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HOUSE BILL NO. 259

Offered January 10, 2018

Prefiled January 2, 2018

A BILL to amend and reenact § 40.1-29 of the Code of Virginia, relating to the payment of wages; remedies; penalties.

Patron—Habeeb

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 40.1-29 of the Code of Virginia is amended and reenacted as follows:****§ 40.1-29. Time and medium of payment; withholding wages; written statement of earnings; agreement for forfeiture of wages; proceedings to enforce compliance; penalties.**

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 this section shall be subject to a civil penalty not to exceed \$1,000 for each violation. 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, (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 (iv) by credit to a prepaid debit card or card account from which the employee is able to withdraw or transfer funds with full written disclosure by the employer of any applicable fees and affirmative consent thereto by the employee. However, an employer that elects not to pay wages or salaries in accordance with clause (i) or (ii) to an employee who is hired after January 1, 2010, shall be permitted to pay wages or salaries by credit to a prepaid debit card or card account in accordance with clause (iv), even though such employee has not affirmatively consented thereto, if the employee fails to designate an account at a financial institution in accordance with clause (iii) and the employer arranges for such card or card account to be issued through a network system through which the employee shall have the ability to make at least one free withdrawal or transfer per pay period, which withdrawal may be for any sum in such card or card account as the employee may elect, using such card or card account at financial institutions participating in such network system.

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. ~~On each regular pay date, the employer, upon request of his employee, shall furnish the latter provide to each employee a written statement of, by a paystub or online accounting, that shows the name and address of the employer, the number of hours worked during the pay period, the rate of pay, 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 employment or the continuance therein, except as otherwise provided by law.

E. An employer who willfully and with intent to defraud fails or refuses to pay wages in accordance with this section:

1. To an employee or employees is guilty of a Class 1 misdemeanor if the value of the wages earned

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59 and not paid by the employer is less than \$10,000; and

60 2. To an employee or employees is guilty of a Class 6 felony (i) if the value of the wages earned
61 and not paid is \$10,000 or more or (ii) regardless of the value of the wages earned and not paid, if the
62 conviction is a second or subsequent conviction under this section.

63 For purposes of this section, the determination as to the "value of the wages earned" shall be made
64 by combining all wages the employer failed or refused to pay pursuant to this section.

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

74 G. In addition to being subject to any other penalty provided by the provisions of this section, any
75 employer who fails to make payment of wages in accordance with subsection A, B, or C shall be liable
76 for the payment of all wages due, plus interest at an annual rate of eight percent accruing from the date
77 the wages were due.

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

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

87 *1. It shall be unlawful for an employer to discharge or in any other manner discriminate against an*
88 *employee because such employee has filed any complaint or instituted or caused to be instituted any*
89 *proceeding under or related to this section, or has testified or is about to testify in any such proceeding.*
90 *Any employee who is discharged or in any other manner discriminated against in a manner prohibited*
91 *by this subsection may file a complaint with the Department, and the Department, with the written and*
92 *signed consent of an employee, may institute proceedings on behalf of an employee for appropriate*
93 *remedies for such retaliatory action, including reinstatement of the employee and recovering lost wages*
94 *and an additional amount equal to the lost wages as liquidated damages.*

95 *The Commissioner may institute proceedings on behalf of an employee, in the manner prescribed in*
96 *subsection F, to enforce compliance with this subsection and, upon entry of a final order for violation of*
97 *this subsection, to collect on behalf of the employee three times the amount of unpaid wages and three*
98 *times the amount of wages the employee would have earned absent the prohibited discharge or other*
99 *discrimination, and to assess and collect a civil penalty of no less than \$2,500 and no more than*
100 *\$10,000 per employee who was subject to the prohibited discharge or other discrimination. The*
101 *procedure for assessment and collection of any civil penalty under this subsection shall conform to the*
102 *provisions of subdivision A 2 and subsection H.*

103 *J. If in the course of an investigation, the Department learns that other employees of the same*
104 *employer are not being paid wages in accordance with this section, the Department may investigate on*
105 *behalf of the other employees and bring any action authorized by this section on behalf of all of the*
106 *affected employees, including negotiating a sum in lieu of the assessment of a penalty.*