer shall not be required to reinstate previously accrued paid sick leave for such employee, and such  
96 employee shall be considered to have newly commenced employment for purposes of this subsection.

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

100 J. An employer may loan paid sick leave to an employee in advance of accrual of paid sick leave by such  
101 employee.

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

108 L. Employees who are employed and compensated on a fee-for-service basis shall accrue paid sick leave  
109 in accordance with regulations adopted by the Commissioner. The Commissioner shall promulgate such  
110 regulations, which shall provide for the accrual of paid sick leave for such employees that is consistent with  
111 the provisions of this section.

112 M. Any employer with employees covered by or receiving benefits pursuant to the Longshore and Harbor  
113 Workers' Compensation Act, 33 U.S.C. § 901 et seq., that is party to an existing, bona fide collective  
114 bargaining agreement in effect on July 1, 2027, shall be exempt from the provisions of this article with  
115 respect to all employees in the bargaining unit subject to such collective bargaining agreement until the  
116 earlier of (i) the expiration of such collective bargaining agreement or (ii) December 31, 2030.

117 **§ 40.1-33.6:3. Use of paid sick leave.**

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

119 1. An employee's mental or physical illness, injury, or health condition; an employee's need for medical  
120 diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's  
121 need for preventive medical care;

122 2. Care of a family member with a mental or physical illness, injury, or health condition; care of a family  
 123 member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health  
 124 condition; or care of a family member who needs preventive medical care; or

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

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

131 C. When the use of paid sick leave is foreseeable, the employee shall make a good faith effort to provide  
 132 notice of the need for such leave to the employer in advance of the use of the paid sick leave and shall make a  
 133 reasonable effort to schedule the use of paid sick leave in a manner that does not unduly disrupt the  
 134 operations of the employer.

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

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

143 F. Paid sick leave shall be used in hourly increments unless the employer allows paid sick leave to be  
 144 taken in smaller increments.

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

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

163 **§ 40.1-33.6:4. Certain health care workers; scope of article.**

164 A. No provision of this article shall apply to an employee as that term is defined in § 40.1-33.3 or the  
 165 employer of any such employment in relation to such employment.

166 B. No employee who (i) is licensed, registered, or certified by a health regulatory board within the  
 167 Department of Health Professions; (ii) is employed by a facility licensed by the Department of Health or the  
 168 University of Virginia Medical Center or Virginia Commonwealth University Health System Authority; and  
 169 (iii) works, on average, no more than 30 hours per week shall be eligible to accrue paid sick leave under the  
 170 provisions of this article.

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

178 D. No provision of this article shall apply to an employer or employee as such terms are defined in 45  
 179 U.S.C. § 351.

180 **§ 40.1-33.6:5. Notice and recordkeeping; regulations.**

181 The Commissioner shall promulgate regulations for employee notice and employer recordkeeping,  
 182 including the following requirements for employers to:

183 1. Notify employees of their rights under this article, both in writing and through required posting,

184 including their right to file a complaint or bring a civil action for violations of this article;

185 2. Establish and maintain recordkeeping systems regarding the use and accrual of paid sick leave,  
186 including the requirement to retain records for three years; and

187 3. Ensure the confidentiality of any protected health information or information regarding domestic  
188 violence, sexual assault, or stalking that the employer possesses about an employee or an employee's family  
189 member.

190 **§ 40.1-33.6:6. Retaliatory action prohibited.**

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

197 B. No person shall interfere with, restrain, deny the exercise of, or deny the attempt to exercise any benefit  
198 provided pursuant to this article. An employer's absence control policy shall not count paid sick leave taken  
199 under this article as an absence that may lead to or result in discipline, discharge, demotion, suspension, or  
200 any other adverse action. The protections of this section shall apply to any person who mistakenly but in  
201 good faith alleges a violation of the provisions of this article.

202 **§ 40.1-33.6:7. Enforcement; civil penalties; civil actions.**

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

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

207 C. Any person alleging a violation of this article shall have the right to file a complaint with the  
208 Commissioner within one year after the date the person knew or should have known of the alleged violation.  
209 The Commissioner may initiate an investigation upon the receipt of a complaint from an employee or an  
210 interested third party or at the Commissioner's discretion. The Commissioner shall encourage reporting  
211 pursuant to this section by keeping confidential, notwithstanding any other provision of law, the name and  
212 other identifying information of the complainant or employee witness, provided, however, that with the  
213 authorization of such person, the Commissioner may disclose such person's name and identifying information  
214 as necessary to enforce this article or for other appropriate purposes. In the course of an investigation, the  
215 Commissioner or the Commissioner's designee may enter the employer's premises to review records, require  
216 an employer or employee to submit a statement or report in writing under oath as to all necessary  
217 information, examine under oath any person alleged to have participated in or have knowledge of the  
218 violation, and issue subpoenas.

