

HOUSE BILL NO. 1451

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce

on _____)

(Patron Prior to Substitute—Delegate Anthony)

A BILL to amend and reenact § 40.1-49.4 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 3.1, consisting of sections numbered 40.1-38.1 through 40.1-38.6, relating to labor and employment; certain employers; required disclosures and recordkeeping; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-49.4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 40.1 an article numbered 3.1, consisting of sections numbered 40.1-38.1 through 40.1-38.6, as follows:

*Article 3.1.**Warehouse Employers.***§ 40.1-38.1. Definitions.**

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

"Aggregated work-speed data" means information collected or maintained in the ordinary course of business that is combined or summarized such that the data cannot be identified with any individual employee.

"Automated or algorithmic management system" means any software, digital monitoring tool, or system that uses data analytics or automated decision making to track employee productivity or evaluate performance in relation to a quota for purposes of discipline or adverse employment action.

"Defined time period" means any unit of time measurement equal to or less than the duration of an employee's work shift, including hours, minutes, seconds, or any fraction thereof.

"Designated employee representative" means any employee representative, including an authorized collective bargaining representative, or any individual expressly designated in writing by an employee or former employee for purposes of requesting records under this article.

"Employee" means a nonexempt employee, as defined by the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq., as amended, who works at a warehouse distribution center and is subject to a quota.

"Employer" means any person that, directly or indirectly, or through an agent or third party, employs, retains, or exercises control over the wages, hours, or working conditions of 500 or more employees

statewide at one or more warehouse distribution centers in the Commonwealth.

"Personal work-speed data" means information that an employer collects or maintains in the ordinary course of business relating to an individual employee's performance of a quota, including quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of performance, and time categorized as performing tasks or not performing tasks.

"Quota" means a performance standard under which an employee is assigned or required, within a defined time period, to perform a quantified number of tasks, to handle or produce a quantified amount of material, or to perform work at a specified productivity speed, and where failure to meet such standard may result in discipline or adverse employment action.

"Warehouse distribution center" means an establishment classified under one or more of the following North American Industry Classification System Codes: (i) 493, Warehousing and Storage; (ii) 423, Merchant Wholesalers, Durable Goods; (iii) 424, Merchant Wholesalers, Nondurable Goods; (iv) 454110, Electronic Shopping and Mail-Order Houses; or (v) 492110, Couriers and Express Delivery Services.

§ 40.1-38.2. Required disclosures; quotas and automated or algorithmic management system.

A. By August 1, 2026, at the commencement of employment, and within 30 days of the implementation of a quota, an employer shall provide each employee with a written description of:

1. Each quota to which the employee is subject, including the quantified work requirement and defined time period;

2. Any incentive or bonus associated with meeting or exceeding the quota; and

3. Any potential adverse employment action that may result from failure to meet the quota.

B. If an employer changes a quota, the employer shall notify each employee before the employee is subject to the new quota and provide an updated written description within two business days.

C. If an employer uses an automated or algorithmic management system to monitor or evaluate employee performance in relation to a quota, the written description provided under subsection A shall include:

1. A plain-language statement that such a system is used; and

2. A general description of the types of data collected by the system and the purpose for which the data is used, without requiring disclosure of proprietary algorithms, formulas, or source code.

D. A written disclosure under this section shall be provided (i) in plain English and, upon request, in any other language primarily spoken by 10 percent or more of the employer's warehouse employees in the Commonwealth and (ii) in a manner reasonably accessible to the employee and that does not require the use of the employee's personal electronic device.

E. Nothing in this article shall be construed to require an employer to adopt, modify, or eliminate any quota, automated or algorithmic management system, or productivity standard or to regulate production rates or operational processes.

§ 40.1-38.3. Compliance with quotas.

