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**SENATE BILL NO. 873**

Offered January 12, 2005

Prefiled January 10, 2005

*A BILL to amend and reenact §§ 9.1-700 through 9.1-704 of the Code of Virginia, relating to overtime compensation for law-enforcement employees.*

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 Patron—Cuccinelli

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 Referred to Committee on Local Government

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

- 1. That §§ 9.1-700 through 9.1-704 of the Code of Virginia are amended and reenacted as follows:**  
**CHAPTER 7.**

**OVERTIME COMPENSATION FOR LAW-ENFORCEMENT EMPLOYEES AND FIREFIGHTERS,  
 EMERGENCY MEDICAL TECHNICIANS, AND OTHER FIRE PROTECTION EMPLOYEES.**

**§ 9.1-700. 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 except any locality with five or fewer paid firefighters that is exempt from overtime rules by 29 U.S.C. § 207 (k).

"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.

"Law-enforcement employee" means any person, other than an employee who is exempt from the overtime provisions of the Fair Labor Standards Act, who is a full-time employee of a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth.

"Regularly scheduled work hours" means those hours that are recurring and fixed within the work period and for which an employee receives a salary or hourly compensation. "Regularly scheduled work hours" does not include on-call, extra duty assignments or any other nonrecurring and nonfixed hours.

**§ 9.1-701. Overtime compensation rate.**

A. Employers shall pay fire protection or law-enforcement 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 regular rate of pay for all hours of work between the statutory maximum permitted under 29 U.S.C. § 207 (k) and the hours for which an employee receives his salary, or if paid on an hourly basis, the hours for which the employee receives hourly compensation. A fire protection or law-enforcement employee who is paid on an hourly basis shall have paid leave counted as hours of work in an amount no greater than the numbers of hours counted for other fire protection or law-enforcement employees working the same schedule who are paid on a salaried basis in that jurisdiction.

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

**§ 9.1-702. Work period.**

Employers may adopt any work period to compute overtime compensation for fire protection or law-enforcement employees between seven and ~~twenty-eight~~ 28 days provided that the work period is recurring and fixed, and is not changed for purposes of denying overtime compensation to such employees to which they may be entitled under subsection A of § 9.1-701.

**§ 9.1-703. Hours of work.**

For purposes of computing fire protection or law-enforcement employees' entitlement to overtime compensation, all hours that an employee works or is in a paid status during his regularly scheduled work hours shall be counted as hours of work.

**§ 9.1-704. Employee's remedies; award of attorneys' fees and costs.**

A. In an action brought under this chapter, an employer who violates the provisions of this chapter

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59 shall be liable to the fire protection *or law-enforcement* employee affected in an amount of double the  
60 amount of the unpaid compensation due such employee. However, if the employer can prove that his  
61 violation was in good faith, he shall be liable only for the amount of the unpaid compensation plus  
62 interest at the rate of eight percent per year, commencing on the date the compensation was due to the  
63 employee.

64 B. Where the fire protection *or law-enforcement* employee prevails, the court shall award him  
65 attorneys' fees and costs to be paid by the employer.