

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.2-2751, 2.2-4321.3, 11-4.6, 40.1-27.3, 40.1-28.7:7, 40.1-28.12, 40.1-29,*
 3 *40.1-29.2, 40.1-29.3, 53.1-40.02, and 53.1-202.3 of the Code of Virginia, relating to labor and*
 4 *employment; payment of wages; minimum wage and overtime wages; misclassification of workers; civil*
 5 *actions.*

6 [H 238]

7 Approved

8 **Be it enacted by the General Assembly of Virginia:**

9 **1. That §§ 2.2-2751, 2.2-4321.3, 11-4.6, 40.1-27.3, 40.1-28.7:7, 40.1-28.12, 40.1-29, 40.1-29.2, 40.1-29.3,**
 10 **53.1-40.02, and 53.1-202.3 of the Code of Virginia are amended and reenacted as follows:**

11 **§ 2.2-2751. Program enrollment; participating employer liability and status under the Program.**

12 A. 1. Any employer that is not an eligible employer may facilitate the participation of its eligible
 13 employees in the Program. However, such employer shall take all steps necessary to ensure that such
 14 facilitation does not constitute an employee benefit plan regulated under Title I of the Employee Retirement
 15 Income Security Act (ERISA).

16 2. Any eligible employee whose employer does not facilitate his participation in the Program pursuant to
 17 subdivision 1 or any self-employed individual may participate in the Program under terms and conditions
 18 prescribed by the Board.

19 3. No eligible employee or self-employed individual shall be permitted to participate in the Program
 20 unless such individual has Virginia taxable income, as defined in Article 2 (§ 58.1-320 et seq.) of Chapter 3
 21 of Title 58.1.

22 B. The Program shall be established and enrollment of eligible employers shall begin on July 1, 2023, or
 23 as soon thereafter as practicable. The Board shall establish an implementation timeline under which eligible
 24 employers shall enroll their eligible employees in the Program.

25 C. The Board shall develop a Program rollout timeline, including deadlines for the enrollment of eligible
 26 employers. The Board may alter the rollout timeline in its discretion, though in all instances any alterations of
 27 established rollout dates shall include reasonable notice to affected eligible employers.

28 D. Participation in the Program shall be mandatory for eligible employers. Eligible employers shall enroll
 29 in the Program in accordance with the timeline established by the Plan. Eligible employers shall facilitate a
 30 payroll deposit retirement savings agreement pursuant to this chapter for their eligible employees.

31 E. Each eligible employee of an eligible employer shall be enrolled in the Program unless the employee
 32 elects not to participate in the Program in a manner prescribed by the Board.

33 F. A participating employee may also terminate his participation in the Program at any time in a manner
 34 prescribed by the Board.

35 G. Participating employers shall not have any liability for a participating employee's decision to
 36 participate in or opt out of the Program or for the investment decisions of participating employees whose
 37 assets are deposited in the Program.

38 H. Participating employers shall not be a fiduciary, or considered to be a fiduciary, over the Program. The
 39 Program is a state-administered program, not an employer-sponsored program. If the Program is subsequently
 40 found to be preempted by any federal law or regulation, participating employers shall not be liable as
 41 Program sponsors. A participating employer shall not bear responsibility for the administration, investment,
 42 or investment performance of the Program. A participating employer shall not be liable with regard to
 43 investment returns, Program design, and benefits paid to Program participants.

44 I. A participating employer shall not have civil liability, and no cause of action shall arise against a
 45 participating employer, for acting pursuant to this chapter.

46 J. The Board shall develop and provide to participating employees and participating individuals Program
 47 summaries and other information concerning participation in the Program, including information on Program
 48 investments and fees, and the consequences of contributing to an IRA, and a statement that the Program is not
 49 an employer-sponsored retirement plan, as required by applicable law and as otherwise determined by the
 50 Board.

51 K. Participating employers shall retain the option at all times to set up any type of employer retirement
 52 plan, including plans qualified under § 401(a), 403(a), 403(b), 408(k), or 408(p), of the Internal Revenue
 53 Code, in which event such employer shall no longer be considered an eligible employer and shall cease
 54 facilitating contributions to the Program in accordance with such procedures as shall be established by the
 55 Board.

56 L. No employer shall be permitted to contribute to the Program or to endorse or otherwise promote the

57 Program.

58 M. The Program shall be exempt from the provisions of subsection *C D* of § 40.1-29.

59 **§ 2.2-4321.3. Payment of prevailing wage for work performed on public works contracts; penalty.**

60 A. As used in this section:

61 "*Employer*" has the same meaning as provided in 29 U.S.C. § 203.

62 "*Locality*" means any county, city, or town, school division, or other political subdivision.

63 "*Prevailing wage rate*" means the rate, amount, or level of wages, salaries, benefits, and other
64 remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the
65 same work in the same trade or occupation in the locality in which the public facility or immovable property
66 that is the subject of public works is located, as determined by the Commissioner of Labor and Industry on
67 the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the
68 provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended.

69 "*Public works*" means the operation, erection, construction, alteration, improvement, maintenance, or
70 repair of any public facility or immovable property owned, used, or leased by a state agency or locality,
71 including transportation infrastructure projects.

72 "*State agency*" means any authority, board, department, instrumentality, institution, agency, or other unit
73 of state government. "*State agency*" does not include any county, city, or town.

