

26110365D

**HOUSE BILL NO. 238**

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor  
on April 13, 2026)

(Patron Prior to Substitute—Delegate Lopez)

A *BILL to amend and reenact §§ 2.2-2751, 2.2-4321.3, 11-4.6, 40.1-28.7:7, 40.1-28.12, 40.1-29, 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 employment; payment of wages; minimum wage and overtime wages; misclassification of workers; civil actions.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE  
SUBSTITUTE

HB238H3

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

60 **§ 2.2-4321.3. Payment of prevailing wage for work performed on public works contracts; penalty.**

61 A. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

118 H. Each employer subject to the provisions of this section shall keep, maintain, and preserve (i) records  
119 relating to the wages paid to and hours worked by each individual performing the work of any mechanic,

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

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

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

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

138 **§ 11-4.6. Required contract provisions in construction contracts.**

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

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

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

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

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

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

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

182 requirements as those provided in this subdivision if (i) such construction contract is related to a project other  
 183 than a single-family residential project and (ii) the value of the project, or an aggregate of projects under such  
 184 construction contract, is greater than \$500,000.

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

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

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

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

218 **§ 40.1-28.7:7. Misclassification of workers.**

219 A. *As used in this section:*

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

221 "Internal Revenue Service guidelines" means the most recent version of the guidelines published by the  
 222 Internal Revenue Service for evaluating independent contractor status, including its interpretation of  
 223 common law doctrine on independent contractors, and any regulations that the Internal Revenue Service may  
 224 promulgate regarding determining whether an employee is an independent contractor, including 26 C.F.R. §  
 225 31.3121(d)-1.

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

237 ~~B:~~ C. In a proceeding under subsection A B, an individual who performs services for a person for  
 238 remuneration shall be presumed to be an employee of the person that paid such remuneration, and the person  
 239 that paid such remuneration shall be presumed to be the employer of the individual who was paid for  
 240 performing the services, unless it is shown that the individual is an independent contractor as determined  
 241 under the Internal Revenue Service guidelines.

242 C. ~~As used in this section, "Internal Revenue Service guidelines" means the most recent version of the~~  
 243 ~~guidelines published by the Internal Revenue Service for evaluating independent contractor status, including~~

244 its interpretation of common law doctrine on independent contractors, and any regulations that the Internal  
 245 Revenue Service may promulgate regarding determining whether an employee is an independent contractor,  
 246 including 26 C.F.R. § 31.3121(d)-1.

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

253 **§ 40.1-28.12. Employee's remedies.**

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

261 **§ 40.1-29. Time and medium of payment; withholding wages; written statement of earnings;  
 262 agreement for forfeiture of wages; proceedings to enforce compliance; penalties.**

263 A. As used in this section:

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

265 "Wages" includes any remuneration an employer owes to an employee, including hourly wages, minimum  
 266 wages, piece rate wages, day rates, salaries, overtime wages, legally required prevailing wages,  
 267 commissions, tips, bonuses, and damages available due to the misclassification of an employee in violation of  
 268 § 40.1-28.7:7.

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

279 **B- C.** Payment of wages or salaries shall be (i) in lawful money of the United States, (ii) by check payable  
 280 at face value upon demand in lawful money of the United States, (iii) by electronic automated fund transfer in  
 281 lawful money of the United States into an account in the name of the employee at a financial institution  
 282 designated by the employee, or (iv) by credit to a prepaid debit card or card account from which the employee  
 283 is able to withdraw or transfer funds with full written disclosure by the employer of any applicable fees and  
 284 affirmative consent thereto by the employee. However, an employer that elects not to pay wages or salaries in  
 285 accordance with clause (i) or (ii) to an employee who is hired after January 1, 2010, shall be permitted to pay  
 286 wages or salaries by credit to a prepaid debit card or card account in accordance with clause (iv), even though  
 287 such employee has not affirmatively consented thereto, if the employee fails to designate an account at a  
 288 financial institution in accordance with clause (iii) and the employer arranges for such card or card account to  
 289 be issued through a network system through which the employee shall have the ability to make at least one  
 290 free withdrawal or transfer per pay period, which withdrawal may be for any sum in such card or card  
 291 account as the employee may elect, using such card or card account at financial institutions participating in  
 292 such network system.