219 D. Upon receiving a complaint alleging a violation of this article, the Commissioner may attempt to  
220 resolve such complaint through mediation between the complainant and the person or employer alleged to  
221 have violated this article. No civil monetary penalty shall be assessed and no action shall be brought if a  
222 person or employer alleged to have violated this article corrects the alleged violation within a reasonable  
223 time to be established by regulation. The Commissioner shall keep the complainant notified regarding the  
224 status of his complaint and any resultant investigation. If the Commissioner determines that a violation has  
225 occurred, he may issue to the offending person or employer a notice of violation and the relief required of the  
226 offending person or employer. The Commissioner shall prescribe the form and wording of such notices of  
227 violation, including any method of appealing a decision of the Commissioner.

228 E. The Commissioner shall notify any employer that he alleges has violated any provision of this article  
229 by certified mail or other appropriate means, as determined by the Commissioner. Such notice shall contain  
230 a description of the alleged violation. Within 15 days of receipt of notice of the alleged violation, the  
231 employer may request an informal conference with the Commissioner regarding such alleged violation.

232 F. Any such employer that knowingly violates this article shall be subject to a civil penalty not to exceed  
233 \$150 for the first violation and, for subsequent violations that occur within two years of any previous  
234 violation, not to exceed \$300 for the second violation and not to exceed \$500 for each successive violation. In  
235 determining the amount of any civil penalty to be imposed, the Commissioner shall consider the size of the  
236 business of the employer charged and the gravity of the violation. The decision of the Commissioner shall be  
237 final.

238 G. The Commissioner or the Attorney General may commence administrative proceedings or bring a civil  
239 action to enforce the provisions of this article. An employer that violates this article shall be liable for such  
240 legal or equitable relief as may be appropriate, including the remedies available under subsection H. Upon  
241 entry of a final order of the Commissioner, or upon entry of a judgment against the employer, the  
242 Commissioner or the court shall assess reasonable attorney fees.

243 H. In addition to any civil penalties provided by this section, and without regard to any exhaustion of  
244 alternative administrative remedies provided for in this section, an employee who alleges a violation of this  
245 article may bring a civil action in a court of competent jurisdiction against an employer violating this article.

246 Such action may be brought by a person aggrieved by a violation of this article without first filing an  
 247 administrative complaint. Upon prevailing in an action brought pursuant to this section, the court shall order  
 248 as a remedy to the employee (i) twice the amount of any uncompensated sick leave; (ii) twice the amount of  
 249 any actual damages suffered as the result of an employer's violation of this article; (iii) injunctive relief as  
 250 appropriate to restrain continued violation of this article; (iv) such legal or equitable relief as may be  
 251 appropriate to remedy the violation, including the reinstatement of the employee to the same position held  
 252 before the retaliatory action or to an equivalent position; and (v) compensation for any lost wages, benefits,  
 253 and other remuneration, together with interest thereon and reasonable attorney fees and costs. The statute of  
 254 limitations for a civil action brought pursuant to this section shall be for a period of two years from the date  
 255 the alleged violation occurred or the date the aggrieved employee knew or should have known of the  
 256 violation.

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

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

263 **3. That by July 1, 2027, the Commissioner of Labor and Industry (the Commissioner) shall adopt**  
 264 **regulations pursuant to § 40.1-33.6:7 of the Code of Virginia, as created by this act, for the**  
 265 **implementation and enforcement of Article 2.1:1 (§ 40.1-33.6:1 et seq.) of Chapter 3 of Title 40.1 of the**  
 266 **Code of Virginia, as created by this act. In promulgating such regulations, the Commissioner shall**  
 267 **prepare a small business regulatory flexibility analysis pursuant to § 2.2-4007.1 of the Code of Virginia**  
 268 **that considers utilizing alternative regulatory methods, consistent with health, safety, environmental,**  
 269 **and economic welfare, that will accomplish the objectives of the provisions of this act while minimizing**  
 270 **the adverse impact on small businesses.**

271 **4. That the Department of Human Resource Management and the Department of Accounts shall assess**  
 272 **the impact of the provisions of this act on state human resources policies and determine how such**  
 273 **changes should be implemented. The assessment shall include any required changes to the system and**  
 274 **the resulting fiscal impact of necessary changes on either the state's human resources or accounting**  
 275 **systems. The Department of Human Resource Management shall report to the Governor and the**  
 276 **Chairs of the House Appropriations Committee and Senate Finance and Appropriations Committee by**  
 277 **September 1, 2026, on any impact on state human resources policies and associated changes to the**  
 278 **system along with any fiscal impact.**