74 B. Notwithstanding any other provision of this chapter, each state agency, when procuring services or
75 letting contracts for public works paid for in whole or in part by state funds, or when overseeing or
76 administering such contracts for public works, shall ensure that its bid specifications or other public contracts
77 applicable to the public works require bidders, offerors, contractors, and subcontractors to pay wages,
78 salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or
79 otherwise hired to perform services in connection with the public contract for public works at the prevailing
80 wage rate. Each public contract for public works by a state agency shall contain a provision requiring that the
81 remuneration to any individual performing the work of any mechanic, laborer, or worker on the work
82 contracted to be done under the public contract shall be at a rate equal to the prevailing wage rate.

83 C. Notwithstanding any other provision of this chapter, any locality may adopt an ordinance requiring
84 that, when letting contracts for public works paid for in whole or in part by funds of the locality, or when
85 overseeing or administering a public contract, its bid specifications, project agreements, or other public
86 contracts applicable to the public works shall require bidders, offerors, contractors, and subcontractors to pay
87 wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or
88 otherwise hired to perform services in connection with the public contract at the prevailing wage rate. Each
89 public contract of a locality that has adopted an ordinance described in this section shall contain a provision
90 requiring that the remuneration to any individual performing the work of any mechanic, laborer, or worker on
91 the work contracted to be done under the public contract shall be at a rate equal to the prevailing wage rate.

92 D. Any contractor or subcontractor who employs any mechanic, laborer, or worker to perform work
93 contracted to be done under the public contract for public works for or on behalf of a state agency or for or on
94 behalf of a locality that has adopted an ordinance described in subsection C or at a rate that is less than the
95 prevailing wage rate (i) shall be liable to such individuals for the payment of all wages due, plus interest at an
96 annual rate of eight percent accruing from the date the wages were due; and (ii) shall be disqualified from
97 bidding on public contracts with any public body until the contractor or subcontractor has made full
98 restitution of the amount described in clause (i) owed to such individuals. A contractor or subcontractor who
99 willfully violates this section is guilty of a Class 1 misdemeanor.

100 E. Any interested party, which shall include a bidder, offeror, contractor, or subcontractor, shall have
101 standing to challenge any bid specification, project agreement, or other public contract for public works that
102 violates the provisions of this section. Such interested party shall be entitled to injunctive relief to prevent any
103 violation of this section. Any interested party bringing a successful action under this section shall be entitled
104 to recover reasonable attorney fees and costs from the responsible party.

105 F. A representative of a state agency or a representative of a locality that has adopted an ordinance
106 described in subsection C may contact the Commissioner of Labor and Industry, at least 10 but not more than
107 20 days prior to the date bids for such a public contract for public works will be advertised or solicited, to
108 ascertain the proper prevailing wage rate for work to be performed under the public contract.

109 G. Upon the award of any public contract subject to the provisions of this section, the contractor to whom
110 such contract is awarded shall certify, under oath, to the Commissioner of Labor and Industry the pay scale
111 for each craft or trade employed on the project to be used by such contractor and any of the contractor's
112 subcontractors for work to be performed under such public contract. This certification shall, for each craft or
113 trade employed on the project, specify the total hourly amount to be paid to employees, including wages and
114 applicable fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit,
115 and list the names and addresses of any third party fund, plan or program to which benefit payments will be
116 made on behalf of employees.

117 H. Each employer subject to the provisions of this section shall keep, maintain, and preserve (i) records

118 relating to the wages paid to and hours worked by each individual performing the work of any mechanic,
119 laborer, or worker and (ii) a schedule of the occupation or work classification at which each individual
120 performing the work of any mechanic, laborer, or worker on the public works project is employed during
121 each work day and week. The employer shall preserve these records for a minimum of six years and make
122 such records available to the Department of Labor and Industry within 10 days of a request and shall certify
123 that records reflect the actual hours worked and the amount paid to its workers for whatever time period they
124 request.

125 I. Contractors and subcontractors performing public works for a state agency or for a locality that has
126 adopted an ordinance described in subsection C shall post the general prevailing wage rate for each craft and
127 classification involved, as determined by the Commissioner of Labor and Industry, including the effective
128 date of any changes thereof, in prominent and easily accessible places at the site of the work or at any such
129 places as are used by the contractor or subcontractors to pay workers their wages. Within 10 days of such
130 posting, a contractor or subcontractor shall certify to the Commissioner of Labor and Industry its compliance
131 with this subsection.

132 J. The provisions of this section shall not apply to any public contract for public works of \$250,000 or
133 less.

134 *K. The Attorney General or the Commissioner of Labor and Industry may investigate, institute*
135 *administrative proceedings, and bring a civil action in a court of competent jurisdiction against an employer*
136 *for a violation of this section under subsection G or N of § 40.1-29.*

137 **§ 11-4.6. Required contract provisions in construction contracts.**

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

139 "Construction contract" means a contract for the construction, alteration, repair, or maintenance of a
140 building, structure, or appurtenance thereto, including moving, demolition, and excavation connected
141 therewith, or any provision contained in any contract relating to the construction of projects other than
142 buildings, except for contracts awarded solely for professional services as that term is defined in § 2.2-4301.