293 **C- D.** No employer shall withhold any part of the wages or salaries of any employee except for payroll,  
 294 wage or withholding taxes or in accordance with law, without the written and signed authorization of the  
 295 employee. On each regular pay date, each employer, other than an employer engaged in agricultural  
 296 employment including agribusiness and forestry, shall provide to each employee a written statement, by a  
 297 paystub or online accounting, that shows the name and address of the employer; the number of hours worked  
 298 during the pay period if the employee is paid on the basis of (i) the number of hours worked or (ii) a salary  
 299 that is less than the standard salary level adopted by regulation of the U.S. Department of Labor pursuant to §  
 300 13(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), as amended, establishing an  
 301 exemption from the Act's overtime premium pay requirements; the rate of pay; the gross wages earned by the  
 302 employee during the pay period; and the amount and purpose of any deductions therefrom. The paystub or  
 303 online accounting shall include sufficient information to enable the employee to determine how the gross and  
 304 net pay were calculated. *An employer shall keep such paystubs or online accounting for at least three years*  
 305 *following the date of the work performed.* An employer engaged in agricultural employment including

306 agribusiness and forestry, upon request of its employee, shall furnish the employee a written statement of the  
 307 gross wages earned by the employee during any pay period and the amount and purpose of any deductions  
 308 therefrom.

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

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

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

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

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

322 ~~F. G.~~ The Commissioner may require a written complaint of the violation of this section and, with the  
 323 written and signed consent of initiate an investigation upon the receipt of a complaint from an employee or  
 324 an interested third party, or at the Commissioner's discretion. The Commissioner shall not disclose a  
 325 complainant's or witness's identity unless the complainant or witness consents to such disclosure. The  
 326 Commissioner may institute commence administrative proceedings on behalf of an employee or refer the  
 327 matter to the Attorney General, who may bring a civil action to enforce compliance with this section, and  
 328 upon the reasonable and good-faith belief of wage violations to remedy the failure to pay wages, including  
 329 violations of this section, § 2.2-4321.3 or 40.1-28.7:7, the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.),  
 330 or § 40.1-29.2 or 40.1-29.3. The Commissioner may seek and collect any moneys wages unlawfully withheld  
 331 from such any employee that shall be paid to the employee entitled thereto and all damages and penalties  
 332 available under subsection K. Such wages and damages shall be paid as restitution to any affected employee  
 333 entitled thereto, and such penalties may be paid to any affected employee or the Commonwealth. In addition,  
 334 following The Commissioner may require an employer or employee to submit a statement or report in writing  
 335 under oath as to all necessary information, examine under oath any person alleged to have participated in or  
 336 have knowledge relevant to the investigation, and issue subpoenas. Following the issuance of a final order by  
 337 the Commissioner or a court, the Commissioner or the Attorney General may engage private counsel,  
 338 approved by the Attorney General, to collect any moneys owed to the employee or the Commonwealth. Upon  
 339 entry of a final order of the Commissioner, or upon entry of a judgment, against the employer, the  
 340 Commissioner or the court shall assess reasonable attorney fees of one-third of the amount set forth in the  
 341 final order or judgment.

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

346 ~~H. I.~~ Any employer who knowingly fails to make payment of wages in accordance with subsection A or  
 347 § 40.1-29.3 shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner  
 348 shall notify any employer that the Commissioner alleges has violated any provision of this section or  
 349 § 40.1-29.3 by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days  
 350 of receipt of notice of the alleged violation, the employer may request an informal conference regarding such  
 351 violation with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner  
 352 shall consider the size of the business of the employer charged and the gravity of the violation. The decision  
 353 of the Commissioner shall be final. Civil penalties owed under this section shall be paid to the Commissioner  
 354 for deposit into the general fund of the State Treasurer. The Commissioner shall prescribe procedures for the  
 355 payment of proposed assessments of penalties that are not contested by employers. Such procedures shall  
 356 include provisions for an employer to consent to abatement of the alleged violation and pay a proposed  
 357 penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such  
 358 alleged violation.

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

362 ~~J. K.~~ In addition to any civil or criminal penalty provided by this section, and without regard to any  
 363 exhaustion of alternative administrative remedies provided for in this section, if an employer fails to pay  
 364 wages to an employee in accordance with this section or violates any provision of § 2.2-4321.3 or  
 365 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  
 366 may bring an action, individually, jointly, with other aggrieved employees, or on behalf of similarly situated  
 367 employees as a collective action consistent with the collective action procedures of the Fair Labor Standards

368 Act, 29 U.S.C. § 216(b), against the employer in a court of competent jurisdiction to recover payment of the  
 369 wages, and the court shall award the wages owed, an additional equal amount as liquidated damages, plus  
 370 prejudgment interest thereon as provided in subsection ~~G~~ H, and reasonable attorney fees and costs. If the  
 371 court finds that the employer knowingly failed to pay wages to an employee ~~in accordance with this section~~,  
 372 the court shall award the employee an amount equal to triple the amount of wages due and reasonable  
 373 attorney fees and costs.

