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**HOUSE BILL NO. 2638**

Offered January 12, 2005

Prefiled January 12, 2005

*A BILL to amend and reenact § 40.1-29 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-111.3, relating to failure or refusal to pay wages; penalty.*

Patrons—Ebbin, Brink, Callahan, Eisenberg, Hull, Moran, Petersen, Plum and Van Landingham;  
Senators: Lucas, Ticer and Whipple

Referred to Committee for Courts of Justice

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

**1. That § 40.1-29 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 18.2-111.3 as follows:**

*§ 18.2-111.3. Failure to pay for labor services; penalty.*

*A. Any employer who knowingly fails or refuses to pay his employee for labor services rendered shall be guilty of embezzlement pursuant to § 18.2-111. When compensation is ordinarily paid upon the rendering of such services, such as for day or temporary laborers, the employer's refusal to pay, or his absconding without payment, shall give rise to a presumption of wrongful and fraudulent intent on his part.*

*B. Prosecution for offenses under this section may be in any county or city in which (i) agreement for labor services was made, (ii) labor services were performed, or (iii) the employer was legally obligated to deliver the embezzled funds.*

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

*A. 1. All employers operating a business 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.*

*2. Any such employer who knowingly fails to make payment of wages in accordance with subsection A of this section shall be subject to a civil penalty not to exceed \$1,000 for each violation and subject to criminal prosecution under § 18.2-111.3. The Commissioner shall notify any employer who he alleges has violated any provision of this section by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner shall consider the size of the business of the employer charged and the gravity of the violation. The decision of the Commissioner shall be final.*

*B. 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 or (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 by credit to a prepaid debit card or card account from which the employee is able to withdraw or transfer funds with full disclosure by the employer of any applicable fees and affirmative consent thereto by the employee.*

*Failure of the employee to designate a financial institution or consent to payment by credit to a prepaid debit card or card account under clause (iii) shall require payment of wages and salaries to be made in accordance with (i) or (ii) of this subsection.*

*C. 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. An employer, upon request of his employee, shall furnish the latter a written statement of the gross wages earned by the employee during any pay period and the amount and purpose of any deductions therefrom.*

*D. No employer shall require any employee, except executive personnel, to sign any contract or agreement which provides for the forfeiture of the employee's wages for time worked as a condition of*

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58 employment or the continuance therein, except as otherwise provided by law.

59 E. An employer who willfully and with intent to defraud violates this section shall be guilty of a  
60 misdemeanor.

61 F. The Commissioner may require a written complaint of the violation of this section and, with the  
62 written and signed consent of an employee, may institute proceedings on behalf of an employee to  
63 enforce compliance with this section, and to collect any moneys unlawfully withheld from such  
64 employee which shall be paid to the employee entitled thereto. In addition, following the issuance of a  
65 final order by the Commissioner or a court, the Commissioner may engage private counsel, approved by  
66 the Attorney General, to collect any moneys owed to the employee or the Commonwealth. Upon entry  
67 of a final order of the Commissioner, or upon entry of a judgment, against the employer, the  
68 Commissioner or the court shall assess attorney's fees of one-third of the amount set forth in the final  
69 order or judgment.

70 G. In addition to being subject to any other penalty provided by the provisions of this section, any  
71 employer who fails to make payment of wages in accordance with subsection A ~~of this section~~ shall be  
72 liable for the payment of all wages due, plus interest at an annual rate of eight percent accruing from  
73 the date the wages were due.

74 H. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the  
75 general fund of the State Treasurer. The Commissioner shall prescribe procedures for the payment of  
76 proposed assessments of penalties which are not contested by employers. Such procedures shall include  
77 provisions for an employer to consent to abatement of the alleged violation and pay a proposed penalty  
78 or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such  
79 alleged violation.

80 Final orders of the Commissioner, the general district courts or the circuit courts may be recorded,  
81 enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the  
82 Commissioner or the court as appropriate.

83 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
84 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
85 **be determined for periods of imprisonment in state adult correctional facilities and \$0 for periods**  
86 **of commitment to the custody of the Department of Juvenile Justice.**  
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