143 "Contractor" or "general contractor" means the same as that term is defined in § 54.1-1100, except that
144 such term shall not include persons solely furnishing materials.

145 "Owner" means a person or entity, other than a public body as defined in § 2.2-4301, responsible for
146 contracting with a general contractor for the procurement of a construction contract.

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

148 B. 1. In any construction contract between an owner and a general contractor, the parties shall include a
149 provision that requires the owner to pay such general contractor within 60 days of the receipt of an invoice
150 following satisfactory completion of the portion of the work for which the general contractor has invoiced.
151 An owner shall not be liable for amounts otherwise reducible due to the general contractor's noncompliance
152 with the terms of the contract. However, in the event that an owner withholds all or a part of the amount
153 invoiced by the general contractor under the terms of the contract, the owner shall notify the general
154 contractor within 45 days of the receipt of such invoice, in writing, of his intention to withhold all or part of
155 the general contractor's payment with the reason for nonpayment, specifically identifying the contractual
156 noncompliance and the dollar amount being withheld. Failure of an owner to make timely payment as
157 provided in this subdivision shall result in interest penalties consistent with § 2.2-4355. Nothing in this
158 subdivision shall be construed to apply to or prohibit the inclusion of any retainage provisions in a
159 construction contract.

160 2. Any construction contract in which there is at least one general contractor and one subcontractor shall
161 be deemed to include a provision under which any general contractor is liable to any subcontractor with
162 whom the general contractor contracts for satisfactory performance of the subcontractor's duties under the
163 contract. Such contract shall require such general contractor to pay such subcontractor within the earlier of (i)
164 60 days of the receipt of an invoice following satisfactory completion of the portion of the work for which the
165 subcontractor has invoiced or (ii) seven days after receipt of amounts paid by the owner to the general
166 contractor or by the contractor to the subcontractor for work performed by a subcontractor pursuant to the
167 terms of the contract. Such contractors shall not be liable for amounts otherwise reducible due to the
168 subcontractor's noncompliance with the terms of the contract. However, in the event that a contractor
169 withholds all or a part of the amount invoiced by any subcontractor under the contract, the contractor shall
170 notify the subcontractor within 50 days of the receipt of such invoice, in writing, of his intention to withhold
171 all or a part of the subcontractor's payment with the reason for nonpayment, specifically identifying the
172 contractual noncompliance, the dollar amount being withheld, and the subcontractor responsible for the
173 contractual noncompliance. Payment by the party contracting with the contractor shall not be a condition
174 precedent to payment to any subcontractor, regardless of that contractor's receiving payment for amounts
175 owed to that contractor, unless the party contracting with the contractor is insolvent or a debtor in bankruptcy
176 as defined in § 50-73.79. Any provision in a contract contrary to this section shall be unenforceable. Failure
177 of a contractor to make timely payment as provided in this subdivision shall result in interest penalties
178 consistent with § 2.2-4355. Nothing in this subdivision shall be construed to apply to or prohibit the inclusion
179 of any retainage provisions in a construction contract. Every subcontract between a subcontractor and a

180 lower-tier subcontractor or supplier, of any tier, shall contain the identical payment, notice, and interest
 181 requirements as those provided in this subdivision if (i) such construction contract is related to a project other
 182 than a single-family residential project and (ii) the value of the project, or an aggregate of projects under such
 183 construction contract, is greater than \$500,000.

184 C. 1. Any construction contract between a general contractor and its subcontractor and any lower tier
 185 additional subcontract entered into on or after July 1, 2020 2026, shall be deemed to include a provision
 186 under which the general contractor, its subcontractor, and the additional subcontractor at any lower tier are
 187 jointly and severally liable to pay the employees of any ~~additional~~ subcontractor at any lower tier the greater
 188 of (i) all wages due to a subcontractor's employees or to the lower tier subcontractor's employees at such rate
 189 and upon such terms as shall be provided in the employment agreement between the subcontractor and its
 190 employees or (ii) the amount of wages that the subcontractor or any lower tier subcontractor is required to
 191 pay to its employees under the provisions of applicable law, including the provisions of §§ 40.1-28.7:7 and
 192 40.1-29, the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), and the federal Fair Labor Standards Act (29
 193 U.S.C. § 201 et seq.).

194 2. A general contractor shall be deemed to be the employer of any subcontractor's employees for purposes
 195 of § 40.1-29. If the wages due to the subcontractor's employees under the terms of the employment agreement
 196 between a subcontractor and its employees are not paid, the general contractor shall be subject to all
 197 penalties, criminal and civil, to which an employer that fails or refuses to pay wages is subject under
 198 § 40.1-29. Any liability of a general contractor pursuant to § 40.1-29 shall be joint and several with the
 199 subcontractor that failed or refused to pay the wages to its employees.

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

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

216 **§ 40.1-27.3. Retaliatory action against employee prohibited.**

217 A. As used in this section:

218 "Federal or state law or regulation" means any federal law, any law of the Commonwealth, and any
 219 regulation published as a final rule in the Federal Register or the Virginia Administrative Code.

220 "In good faith" means having a reasonable belief that a violation of law is occurring or has occurred.