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

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

382 N. Upon referral from the Commissioner, the Attorney General may investigate and bring a civil action in  
 383 a court of competent jurisdiction against an employer for a violation of this section, § 2.2-4321.3 or  
 384 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 for restitution  
 385 or for injunctive, compensatory, or other authorized relief for any affected employees or for the public  
 386 interest. The Attorney General may require an employer or employee to submit a statement or report in  
 387 writing under oath as to all necessary information, examine under oath any person alleged to have  
 388 participated in or have knowledge of the violation, and issue subpoenas. Upon prevailing in a civil action  
 389 under this section, the Attorney General shall be entitled to reasonable attorney fees and costs, statutory  
 390 penalties equal to any administrative penalties provided by law, and, on behalf of affected employees, the  
 391 payment of wages unlawfully withheld, additional damages to the same extent as would be available if the  
 392 employee brought the civil action, and equitable relief as may be appropriate.

393 O. In no civil action brought under this section shall an employee be awarded an amount already  
 394 recovered on their behalf by the Attorney General or the Commissioner. In no administrative action brought  
 395 under this section shall the Commissioner be awarded an amount already recovered by an employee or the  
 396 Attorney General for the same violation. In no civil action brought under this section shall the Attorney  
 397 General recover an amount already recovered by the Commissioner or an employee for the same violation.

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

405 **§ 40.1-29.2. Employer liability.**

406 Any employer that violates the overtime pay requirements of the federal Fair Labor Standards Act of  
 407 1938, 29 U.S.C. § 201 et seq., as amended, and any regulations, guidance, or rules adopted pursuant to the  
 408 overtime pay provisions of such federal act or any related governing case law shall be liable to the employee  
 409 for the applicable remedies, damages, or other relief available under the federal Fair Labor Standards Act in  
 410 an action brought pursuant to ~~the process in~~ subsection ~~J~~ K of § 40.1-29. For the purposes of this section,  
 411 "employer" and "employee" shall have the meanings ascribed to them under the federal Fair Labor Standards  
 412 Act and all applicable exemptions, overtime calculation methods, methods of overtime payment, or other  
 413 overtime provisions within the federal Fair Labor Standards Act and any attendant regulations, guidance, or  
 414 rules shall apply. Any action brought pursuant to this section shall accrue according to the applicable  
 415 limitations set forth in the federal Fair Labor Standards Act *and shall be commenced within three years after*  
 416 *accrual.*

417 **§ 40.1-29.3. Overtime for certain employees.**

418 A. As used in this section:

419 "Carrier" means an air carrier that is subject to the provisions of the federal Railway Labor Act, 45 U.S.C.  
 420 § 181 et seq.

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

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

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

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

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

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

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

449 **§ 53.1-40.02. Conditional release of terminally ill prisoners.**

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

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

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

- 456 1. A Class 1 felony;
- 457 2. Any violation of § 18.2-32, 18.2-32.1, 18.2-32.2, or 18.2-33;
- 458 3. Any violation of § 18.2-40 or 18.2-45;
- 459 4. Any violation of § 18.2-46.5, subsection A or B of § 18.2-46.6, or § 18.2-46.7;
- 460 5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2,  
 461 except for a violation of § 18.2-49.1;
- 462 6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of  
 463 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  
 464 § 18.2-57.2;
- 465 7. Any felony violation of § 18.2-60.3;
- 466 8. Any felony violation of § 16.1-253.2 or 18.2-60.4;
- 467 9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;
- 468 10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title  
 469 18.2, except, when not committed against a minor, a violation of subdivision A 5 of § 18.2-67.3,  
 470 § 18.2-67.4:1, subsection B of § 18.2-67.5, or § 18.2-67.5:1;
- 471 11. Any violation of § 18.2-90 or 18.2-93;
- 472 12. Any violation of § 18.2-289 or subsection A of § 18.2-300;
- 473 13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2 involving a minor  
 474 victim;
- 475 14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2 involving a minor  
 476 victim, except for a violation of § 18.2-362 or 18.2-370.5 or subsection B of § 18.2-371.1;
- 477 15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 involving a minor  
 478 victim, except for a violation of subsection A of § 18.2-374.1:1;
- 479 16. Any violation of § 18.2-481, 40.1-100.2, or 40.1-103; or
- 480 17. A second or subsequent felony violation of the following offenses when such offenses were not part of  
 481 a common act, transaction, or scheme and such person has been at liberty as defined in § 53.1-151 between  
 482 each conviction:
  - 483 a. Voluntary or involuntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2 or  
 484 any crime punishable as such;
  - 485 b. Any violation of § 18.2-41 or 18.2-42.1;
  - 486 c. Any violation of subsection C of § 18.2-46.6;
  - 487 d. Any violation when done unlawfully but not maliciously of § 18.2-51 or 18.2-51.1;
  - 488 e. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of  
 489 § 18.2-79;
  - 490 f. Any violation of § 18.2-89 with the intent to commit any larceny or § 18.2-92;
  - 491 g. Any violation of subsection A of § 18.2-374.1:1;

