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HOUSE BILL NO. 1171

Offered January 10, 2018

Prefiled January 10, 2018

A *BILL to amend the Code of Virginia by adding a section numbered 11-4.6, relating to construction contracts; joint and several liability of general contractor and subcontractor for payment of wages to subcontractor's employees.*

Patron—Krizek

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 11-4.6 as follows:****§ 11-4.6. Liability of contractor for wages of subcontractor's employees.**

A. As used in this section, unless the context requires a different meaning:

"Construction contract" means a contract between a general contractor and a subcontractor relating to the construction, alteration, repair or maintenance of a building, structure or appurtenance thereto, including moving, demolition and excavation connected therewith, or any provision contained in any contract relating to the construction of projects other than buildings.

"General contractor" and "subcontractor" have the meanings ascribed thereto in § 43-1.

B. Any construction contract entered into on or after July 1, 2018, shall be deemed to include a provision under which the general contractor and the subcontractor are jointly and severally liable to pay to the subcontractor's employees the greater of (i) all wages due to the subcontractor's employees at such rate and upon such terms as shall be provided in the employment agreement between the subcontractor and its employees or (ii) the amount of wages that the subcontractor is required to pay to its employees under the provisions of applicable law, including the provisions of Article 1.1 (§ 40.1-28.8 et seq.) of Chapter 3 of Title 40.1.

C. A general contractor shall be deemed to be the employer of the subcontractor's employees for purposes of § 40.1-29. If the wages due to the subcontractor's employees under the terms of the employment agreement between the subcontractor and its employees are not paid, the general contractor shall be subject to all penalties, criminal and civil, to which an employer that fails or refuses to pay wages is subject under § 40.1-29. Any liability of a general contractor pursuant to § 40.1-29 shall be joint and several with the subcontractor that failed or refused to pay the wages to its employees.

D. Except as otherwise provided in a contract between the general contractor and the subcontractor, the subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorney fees owed as a result of the subcontractor's failure to pay wages to the subcontractor's employees as provided in subsection B, unless the subcontractor's failure to pay the wages was due to the general contractor's failure to pay moneys due to the subcontractor in accordance with the terms of their construction contract.

E. Lack of privity between the general contractor and the employees of the subcontractor shall be no defense in an action against the general contractor arising from nonpayment of wages to the subcontractor's employees.

INTRODUCED

HB1171