221 B. An employer shall not discharge, discipline, threaten, discriminate against, or penalize an employee, ~~or~~
 222 take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges
 223 of employment, *or otherwise retaliate against an employee* because the employee:

224 1. Or a person acting on behalf of the employee *reports any information or allegation* in good faith
 225 ~~reports that, if true, amounts to a violation of any federal or state law or regulation to (i) a supervisor,~~
 226 ~~manager, or officer or (ii) to any governmental body or law-enforcement official. Such a report is protected~~
 227 ~~pursuant to this subdivision regardless of whether such report refers to a particular law or regulation or~~
 228 ~~whether it was made in the ordinary course of the employee's employment;~~

229 2. Is requested by a governmental body or law-enforcement official to participate in an investigation,
 230 hearing, or inquiry;

231 3. Refuses to engage in a criminal act that would subject the employee to criminal liability;

232 4. Refuses an employer's order to perform an action that violates any federal or state law or regulation and
 233 the employee informs the employer that the order is being refused for that reason; or

234 5. Provides information to or testifies before any governmental body or law-enforcement official
 235 conducting an investigation, hearing, or inquiry into any alleged violation by the employer of a federal or
 236 state law or regulation.

237 ~~B.~~ C. This section does not:

238 1. Authorize an employee to make a disclosure of data otherwise protected by law or any legal privilege;

239 2. Permit an employee to make statements or disclosures knowing that they are false or that they are in
 240 reckless disregard of the truth; or

241 3. Permit disclosures that would violate federal or state law or diminish or impair the rights of any person

242 to the continued protection of confidentiality of communications provided by common law.

243 C. A person who alleges a violation of this section may bring a civil action in a court of competent
244 jurisdiction within one year of the employer's prohibited retaliatory action. The court may order as a remedy
245 to the employee (i) an injunction to restrain continued violation of this section; (ii) the reinstatement of the
246 employee to the same position held before the retaliatory action or to an equivalent position; and (iii)
247 compensation for lost wages, benefits, and other remuneration, together with interest thereon, as well as
248 reasonable attorney fees and costs.

249 D. No employer shall (i) take any action or include any policy in an employee handbook, employment
250 contract, or separation agreement that impedes an employee from disclosing possible or actual illegal
251 activity to the public, a governmental body, or his employer, including disclosures regarding violations of
252 civil rights or antidiscrimination laws, or (ii) take any disciplinary action in retaliation against an employee
253 for reporting to the public, a governmental body, or his employer any possible or actual violation of any
254 federal or state law or regulation.

255 E. The Commissioner or the Attorney General may investigate, institute administrative proceedings, and
256 bring a civil action against an employer for a violation of this section in accordance with the procedures set
257 forth in subsections G and N of § 40.1-29. Any person who alleges a violation of this section may bring a civil
258 action. The person alleging such violation shall prevail upon a showing that protected activity under this
259 section was a contributing factor in the employer's decision to take a retaliatory action. It shall be an
260 affirmative defense if an employer can show it would have taken the same action in the absence of activity
261 protected by this section.

262 F. A person who suffers loss as the result of a violation of this section may bring a civil action. In any
263 action, a person may recover (i) actual damages; (ii) reinstatement of the employee to the same position held
264 before the retaliatory action or to an equivalent position; (iii) any other damages, including lost wages and
265 benefits; (iv) punitive damages if such violation was malicious or willful and wanton; (v) reasonable attorney
266 fees; (vi) litigation expenses; and (vii) other relief authorized under § 8.01-382 or Chapter 6 (§ 17.1-600 *et*
267 *seq.*) of Title 17.1. In any action brought by the Commissioner or the Attorney General, or brought as a class
268 action, the Commissioner or the Attorney General may also seek injunctive relief to restrain continued
269 violation of this section.

270 G. Any action under this section shall be brought within two years and shall accrue after such person
271 learns or should have learned of the employer's prohibited retaliatory action in the exercise of due diligence.

272 H. No right or remedy provided under this section shall be waived by any employment agreement, policy,
273 term, or condition, excluding a separation agreement.

274 I. No provision of this section shall be construed to invalidate, alter, or diminish the rights, privileges, or
275 remedies of any employee under any law, regulation, collective bargaining agreement, or employment
276 contract.

277 **§ 40.1-28.7:7. Misclassification of workers.**

278 A. As used in this section:

279 "Employer" has the same meaning as provided in 29 U.S.C. § 203.

280 "Internal Revenue Service guidelines" means the most recent version of the guidelines published by the
281 Internal Revenue Service for evaluating independent contractor status, including its interpretation of
282 common law doctrine on independent contractors, and any regulations that the Internal Revenue Service may
283 promulgate regarding determining whether an employee is an independent contractor, including 26 C.F.R. §
284 31.3121(d)-1.

285 B. An individual who has not been properly classified as an employee may bring a civil action for
286 damages against his employer for failing to properly classify the employee if the employer had knowledge of
287 the individual's misclassification. An individual's representative may bring the action on behalf of the
288 individual. If the court finds that the employer has not properly classified the individual as an employee, the
289 court may award the individual damages in the amount of any wages, salary, employment benefits, including
290 expenses incurred by the employee that would otherwise have been covered by insurance, or other
291 compensation lost to the individual; a reasonable attorney fee; and the costs incurred by the individual in
292 bringing the action such employer shall be liable to the aggrieved individual for the applicable remedies,
293 damages, or other relief available in an action brought pursuant to subsection K of § 40.1-29. Any action
294 brought pursuant to this subsection shall commence within three years after the accrual of the cause of
295 action.

