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SENATE BILL NO. 410

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 27, 2004)

(Patron Prior to Substitute—Senator Ruff)

A BILL for the relief of Sharon Dalton.

Whereas, Sharon Dalton was employed as an acting assistant manager by the Virginia Department of Alcohol Beverage Control (ABC) at its Kenbridge store on and prior to December 16, 1996; and

Whereas, on December 16, 1996, Mrs. Dalton was performing her work duties when a stack of liquor cases fell on her head and neck; and

Whereas, the neck injury she sustained as a result of this accident required surgery in September 1997; and

Whereas, Mrs. Dalton returned to work in January 1998, despite substantial pain and discomfort remaining from the December 1996 neck injury; and

Whereas, on February 11, 1998, Mrs. Dalton filed a claim for benefits with the Workers' Compensation Commission related to the December 1996 neck injury and, on May 18, 1998, was awarded temporary total disability benefits from September 1, 1997, through January 1, 1998, and medical benefits; and

Whereas, in May 1999 Mrs. Dalton was planning to leave work for an extended period of time in order to undergo physical therapy for her December 1996 neck injury; and

Whereas, her store manager became gravely ill and was unable to work for six months, during which time Mrs. Dalton delayed the start of her physical therapy and managed two ABC stores, despite substantial pain and discomfort caused by her December 1996 neck injury; and

Whereas, in February 2000, in anticipation of beginning new treatment for the substantial pain and discomfort caused by her December 1996 neck injury, Mrs. Dalton's doctor advised her to change her work situation to light duty; and

Whereas, Mrs. Dalton's manager informed her that no light duty option existed and immediately removed her from the work schedule; and

Whereas, several days later Mrs. Dalton was hospitalized and placed in intensive care for what was later determined to be a cardiac episode caused by the pain in her neck and overall stress; and

Whereas, Mrs. Dalton initially refrained from filing a change-in-condition claim with the Workers' Compensation Commission because her superiors told her that everything must be handled through the chain of command according to ABC policy; and

Whereas, Mrs. Dalton eventually did file a change-in-condition claim with the Workers' Compensation Commission; and

Whereas, even though several witnesses were not present for Mrs. Dalton's March 20, 2001, Workers' Compensation Commission hearing, Mrs. Dalton elected to go forward with the hearing after being told she would be able to appeal an adverse decision and have the witnesses testify at such time, but that Mrs. Dalton now asserts such testimony is currently being barred from entry into the record; and

Whereas, pursuant to a decision by the full Workers' Compensation Commission on September 24, 2001, the Commission denied the change-in-claim due to (i) Mrs. Dalton's failure to file the claim within the two-year time period as set forth in § 65.2-708 of the Code of Virginia and (ii) no evidence on record requiring application of the principles of equitable estoppel or the doctrine of imposition; and

Whereas, in light of the absence of the aforementioned witnesses and other inaccuracies, Mrs. Dalton continues to challenge the sufficiency of the evidence relied upon by the Workers' Compensation Commission in reaching its September 24, 2001, decision denying her claim; and

Whereas, due to financial hardship, Mrs. Dalton has been forced to represent herself without attorney assistance throughout many of the foregoing proceedings; and

Whereas, several of Mrs. Dalton's former co-workers and superiors have stated publicly that they have seen Mrs. Dalton work through extreme physical pain on numerous occasions and never ask for special treatment, and that she always displayed exemplary employee qualities in the execution of her duties; and

Whereas, there is ample physical evidence that, as a result of her December 1996 neck injury, Mrs. Dalton suffers ongoing pain, discomfort, limited mobility and other physical difficulties that make it extremely difficult for her to obtain regular employment; and

Whereas, while Mrs. Dalton would like to return to work for the ABC, her neck injury has prevented her from doing so since February 2000; and

Whereas, Mrs. Dalton has suffered financial hardship since February 2000 due to her loss of wages; and

60 Whereas, Sharon Dalton has no other means to obtain relief except by action of this body; now,
61 therefore,

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

63 *1. § 1. That there is hereby allocated from the Workers' Compensation Insurance Program trust fund,*
64 *administered by the Department of Human Resource Management, for the relief of Sharon Dalton on*
65 *account of her personal physical injuries, the amount of \$69,820 to be paid by checks issued by the*
66 *State Treasurer on warrant of the Comptroller to Sharon Dalton, subject to a release by her of all*
67 *claims (other than claims for the Virginia Retirement System) against the Commonwealth and its*
68 *political subdivisions, agencies, instrumentalities, officers or employees in connection with or arising out*
69 *of the aforesaid occurrence.*

70 *§ 2. The award granted hereby is subject to the following conditions: (i) subject to the release of*
71 *claims by Mrs. Dalton, \$34,910 is payable on or before July 1, 2004; (ii) the remaining amount of the*
72 *award is payable in five equal installments of \$6,982 on July 1 of each year from 2005 through 2009;*
73 *and (iii) the amounts payable annually shall be paid each July 1 only upon receipt by the preceding*
74 *June 1 of each year by the Department of Alcohol Beverage Control of a written physical and mental*
75 *evaluation of Mrs. Dalton that finds her unable to return to work as an acting assistant manager.*