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HOUSE BILL NO. 220

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Counties, Cities and Towns
on February 8, 2000)

(Patron Prior to Substitute—Delegate Callahan)

A BILL to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 10.1:3, consisting of sections numbered 2.1-116.9:7 through 2.1-116.9:13, relating to overtime compensation for fire protection employees.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 10.1:3, consisting of sections numbered 2.1-116.9:7 through 2.1-116.9:13 as follows:

CHAPTER 10.1:3.

OVERTIME COMPENSATION FOR FIREFIGHTERS, EMERGENCY MEDICAL TECHNICIANS AND
OTHER FIRE PROTECTION EMPLOYEES.

§ 2.1-116.9:7. Definitions.

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

"Employer" means any political subdivision of the Commonwealth, including any county, city, town, authority, or special district that employs fire protection employees.

"Fire protection employee" means any person, other than an employee who is exempt from the overtime provisions of the Fair Labor Standards Act, who is employed by an employer as a paid firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker who is (i) trained in fire suppression and has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of an employer, and (ii) engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

§ 2.1-116.9:8. Overtime compensation rate.

A. Employers shall pay fire protection employees overtime compensation or leave, as under the Fair Labor Standards Act, 29 U.S.C. 207(o), at a rate of not less than one and one-half times the employee's basis rate of pay for all hours of work in excess of fifty-three hours in a seven-day work period or 212 hours in a twenty-eight-day work period, or for work periods adopted between seven and twenty-eight days, the number of hours which bears the same relationship to 212 as the number of days in the work period bears to twenty-eight.

B. Nothing in this chapter shall be construed to affect the right of any employer to provide overtime compensation to fire protection employees in an amount that exceeds the amounts required by this section.

§ 2.1-116.9:9. Work period.

Employers may adopt any work period to compute overtime compensation for fire protection employees between seven and twenty-eight days provided that the work period is recurring and fixed, and is not changed for purposes of denying overtime compensation to such employees.

§ 2.1-116.9:10. Hours of work.

For purposes of computing fire protection employees' entitlement to overtime compensation, all hours in which an employee works or is in a paid status shall be counted as hours of work.

§ 2.1-116.9:11. Employee's remedies; award of attorney's fees and costs.

A. In an action brought under this chapter, an employer who violates the provisions of this chapter shall be liable to the fire protection employee affected in an amount of double the amount of the unpaid compensation due such employee. However, if the employer can prove that his violation was in good faith, he shall be liable only for the amount of the unpaid compensation plus interest at the rate of eight percent per year, commencing on the date the compensation was due to the employee.

B. Where the fire protection employee prevails, the court shall award him attorneys' fees and costs to be paid by the employer.

§ 2.1-116.9:12. Limitation of actions.

Actions brought under this chapter shall be commenced within two years of the date the unpaid compensation was due, or if the violation is willful, within three years of the date the unpaid compensation was due.

§ 2.1-116.9:13. Sovereign immunity.

The immunity of the Commonwealth and of any "agency" as defined in § 8.01-195.2 is hereby preserved.