296 B. C. In a proceeding under subsection A B, an individual who performs services for a person for
297 remuneration shall be presumed to be an employee of the person that paid such remuneration, and the person
298 that paid such remuneration shall be presumed to be the employer of the individual who was paid for
299 performing the services, unless it is shown that the individual is an independent contractor as determined
300 under the Internal Revenue Service guidelines.

301 C. As used in this section, "Internal Revenue Service guidelines" means the most recent version of the
302 guidelines published by the Internal Revenue Service for evaluating independent contractor status, including
303 its interpretation of common law doctrine on independent contractors, and any regulations that the Internal

304 Revenue Service may promulgate regarding determining whether an employee is an independent contractor,
 305 including 26 C.F.R. § 31.3121(d)-1.

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

312 **§ 40.1-28.12. Employee's remedies.**

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

320 **§ 40.1-29. Time and medium of payment; withholding wages; written statement of earnings;
 321 agreement for forfeiture of wages; proceedings to enforce compliance; penalties.**

322 *A. As used in this section:*

323 "*Employer*" has the same meaning as provided in 29 U.S.C. § 203.

324 "*Wages*" includes any remuneration an employer owes to an employee, including hourly wages, minimum
 325 wages, piece rate wages, day rates, salaries, overtime wages, legally required prevailing wages,
 326 commissions, tips, bonuses, and damages available due to the misclassification of an employee in violation of
 327 § 40.1-28.7:7.

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

338 ~~B~~. *C.* Payment of wages ~~or salaries~~ shall be (i) in lawful money of the United States, (ii) by check payable
 339 at face value upon demand in lawful money of the United States, (iii) by electronic automated fund transfer in
 340 lawful money of the United States into an account in the name of the employee at a financial institution
 341 designated by the employee, or (iv) by credit to a prepaid debit card or card account from which the employee
 342 is able to withdraw or transfer funds with full written disclosure by the employer of any applicable fees and
 343 affirmative consent thereto by the employee. However, an employer that elects not to pay wages ~~or salaries~~ in
 344 accordance with clause (i) or (ii) to an employee who is hired after January 1, 2010, shall be permitted to pay
 345 wages ~~or salaries~~ by credit to a prepaid debit card or card account in accordance with clause (iv), even though
 346 such employee has not affirmatively consented thereto, if the employee fails to designate an account at a
 347 financial institution in accordance with clause (iii) and the employer arranges for such card or card account to
 348 be issued through a network system through which the employee shall have the ability to make at least one
 349 free withdrawal or transfer per pay period, which withdrawal may be for any sum in such card or card
 350 account as the employee may elect, using such card or card account at financial institutions participating in
 351 such network system.

352 ~~C~~. *D.* No employer shall withhold any part of the wages ~~or salaries~~ of any employee except for payroll,
 353 wage or withholding taxes or in accordance with law, without the written and signed authorization of the
 354 employee. On each regular pay date, each employer, other than an employer engaged in agricultural
 355 employment including agribusiness and forestry, shall provide to each employee a written statement, by a
 356 paystub or online accounting, that shows the name and address of the employer; the number of hours worked
 357 during the pay period if the employee is paid on the basis of (i) the number of hours worked or (ii) a salary
 358 that is less than the standard salary level adopted by regulation of the U.S. Department of Labor pursuant to §
 359 13(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), as amended, establishing an
 360 exemption from the Act's overtime premium pay requirements; the rate of pay; the gross wages earned by the
 361 employee during the pay period; and the amount and purpose of any deductions therefrom. The paystub or
 362 online accounting shall include sufficient information to enable the employee to determine how the gross and
 363 net pay were calculated. *An employer shall keep such paystubs or online accounting for at least three years
 364 following the date of the work performed.* An employer engaged in agricultural employment including
 365 agribusiness and forestry, upon request of its employee, shall furnish the employee a written statement of the

366 gross wages earned by the employee during any pay period and the amount and purpose of any deductions
367 therefrom.

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

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

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

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

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

381 ~~F. G.~~ The Commissioner may ~~require a written complaint of the violation of this section and, with the~~
382 ~~written and signed consent of~~ initiate an investigation upon the receipt of a complaint from an employee or
383 an interested third party, or at the Commissioner's discretion. Notwithstanding any other provision of law,
384 the Commissioner shall not disclose a complainant's or witness's identity unless the complainant or witness
385 consents to such disclosure. The Commissioner may ~~institute~~ commence administrative or court proceedings
386 ~~on behalf of an employee to enforce compliance with this section, and upon the reasonable and good-faith~~
387 ~~belief of wage violations to remedy the failure to pay wages, including violations of this section, § 2.2-4321.3~~
388 ~~or 40.1-28.7:7, the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), or § 40.1-29.2 or 40.1-29.3. The~~
389 ~~Commissioner may seek and collect any moneys wages unlawfully withheld from such any employee that~~
390 ~~shall be paid to the employee entitled thereto and all damages and penalties available under subsection K.~~
391 ~~Such wages and damages shall be paid as restitution to any affected employee entitled thereto, and such~~
392 ~~penalties may be paid to any affected employee or the Commonwealth. In the course of an investigation, the~~
393 ~~Commissioner or the Commissioner's designee may enter the employer's premises to review records. In~~
394 addition, following the issuance of a final order by the Commissioner or a court, the Commissioner may
395 engage private counsel, approved by the Attorney General, to collect any moneys owed to the employee or
396 the Commonwealth. Upon entry of a final order of the Commissioner, or upon entry of a judgment, against
397 the employer, the Commissioner or the court shall assess reasonable attorney fees of ~~one-third of the amount~~
398 ~~set forth in the final order or judgment.~~

