

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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.

[H 238]

Approved

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.

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

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

A. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

136 **§ 11-4.6. Required contract provisions in construction contracts.**

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

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

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

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

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

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

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

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

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

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

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

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

216 **§ 40.1-28.7:7. Misclassification of workers.**

217 A. *As used in this section:*

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

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

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

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

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

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

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

§ 40.1-28.12. Employee's remedies.

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

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

A. *As used in this section:*

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

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

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

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

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

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

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

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

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

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

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

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

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

344 ~~H. I.~~ Any employer who knowingly fails to make payment of wages in accordance with subsection A or
 345 § 40.1-29.3 shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner
 346 shall notify any employer that the Commissioner alleges has violated any provision of this section or
 347 § 40.1-29.3 by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days
 348 of receipt of notice of the alleged violation, the employer may request an informal conference regarding such
 349 violation with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner
 350 shall consider the size of the business of the employer charged and the gravity of the violation. The decision
 351 of the Commissioner shall be final. Civil penalties owed under this section shall be paid to the Commissioner
 352 for deposit into the general fund of the State Treasurer. The Commissioner shall prescribe procedures for the
 353 payment of proposed assessments of penalties that are not contested by employers. Such procedures shall
 354 include provisions for an employer to consent to abatement of the alleged violation and pay a proposed
 355 penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such
 356 alleged violation.

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

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

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

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

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

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

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

397 P. In any action to recover unpaid wages commenced on or after July 1, 2026, if the employer shows to
 398 the satisfaction of the court or the Commissioner that the act or omission giving rise to such action was in
 399 good faith and that the employer had reasonable grounds for believing that his act or omission was not in
 400 violation of this article, the court or the Commissioner shall not award any additional damages or impose
 401 any additional penalties. An employer shall not claim the good faith defense unless such employer cures the
 402 violation within 14 days of being notified of the violation by paying all wages unlawfully withheld.

403 **§ 40.1-29.2. Employer liability.**

404 Any employer that violates the overtime pay requirements of the federal Fair Labor Standards Act of
 405 1938, 29 U.S.C. § 201 et seq., as amended, and any regulations, guidance, or rules adopted pursuant to the
 406 overtime pay provisions of such federal act or any related governing case law shall be liable to the employee
 407 for the applicable remedies, damages, or other relief available under the federal Fair Labor Standards Act in
 408 an action brought pursuant to the process in subsection ~~J~~ K of § 40.1-29. For the purposes of this section,
 409 "employer" and "employee" shall have the meanings ascribed to them under the federal Fair Labor Standards
 410 Act and all applicable exemptions, overtime calculation methods, methods of overtime payment, or other
 411 overtime provisions within the federal Fair Labor Standards Act and any attendant regulations, guidance, or
 412 rules shall apply. Any action brought pursuant to this section shall accrue according to the applicable
 413 limitations set forth in the federal Fair Labor Standards Act and shall be commenced within three years after
 414 accrual.

415 **§ 40.1-29.3. Overtime for certain employees.**

416 A. As used in this section:

417 "Carrier" means an air carrier that is subject to the provisions of the federal Railway Labor Act, 45 U.S.C.
 418 § 181 et seq.

