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HOUSE BILL NO. 1569

Offered January 19, 2018

A *BILL to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:6, relating to the duty of employers to give notice of work schedules; civil penalties.*

Patrons—Carroll Foy and Kory

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:6 as follows:

§ 40.1-28.7:6. Notice of work schedules.

A. As used in this section:

"Employee" means an employee as defined in § 40.1-2 who is paid wages based on the number of hours worked in a regular pay period.

"Shift" means the consecutive hours an employer requires an employee to work.

"Work schedule" means the written work schedule of an employee's shifts for a workweek that is provided by an employer to an employee.

B. Each employer shall:

1. Provide each employee, before the employee's first day of work, with a good faith estimate of the employee's expected minimum shifts per month and the days and hours of those shifts; and

2. Provide each employee on a biweekly basis with at least two weeks' prior notice of the employee's expected work schedule over the ensuing two-week period.

C. This section does not apply to a change to an employee's work schedule that is made at the request of the employee.

D. Any employer who violates the provisions of this section shall be subject to a civil penalty not to exceed \$100 for each violation. The Commissioner shall notify any employer who he alleges has violated any provision of this section by certified mail or overnight delivery service. Such notice shall contain a description of the alleged violation. Within 21 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. If the employer fails to contest the violation by requesting such an informal conference within 21 days following its receipt of the notice of the alleged violation, the violation and proposed penalty will become a final order of the Commissioner and not subject to review by any court or agency except upon a showing of good cause. Such informal conference shall result in a decision by the Commissioner that will be appealable to the appropriate circuit court. The Department shall send a copy of the Commissioner's decision to the employer by certified mail or overnight delivery service. The employer may file a notice of an appeal only within 30 days from the receipt of the decision. The appeal shall be on the agency record. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support the Commissioner's findings of fact. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund. The Commissioner shall prescribe procedures for the payment of proposed penalties that are not contested by employers.

E. The Commissioner shall adopt all necessary rules and regulations for carrying out the purposes of this section.