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

403 ~~H. I.~~ Any employer who knowingly fails to make payment of wages ~~in accordance with subsection A or~~
404 ~~§ 40.1-29.3~~ shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner
405 shall notify any employer that the Commissioner alleges has violated any provision of this section ~~or~~
406 ~~§ 40.1-29.3~~ by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days
407 of receipt of notice of the alleged violation, the employer may request an informal conference regarding such
408 violation with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner
409 shall consider the size of the business of the employer charged and the gravity of the violation. The decision
410 of the Commissioner shall be final. Civil penalties owed under this section shall be paid to the Commissioner
411 for deposit into the general fund of the State Treasurer. The Commissioner shall prescribe procedures for the
412 payment of proposed assessments of penalties that are not contested by employers. Such procedures shall
413 include provisions for an employer to consent to abatement of the alleged violation and pay a proposed
414 penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such
415 alleged violation.

416 ~~I. J.~~ Final orders of the Commissioner, the general district courts, or the circuit courts may be recorded,
417 enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the
418 Commissioner or the court as appropriate.

419 ~~J. K.~~ In addition to any civil or criminal penalty provided by this section, and without regard to any
420 exhaustion of alternative administrative remedies provided for in this section, if an employer fails to pay
421 wages to an employee in accordance with this section ~~or violates any provision of § 2.2-4321.3 or~~
422 ~~40.1-28.7:7, the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), or § 40.1-29.2 or 40.1-29.3, the employee~~
423 may bring an action, individually, jointly, with other aggrieved employees, or on behalf of similarly situated
424 employees as a collective action consistent with the collective action procedures of the Fair Labor Standards
425 Act, 29 U.S.C. § 216(b), against the employer in a court of competent jurisdiction to recover payment of the
426 wages, and the court shall award the wages owed, an additional equal amount as liquidated damages, plus
427 prejudgment interest thereon as provided in subsection ~~G H~~, and reasonable attorney fees and costs. If the

428 court finds that the employer knowingly failed to pay wages to an employee ~~in accordance with this section,~~
 429 the court shall award the employee an amount equal to triple the amount of wages due and reasonable
 430 attorney fees and costs. *No provision of this subsection shall be construed to replace or limit the availability*
 431 *of any other class or collective action available in a court of competent jurisdiction or other tribunal.*

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

436 ~~E.~~ *M.* An action under this section shall be commenced within three years after the cause of action
 437 accrued. The period for filing is tolled upon the filing of an administrative action under subsection ~~F~~ *G* until
 438 the employee has been informed that the action has been resolved or until the employee has withdrawn the
 439 complaint, whichever is sooner.

440 *N.* *The Attorney General or the Commissioner may investigate and bring a civil action in a court of*
 441 *competent jurisdiction against an employer for a violation of this section, § 2.2-4321.3 or 40.1-28.7:7, the*
 442 *Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), or § 40.1-29.2 or 40.1-29.3 for restitution or for*
 443 *injunctive, compensatory, or other authorized relief for any affected employees or for the public interest. The*
 444 *Attorney General or the Commissioner may require an employer or employee to submit a statement or report*
 445 *in writing under oath as to all necessary information, examine under oath any person alleged to have*
 446 *participated in or have knowledge of the violation, and issue subpoenas. Upon prevailing in a civil action*
 447 *under this section, the Attorney General or the Commissioner shall be entitled to reasonable attorney fees*
 448 *and costs, statutory penalties equal to any administrative penalties provided by law, and, on behalf of*
 449 *affected employees, the payment of wages unlawfully withheld, additional damages to the same extent as*
 450 *would be available if the employee brought the civil action, and equitable relief as may be appropriate. In no*
 451 *such action shall the Attorney General or the Commissioner be awarded an amount already recovered by an*
 452 *employee. In addition, the Attorney General or the Commissioner may authorize private counsel to pursue*
 453 *any wages, damages, and penalties owed to employees or the Commonwealth in any such action.*

454 *O.* *In any action to recover unpaid wages commenced on or after July 1, 2026, if the employer shows to*
 455 *the satisfaction of the court or the Commissioner that the act or omission giving rise to such action was in*
 456 *good faith and that the employer had reasonable grounds for believing that his act or omission was not in*
 457 *violation of this article, the court or the Commission may, in their sound discretion, award no liquidated*
 458 *damages or any amount of liquidated damages that does not exceed the amount specified in subsection K.*
 459 *For the purposes of this subsection, "good faith" and "reasonable grounds" have the same meanings as*
 460 *provided in 29 U.S.C. § 260.*