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

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

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

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

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

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

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

447 **§ 53.1-40.02. Conditional release of terminally ill prisoners.**

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

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

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

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

- 490 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
 491 i. Any violation of subdivision *E F* 2 of § 40.1-29.
- 492 D. The Parole Board shall promulgate regulations to implement the provisions of this section.
 493 **§ 53.1-202.3. Rate at which sentence credits may be earned; prerequisites.**
- 494 A. A maximum of 4.5 sentence credits may be earned for each 30 days served on a sentence for a
 495 conviction for any offense of:
- 496 1. A Class 1 felony;
 - 497 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
 498 18.2-33;
 - 499 3. Any violation of § 18.2-40 or 18.2-45;
 - 500 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
 501 results from providing any material support, or of subsection A of § 18.2-46.6;
 - 502 5. Any kidnapping or abduction felony under Article 3 (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2;
 - 503 6. Any malicious felonious assault or malicious bodily wounding under Article 4 (§ 18.2-51 et seq.) of
 504 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;
 - 505 7. Any felony violation of § 18.2-60.3;
 - 506 8. Any felony violation of § 16.1-253.2 or 18.2-60.4;
 - 507 9. Robbery under § 18.2-58 or carjacking under § 18.2-58.1;
 - 508 10. Criminal sexual assault punishable as a felony under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title
 509 18.2;
 - 510 11. Any violation of § 18.2-90;
 - 511 12. Any violation of § 18.2-289 or subsection A of § 18.2-300;
 - 512 13. Any felony offense in Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Title 18.2;
 - 513 14. Any felony offense in Article 4 (§ 18.2-362 et seq.) of Chapter 8 of Title 18.2, except for a violation of
 514 § 18.2-362 or subsection B or C of § 18.2-371.1;
 - 515 15. Any felony offense in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, except for a violation of
 516 subsection A of § 18.2-374.1:1;
 - 517 16. Any violation of subsection F of § 3.2-6570, any felony violation of § 18.2-128, or any violation of
 518 § 18.2-481, 37.2-917, 37.2-918, 40.1-100.2, or 40.1-103; or
 - 519 17. A second or subsequent violation of the following offenses, in any combination, when such offenses
 520 were not part of a common act, transaction, or scheme and such person has been at liberty as defined in
 521 § 53.1-151 between each conviction:
 - 522 a. Any felony violation of § 3.2-6571;
 - 523 b. Voluntary manslaughter under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
 - 524 c. Any violation of § 18.2-41 or felony violation of § 18.2-42.1;
 - 525 d. Any violation of subsection B, C, or D of § 18.2-46.5 or § 18.2-46.7;
 - 526 e. Any violation of § 18.2-51 when done unlawfully but not maliciously, § 18.2-51.1 when done
 527 unlawfully but not maliciously, or § 18.2-54.1 or 18.2-54.2;
 - 528 f. Arson in violation of § 18.2-77 when the structure burned was occupied or a Class 3 felony violation of
 529 § 18.2-79;
 - 530 g. Any violation of § 18.2-89 or 18.2-92;
 - 531 h. Any violation of subsection A of § 18.2-374.1:1;
 - 532 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
 - 533 j. Any violation of subdivision *E F* 2 of § 40.1-29.
- 534 The earning of sentence credits shall be conditioned, in part, upon full participation in and cooperation
 535 with programs to which a person is assigned pursuant to § 53.1-32.1.
- 536 B. For any offense other than those enumerated in subsection A for which sentence credits may be earned,
 537 earned sentence credits shall be awarded and calculated using the following four-level classification system:
- 538 1. Level I. For persons receiving Level I sentence credits, 15 days shall be deducted from the person's
 539 sentence for every 30 days served. Level I sentence credits shall be awarded to persons who participate in and
 540 cooperate with all programs to which the person is assigned pursuant to § 53.1-32.1 and who have no more
 541 than one minor correctional infraction and no serious correctional infractions as established by the
 542 Department's policies or procedures.
 - 543 2. Level II. For persons receiving Level II sentence credits, 7.5 days shall be deducted from the person's
 544 sentence for every 30 days served. Level II sentence credits shall be awarded to persons who participate in
 545 and cooperate with all programs, job assignments, and educational curriculums to which the person is
 546 assigned pursuant to § 53.1-32.1, but who require improvement in not more than one area as established by
 547 the Department's policies or procedures.
 - 548 3. Level III. For persons receiving Level III sentence credits, 3.5 days shall be deducted from the person's
 549 sentence for every 30 days served. Level III sentence credits shall be awarded to persons who participate in
 550 and cooperate with all programs, job assignments, and educational curriculums to which the person is
 551 assigned pursuant to § 53.1-32.1, but who require significant improvement in two or more areas as

552 established by the Department's policies or procedures.

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

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

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

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

571 F. For a juvenile sentenced to serve a portion of his sentence as a serious juvenile offender under
572 § 16.1-285.1, consideration for earning sentence credits shall be conditioned, in part, upon full participation
573 in and cooperation with programs afforded to the juvenile during that portion of the sentence. The
574 Department of Juvenile Justice shall provide a report that describes the juvenile's adherence to the facility's
575 rules and the juvenile's progress toward treatment goals and objectives while sentenced as a serious juvenile
576 offender under § 16.1-285.1.

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

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