- 492 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  
 493 i. Any violation of subdivision *E F* 2 of § 40.1-29.
- 494 D. The Parole Board shall promulgate regulations to implement the provisions of this section.  
 495 **§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.**  
 496 A. A maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence for a  
 497 conviction for any offense of:  
 498 1. A Class 1 felony;  
 499 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  
 500 18.2-33;  
 501 3. Any violation of § 18.2-40 or 18.2-45;  
 502 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  
 503 results from providing any material support, or of subsection A of § 18.2-46.6;  
 504 5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2;  
 505 6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of  
 506 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;  
 507 7. Any felony violation of § 18.2-60.3;  
 508 8. Any felony violation of § 16.1-253.2 or 18.2-60.4;  
 509 9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;  
 510 10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title  
 511 18.2;  
 512 11. Any violation of § 18.2-90;  
 513 12. Any violation of § 18.2-289 or subsection A of § 18.2-300;  
 514 13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;  
 515 14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a violation of  
 516 § 18.2-362 or subsection B or C of § 18.2-371.1;  
 517 15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a violation of  
 518 subsection A of § 18.2-374.1:1;  
 519 16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any violation of  
 520 § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or  
 521 17. A second or subsequent violation of the following offenses, in any combination, when such offenses  
 522 were not part of a common act, transaction, or scheme and such person has been at liberty as defined in  
 523 § 53.1-151 between each conviction:  
 524 a. Any felony violation of § 3.2-6571;  
 525 b. Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;  
 526 c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;  
 527 d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;  
 528 e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done  
 529 unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;  
 530 f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of  
 531 § 18.2-79;  
 532 g. Any violation of § 18.2-89 or 18.2-92;  
 533 h. Any violation of subsection A of § 18.2-374.1:1;  
 534 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  
 535 j. Any violation of subdivision *E F* 2 of § 40.1-29.
- 536 The earning of sentence credits shall be conditioned, in part, upon full participation in and cooperation  
 537 with programs to which a person is assigned pursuant to § 53.1-32.1.
- 538 B. For any offense other than those enumerated in subsection A for which sentence credits may be earned,  
 539 earned sentence credits shall be awarded and calculated using the following four-level classification system:  
 540 1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the person's  
 541 sentence for every 30 days served. Level I sentence credits shall be awarded to persons who participate in and  
 542 cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1 and who have no more  
 543 than one minor correctional infraction and no serious correctional infractions as established by the  
 544 Department's policies or procedures.  
 545 2. Level II. For persons receiving Level II sentence credits, 7.5 days shall be deducted from the person's  
 546 sentence for every 30 days served. Level II sentence credits shall be awarded to persons who participate in  
 547 and cooperate with all programs, job assignments, and educational curriculums to which the person is  
 548 assigned pursuant to § 53.1-32.1, but who require improvement in not more than one area as established by  
 549 the Department's policies or procedures.  
 550 3. Level III. For persons receiving Level III sentence credits, 3.5 days shall be deducted from the person's  
 551 sentence for every 30 days served. Level III sentence credits shall be awarded to persons who participate in  
 552 and cooperate with all programs, job assignments, and educational curriculums to which the person is  
 553 assigned pursuant to § 53.1-32.1, but who require significant improvement in two or more areas as

554 established by the Department's policies or procedures.

555 4. Level IV. No sentence credits shall be awarded to persons classified in Level IV. A person will be  
556 classified in Level IV if that person willfully fails to participate in or cooperate with all programs, job  
557 assignments, and educational curriculums to which the person is assigned pursuant to § 53.1-32.1 or that  
558 person causes substantial security or operational problems at the correctional facility as established by the  
559 Department's policies or procedures.

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

567 D. A person's classification level under subsection B may be immediately reviewed and adjusted  
568 following removal from a program, job assignment, or educational curriculum that was assigned pursuant to  
569 § 53.1-32.1 for disciplinary or noncompliance reasons.

570 E. A person may appeal a reclassification determination under subsection C or D in the manner set forth  
571 in the grievance procedure established by the Director pursuant to his powers and duties as set forth in  
572 § 53.1-10.

573 F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under  
574 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full participation  
575 in and cooperation with programs afforded to the juvenile during that portion of the sentence. The  
576 Department of Juvenile Justice shall provide a report that describes the juvenile's adherence to the facility's  
577 rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile  
578 offender under § 16.1-285.1.

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

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