461 **§ 40.1-29.2. Employer liability.**

462 Any employer that violates the overtime pay requirements of the federal Fair Labor Standards Act of
 463 1938, 29 U.S.C. § 201 et seq., as amended, and any regulations, guidance, or rules adopted pursuant to the
 464 overtime pay provisions of such federal act or any related governing case law shall be liable to the employee
 465 for the applicable remedies, damages, or other relief available ~~under the federal Fair Labor Standards Act~~ in
 466 an action brought pursuant to ~~the process in~~ subsection ~~J~~ *K* of § 40.1-29. For the purposes of this section,
 467 "employer" and "employee" shall have the meanings ascribed to them under the federal Fair Labor Standards
 468 Act and all applicable exemptions, overtime calculation methods, methods of overtime payment, or other
 469 overtime provisions within the federal Fair Labor Standards Act and any attendant regulations, guidance, or
 470 rules shall apply. Any action brought pursuant to this section shall accrue according to the applicable
 471 limitations set forth in the federal Fair Labor Standards Act *and shall be commenced within three years after*
 472 *accrual.*

473 **§ 40.1-29.3. Overtime for certain employees.**

474 A. As used in this section:

475 "Carrier" means an air carrier that is subject to the provisions of the federal Railway Labor Act, 45 U.S.C.
 476 § 181 et seq.

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

479 "*Direct support services*" means *personal care services that assist participants with instrumental*
 480 *activities of daily living, such as grooming, toileting, bathing, eating, dressing, monitoring health status and*
 481 *physical condition, and assisting with housekeeping activities, and other in-home, long-term services and*
 482 *supports provided to an elderly person or person with a disability.*

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

485 "Employer" has the same meaning as provided in 29 U.S.C. § 203.

486 B. An employer shall pay each employee an overtime premium at a rate not less than one and one-half
 487 times the employee's regular rate for any hours worked by an employee in excess of 40 hours in any one
 488 workweek. An employee's regular rate shall be calculated as the employee's hourly rate of pay plus any other
 489 non-overtime wages paid or allocated for that workweek, excluding any amounts that would be excluded

490 from the regular rate by the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., and its implementing
 491 regulations for an individual covered by such federal act, divided by the total number of hours worked in that
 492 workweek.

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

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

505 **§ 53.1-40.02. Conditional release of terminally ill prisoners.**

506 A. As used in this section, "terminally ill" means having a chronic or progressive medical condition
 507 caused by injury, disease, or illness where the medical prognosis is the person's death within 12 months.

508 B. Any person serving a sentence imposed upon a conviction for a felony offense, except as provided in
 509 subsection C, who is terminally ill may petition the Parole Board for conditional release.

510 C. A person who is terminally ill and is serving a sentence imposed upon a conviction for one of the
 511 following offenses shall not be eligible to petition the Parole Board for conditional release:

- 512 1. A Class 1 felony;
- 513 2. Any violation of § 18.2-32, 18.2-32.1, 18.2-32.2, or 18.2-33;
- 514 3. Any violation of § 18.2-40 or 18.2-45;
- 515 4. Any violation of § 18.2-46.5, subsection A or B of § 18.2-46.6, or § 18.2-46.7;
- 516 5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2,
 517 except for a violation of § 18.2-49.1;
- 518 6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of
 519 Chapter 4 of Title 18.2, any violation of § 18.2-51.7, 18.2-54.1, or 18.2-54.2, or any felony violation of
 520 § 18.2-57.2;
- 521 7. Any felony violation of § 18.2-60.3;
- 522 8. Any felony violation of § 16.1-253.2 or 18.2-60.4;
- 523 9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;
- 524 10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title
 525 18.2, except, when not committed against a minor, a violation of subdivision A 5 of § 18.2-67.3,
 526 § 18.2-67.4:1, subsection B of § 18.2-67.5, or § 18.2-67.5:1;
- 527 11. Any violation of § 18.2-90 or 18.2-93;
- 528 12. Any violation of § 18.2-289 or subsection A of § 18.2-300;
- 529 13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2 involving a minor
 530 victim;
- 531 14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2 involving a minor
 532 victim, except for a violation of § 18.2-362 or 18.2-370.5 or subsection B of § 18.2-371.1;
- 533 15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 involving a minor
 534 victim, except for a violation of subsection A of § 18.2-374.1:1;
- 535 16. Any violation of § 18.2-481, 40.1-100.2, or 40.1-103; or
- 536 17. A second or subsequent felony violation of the following offenses when such offenses were not part of
 537 a common act, transaction, or scheme and such person has been at liberty as defined in § 53.1-151 between
 538 each conviction:
 - 539 a. Voluntary or involuntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2 or
 540 any crime punishable as such;
 - 541 b. Any violation of § 18.2-41 or 18.2-42.1;
 - 542 c. Any violation of subsection C of § 18.2-46.6;
 - 543 d. Any violation when done unlawfully but not maliciously of § 18.2-51 or 18.2-51.1;
 - 544 e. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of
 545 § 18.2-79;
 - 546 f. Any violation of § 18.2-89 with the intent to commit any larceny or § 18.2-92;
 - 547 g. Any violation of subsection A of § 18.2-374.1:1;
 - 548 h. Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or
 - 549 i. Any violation of subdivision E F 2 of § 40.1-29.