A. No employer shall require an employee to meet a quota that:

- 1. Has not been disclosed pursuant to § 40.1-38.2; or*
- 2. Has the effect of preventing the employee from complying with applicable laws relating to meal periods, rest periods, bathroom access, or workplace safety.*

B. For the purposes of this section, the time period considered in a quota shall be deemed to include:

- 1. Rest breaks required by law or employer policy and reasonable travel time to designated locations;*
- 2. Reasonable travel time to on-site meal break locations;*
- 3. Time required to perform employer-mandated activities as necessary to complete assigned work;*
- 4. Time to use the bathroom, including reasonable travel time; and*
- 5. Time necessary to access tools, equipment, or safety devices required to perform work properly and safely.*

C. For the purposes of this section, reasonable travel time shall be determined based on the size, layout, and geography of the warehouse facility and the employee's assigned work location.

§ 40.1-38.4. Recordkeeping requirements; right to request information.

A. An employer that uses a quota shall maintain, to the extent such records are collected or maintained in the ordinary course of business, records of:

- 1. Each employee's personal work-speed data;*
- 2. Aggregated work-speed data for similarly situated employees; and*
- 3. Written quota disclosures provided under § 40.1-38.2.*

B. Such records shall be maintained for the duration of an employee's employment. All such records from the six-month period preceding the separation of an employee shall be preserved for at least three years following such employee's separation.

C. A current employee, former employee, or a designated employee representative may request at any time, to the extent such records are collected or maintained in the ordinary course of business, records of:

- 1. The written quota description applicable to the employee;*
- 2. The employee's personal work-speed data for the preceding six months; and*
- 3. Aggregated work-speed data for similarly situated employees for the same time period.*

95 *D. Requested records shall be provided at no cost and within a reasonable time as prescribed by the*
96 *Commissioner by regulation, not to exceed (i) two business days after a request for quota descriptions and*
97 *(ii) seven business days after a request for personal and aggregated work-speed data.*

98 **§ 40.1-38.5. Retaliatory action prohibited.**

99 *A. No employer shall discharge, discipline, or retaliate against an employee for requesting information,*
100 *making a good faith complaint, or participating in an investigation under this article.*

101 *B. Any adverse employment action taken within 90 days of an employee requesting information, making a*
102 *good faith complaint, or participating in an investigation under this article shall create a rebuttable*
103 *presumption of retaliation, which may be rebutted by clear and convincing evidence of lawful, nonretaliatory*
104 *reasons.*

105 **§ 40.1-38.6. Enforcement; civil penalties.**

106 *A. The Commissioner shall enforce the provisions of this article consistent with the provisions of*
107 *§ 40.1-49.4.*

108 *B. The Commissioner may adopt regulations to implement the provisions of this article, including*
109 *regulations prescribing the form, manner, and reasonable timeliness for compliance.*

110 *C. Nothing in this article shall be construed to create a private right of action or to alter the employment*
111 *at will doctrine in the Commonwealth.*

112 **§ 40.1-49.4. Enforcement of this title and standards, rules, or regulations for safety and health;**
113 **orders of Commissioner; proceedings in circuit court; injunctions; penalties.**

114 *A. 1. If the Commissioner has reasonable cause to believe that an employer has violated any safety or*
115 *health provision of Title 40.1 or any standard, rule, or regulation adopted pursuant thereto, he shall with*
116 *reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe*
117 *with particularity the nature of the violation or violations, including a reference to the provision of this title or*
118 *the appropriate standards, rules, or regulations adopted pursuant thereto, and shall include an order of*
119 *abatement fixing a reasonable time for abatement of each violation.*

120 *2. The Commissioner may prescribe procedures for calling to the employer's attention de minimis*
121 *violations which have no direct or immediate relationship to safety and health.*

122 *3. No citation may be issued under this section after the expiration of six months following the occurrence*
123 *of any alleged violation.*

124 *4. (a) The Commissioner shall have the authority to propose civil penalties for cited violations in*
125 *accordance with subsections G, H, I, and J. In determining the amount of any proposed penalty, he shall give*

due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations. In addition, the Commissioner shall have authority to assess interest on all past-due penalties and administrative costs incurred in the collection of penalties for such violations consistent with § 2.2-4805.

