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SENATE BILL NO. 713

Offered January 12, 2005

Prefiled December 27, 2004

A *BILL to amend and reenact §§ 40.1-28.1 through 40.1-28.4 of the Code of Virginia, relating to employee leave.*

Patrons—Potts and Reynolds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-28.1 through 40.1-28.4 of the Code of Virginia are amended and reenacted as follows:

§ 40.1-28.1. Employers to allow employees at least one day of rest in each week.

A. Except in an emergency, every employer shall allow each person employed by him in connection with any business or service at least ~~twenty-four~~ 24 consecutive hours of rest in each calendar week in addition to the regular periods of rest normally allowed or legally required in each working day.

B. 1. Every employer shall allow each person employed by him in connection with any business or service, which person is a parent, guardian, or person standing in loco parentis of a school-aged child, at least four hours leave annually so that the employee may attend or otherwise be involved at that child's school. Any leave under this section is subject to the following:

a. The employee shall take the leave at a time mutually agreed upon with his employer.

b. The employer may require the employee to provide the employer with a written request for the leave at least 48 hours before the time desired for the leave.

c. The employer may require the employee to furnish written verification from the child's school that the employee attended or was otherwise involved at the school at the time of the leave.

2. For the purposes of this section, "school" means any public school; private church school, church of religious charter, or nonpublic school that regularly provides a course of grade school instruction; preschool; or child care facility.

3. Employers shall not discharge, demote or otherwise take an adverse employment action against an employee who requests or takes leave under this section. Nothing in this section shall require an employer to pay an employee for leave taken under this section.

4. An employee who is demoted or discharged or who has had an adverse employment action taken against him or her in violation of this section may bring a civil action within one year from the date of the alleged violation against the employer who violates this section and obtain either (i) any wages or benefits lost as a result of the violation or (ii) an order of reinstatement without loss of position, seniority, wages, or benefits. The burden of proof in such civil action shall be upon the employee.

§ 40.1-28.2. Employees entitled to choose Sunday as day of rest.

Every nonmanagerial person employed by any employer shall, as a matter of right, be entitled to choose Sunday as a day of rest in accordance with *subsection A of § 40.1-28.1* and upon the filing of written notice by the employee with the employer that such employee chooses Sunday as a day of rest, no employer shall, in any manner, discharge, discipline or penalize such employee for exercising his rights under this section and the provisions of this section may not be waived on an application for employment.

§ 40.1-28.3. Employees entitled to choose Saturday as day of rest.

Any nonmanagerial employee who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, shall be entitled to choose the seventh day of the week as his day of rest in accordance with *subsection A of § 40.1-28.1* and upon the filing of written notice by the employee with the employer that such employee chooses the seventh day of the week as a day of rest, no employer shall, in any manner, discharge, discipline or penalize such employee for exercising his rights under this section.

§ 40.1-28.4. Penalties for violation of §§ 40.1-28.1 through 40.1-28.3; investigations.

Any employer who violates § *subsection A of § 40.1-28.1*, § 40.1-28.2 or § 40.1-28.3 shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than \$250 nor more than \$500 for each offense. Moreover, in the event such employer compels a nonmanagerial employee to work on his chosen day of rest in violation of the heretofore stated sections, such employer shall be liable to such employee for wages at the rate of three times the employee's regular rate of pay for all hours worked by such employee on his chosen day of rest.

Nothing contained herein shall be construed to permit any fine or penalty against any supervisory

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59 employee or agent who has been caused, directed or authorized by his employer to violate any provision
60 of the heretofore stated sections, in which case the employer shall be subject to the sanctions prescribed
61 by this section.

62 The Commissioner of Labor and Industry shall be authorized to conduct investigations of possible
63 violations and thereafter, if compliance is not achieved, report any findings to the appropriate attorney
64 for the Commonwealth.