550 D. The Parole Board shall promulgate regulations to implement the provisions of this section.

551 **§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.**

- 552 A. A maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence for a
553 conviction for any offense of:
- 554 1. A Class 1 felony;
 - 555 2. Solicitation to commit murder under § 18.2-29 or any violation of § 18.2-32, 18.2-32.1, 18.2-32.2, or
556 18.2-33;
 - 557 3. Any violation of § 18.2-40 or 18.2-45;
 - 558 4. Any violation of subsection A of § 18.2-46.5, of subsection D of § 18.2-46.5 if the death of any person
559 results from providing any material support, or of subsection A of § 18.2-46.6;
 - 560 5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2;
 - 561 6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of
562 Chapter 4 of Title 18.2, any violation of § 18.2-51.6 or 18.2-51.7, or any felony violation of § 18.2-57.2;
 - 563 7. Any felony violation of § 18.2-60.3;
 - 564 8. Any felony violation of § 16.1-253.2 or 18.2-60.4;
 - 565 9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;
 - 566 10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title
567 18.2;
 - 568 11. Any violation of § 18.2-90;
 - 569 12. Any violation of § 18.2-289 or subsection A of § 18.2-300;
 - 570 13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;
 - 571 14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a violation of
572 § 18.2-362 or subsection B or C of § 18.2-371.1;
 - 573 15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a violation of
574 subsection A of § 18.2-374.1:1;
 - 575 16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any violation of
576 § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or
 - 577 17. A second or subsequent violation of the following offenses, in any combination, when such offenses
578 were not part of a common act, transaction, or scheme and such person has been at liberty as defined in
579 § 53.1-151 between each conviction:
 - 580 a. Any felony violation of § 3.2-6571;
 - 581 b. Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
 - 582 c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;
 - 583 d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;
 - 584 e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done
585 unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;
 - 586 f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of
587 § 18.2-79;
 - 588 g. Any violation of § 18.2-89 or 18.2-92;
 - 589 h. Any violation of subsection A of § 18.2-374.1:1;
 - 590 i. Any violation of § 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, or 18.2-433.2; or
 - 591 j. Any violation of subdivision E F 2 of § 40.1-29.
- 592 The earning of sentence credits shall be conditioned, in part, upon full participation in and cooperation
593 with programs to which a person is assigned pursuant to § 53.1-32.1.
- 594 B. For any offense other than those enumerated in subsection A for which sentence credits may be earned,
595 earned sentence credits shall be awarded and calculated using the following four-level classification system:
- 596 1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the person's
597 sentence for every 30 days served. Level I sentence credits shall be awarded to persons who participate in and
598 cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1 and who have no more
599 than one minor correctional infraction and no serious correctional infractions as established by the
600 Department's policies or procedures.
 - 601 2. Level II. For persons receiving Level II sentence credits, 7.5 days shall be deducted from the person's
602 sentence for every 30 days served. Level II sentence credits shall be awarded to persons who participate in
603 and cooperate with all programs, job assignments, and educational curriculums to which the person is
604 assigned pursuant to § 53.1-32.1, but who require improvement in not more than one area as established by
605 the Department's policies or procedures.
 - 606 3. Level III. For persons receiving Level III sentence credits, 3.5 days shall be deducted from the person's
607 sentence for every 30 days served. Level III sentence credits shall be awarded to persons who participate in
608 and cooperate with all programs, job assignments, and educational curriculums to which the person is
609 assigned pursuant to § 53.1-32.1, but who require significant improvement in two or more areas as
610 established by the Department's policies or procedures.
 - 611 4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will be
612 classified in Level IV if that person willfully fails to participate in or cooperate with all programs, job
613 assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1 or that

614 person causes substantial security or operational problems at the correctional facility as established by the
615 Department's policies or procedures.

616 C. A person's classification level under subsection B shall be reviewed at least once annually, and the
617 classification level may be adjusted based upon that person's participation in and cooperation with programs,
618 job assignments, and educational curriculums assigned pursuant to § 53.1-32.1. A person's classification and
619 calculation of earned sentence credits shall not be lowered or withheld due to a lack of programming,
620 educational, or employment opportunities at the correctional facility at which the person is confined. Records
621 from this review, including an explanation of the reasons why a person's classification level was or was not
622 adjusted, shall be maintained in the person's correctional file.

623 D. A person's classification level under subsection B may be immediately reviewed and adjusted
624 following removal from a program, job assignment, or educational curriculum that was assigned pursuant to
625 § 53.1-32.1 for disciplinary or noncompliance reasons.

626 E. A person may appeal a reclassification determination under subsection C or D in the manner set forth
627 in the grievance procedure established by the Director pursuant to his powers and duties as set forth in
628 § 53.1-10.

629 F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under
630 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full participation
631 in and cooperation with programs afforded to the juvenile during that portion of the sentence. The
632 Department of Juvenile Justice shall provide a report that describes the juvenile's adherence to the facility's
633 rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile
634 offender under § 16.1-285.1.

635 G. Notwithstanding any other provision of law, no portion of any sentence credits earned shall be applied
636 to reduce the period of time a person must serve before becoming eligible for parole upon any sentence.

637 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
638 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
639 **appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;**
640 **therefore, Chapter 725 of the Acts of Assembly of 2025 requires the Virginia Criminal Sentencing**
641 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of**
642 **Virginia, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the**
643 **custody of the Department of Juvenile Justice.**

ENROLLED

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