(b) After, or concurrent with, the issuance of a citation and order of abatement, and within a reasonable time after the termination of an inspection or investigation, the Commissioner shall notify the employer by certified mail, by commercial delivery service with signed and dated acknowledgment of delivery, or by personal service of the proposed penalty or that no penalty is being proposed. The proposed penalty shall be deemed to be the final order of the Commissioner and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notice, the employer notifies the Commissioner in writing that he intends to contest the citation, order of abatement or the proposed penalty or the employee or representative of employees has filed a notice in accordance with subsection B of this section and any such notice of proposed penalty, citation or order of abatement shall so state.

B. Any employee or representative of employees of an employer to whom a citation and order of abatement has been issued may, within 15 working days from the time of the receipt of the citation and order of abatement by the employer, notify the Commissioner, in writing, that they wish to contest the abatement time before the circuit court.

C. If the Commissioner has reasonable cause to believe that an employer has failed to abate a violation for which a citation has been issued within the time period permitted for its abatement, which time shall not begin to run until the entry of a final order in the case of any contest as provided in subsection E of this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, a citation for failure to abate will be issued to the employer in the same manner as prescribed by subsection A. In addition, the Commissioner shall notify the employer by certified mail, by commercial delivery service with signed and dated acknowledgment of delivery, or by personal service of such failure and of the penalty proposed to be assessed by reason of such failure. If, within 15 working days from the date of receipt of the notice of the proposed penalty, the employer fails to notify the Commissioner that he intends to contest the citation or proposed assessment of penalty, the citation and assessment as proposed shall be deemed a final order of the Commissioner and not subject to review by any court or agency.

D. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the Treasurer of the Commonwealth. The Commissioner shall prescribe procedures for the payment

157 of proposed assessments of penalties which are not contested by employers. Such procedures shall include
158 provisions for an employer to consent to abatement of the alleged violation and pay a proposed penalty or a
159 negotiated sum in lieu of such penalty without admission of any civil liability arising from such alleged
160 violation.

161 Final orders of the Commissioner or the circuit courts may be recorded, enforced, and satisfied as orders
162 or decrees of a circuit court upon certification of such orders by the Commissioner or the court as appropriate.

163 E. Upon receipt of a notice of contest of a citation, proposed penalty, order of abatement, or abatement
164 time pursuant to subdivision A 4 (b) or subsection B or C, the Commissioner shall immediately notify the
165 attorney for the Commonwealth for the jurisdiction wherein the violation is alleged to have occurred and
166 shall file a civil action with the circuit court. Upon issuance and service of process, the circuit court shall
167 promptly set the matter for hearing without a jury. The circuit court shall thereafter issue a written order,
168 based on findings of fact and conclusions of law, affirming, modifying or vacating the Commissioner's
169 citation or proposed penalty, or directing other appropriate relief, and such order shall become final 21 days
170 after its issuance. The circuit court shall provide affected employees or their representatives and employers an
171 opportunity to participate as parties to hearings under this subsection.

172 F. 1. In addition to the remedies set forth above, the Commissioner may file a civil action with the clerk of
173 the circuit court having equity jurisdiction over the employer or the place of employment involved asking the
174 court to temporarily or permanently enjoin any conditions or practices in any place of employment which are
175 such that a danger exists which could reasonably be expected to cause death or serious physical harm
176 immediately or before the imminence of such danger can be eliminated through the enforcement procedures
177 otherwise provided by this title. Any order issued under this section may require such steps to be taken as
178 may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence
179 of any individual in locations or under conditions where such imminent danger exists, except individuals
180 whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of
181 a continuous process operation to resume normal operations without a complete cessation of operations, or
182 where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.
183 No order issued without prior notice to the employer shall be effective for more than five working days.
184 Whenever and as soon as the Commissioner concludes that conditions or practices described in this
185 subsection exist in any place of employment and that judicial relief shall be sought, he shall immediately
186 inform the affected employer and employees of such proposed course of action.

2. Any court described in this section shall also have jurisdiction, upon petition of the Commissioner or his authorized representative, to enjoin any violations of this title or the standards, rules, or regulations promulgated thereunder.

3. If the Commissioner arbitrarily or capriciously fails to seek relief under subdivision 1 ~~of this subsection~~, any employee who may be injured by reason of such failure, or the representative of such employee, may bring an action against the Commissioner in a circuit court of competent jurisdiction for a writ of mandamus to compel the Commissioner to seek such an order and for such further relief as may be appropriate.

G. Any employer who has received a citation for a violation of any safety or health provision of this title or any standard, rule, or regulation promulgated pursuant thereto and such violation is specifically determined not to be of a serious nature may be assessed a civil penalty of up to \$12,471, as such amount may be adjusted as provided in subsection P, for each such violation.

H. Any employer who has received a citation for a violation of any safety or health provision of this title or any standard, rule, or regulation promulgated pursuant thereto and such violation is determined to be a serious violation shall be assessed a civil penalty of up to \$12,471, as such amount may be adjusted as provided in subsection P, for each such violation.

I. Any employer who fails to abate a violation for which a citation has been issued within the period permitted for its abatement (, which period shall not begin to run until the entry of the final order of the circuit court), may be assessed a civil penalty of not more than \$12,471, as such amount may be adjusted as provided in subsection P, for each day during which such violation continues.

J. Any employer who willfully or repeatedly violates any safety or health provision of this title or any standard, rule, or regulation promulgated pursuant thereto may be assessed a civil penalty of not more than \$124,709, as such amount may be adjusted as provided in subsection P, for each such violation.

K. Any employer who willfully violates any safety or health provisions of this title or standards, rules, or regulations adopted pursuant thereto, and that violation causes death to any employee, shall, upon conviction, be punished by a fine of not more than \$70,000 or by imprisonment for not more than six months, or by both such fine and imprisonment. If the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than \$140,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

L. In any proceeding before a judge of a circuit court parties may obtain discovery by the methods provided for in the Rules of *the* Supreme Court of Virginia.

218 M. No fees or costs shall be charged the Commonwealth by a court or any officer for or in connection
219 with the filing of the complaint, pleadings, or other papers in any action authorized by this section or
220 § 40.1-49.5.

221 N. Every official act of the circuit court shall be entered of record and all hearings and records shall be
222 open to the public, except any information subject to protection under the provisions of § 40.1-51.4:1.

223 O. The provisions of *Article 3.1 (§ 40.1-38.1 et seq.) and Chapter 30 (§ 59.1-406 et seq.)* of Title 59.1
224 shall be considered safety and health standards of the Commonwealth and enforced as to employers pursuant
225 to this section by the Commissioner of Labor and Industry.

226 P. Beginning in 2018, the Commissioner annually shall adjust the maximum civil penalties stated in
227 subsections G through J each year by the percentage increase, if any, in the United States Average Consumer
228 Price Index for all Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics of the United
229 States Department of Labor, from its monthly average for the previous calendar year. The amount of each
230 adjustment to the maximum civil penalties shall be rounded to the nearest whole dollar. The adjustments to
231 the maximum civil penalties shall be effective on each August 1. If the CPI-U is discontinued or revised, such
232 other historical index or computation approved by the Commissioner shall be used for purposes of this
233 section that would obtain substantially the same result as would have been obtained if the CPI-U had not been
234 discontinued or revised.

235 **2. That the Department of Labor and Industry (the Department) shall convene a work group to assess**
236 **the use of employee performance standards, including quota-based or automated management systems,**
237 **in high-volume distribution and logistics settings in the Commonwealth. The work group shall review**
238 **any available Virginia data regarding workplace injuries, employee complaints, enforcement activity,**
239 **and existing employer transparency practices related to such systems and shall develop**
240 **recommendations to promote employee access to information and workplace safety while preserving**
241 **operational feasibility for employers. The work group shall include representatives of employers,**
242 **employees, organized labor, and other stakeholders as determined by the Commissioner of Labor and**
243 **Industry. The Department shall convene the work group within existing resources and shall submit a**
244 **report of its findings and recommendations to the Governor and the Chairs of the House Committee on**
245 **Labor and Commerce and the Senate Committee on Commerce and Labor by November 1, 2026.**