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## SENATE BILL NO. 1724

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on January 23, 2019)

(Patrons Prior to Substitute—Senators Norment and Mason [SB 1682])

A *BILL to amend and reenact § 8.01-413.1 of the Code of Virginia, relating to employment records; written request from employee; subpoena duces tecum; penalty for failure to provide.*

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

**1. That § 8.01-413.1 of the Code of Virginia is amended and reenacted as follows:**

**§ 8.01-413.1. Certain copies of employment records or papers admissible; right of employee or his attorney to copies of such records or papers; subpoena; damages, costs and attorney's fees.**

A. In any case where the original wage or salary records or papers of any employee are admissible or would be admissible as evidence, any typewritten copy, photograph, photostatic copy, or microphotograph thereof shall be admissible as evidence in any court of this Commonwealth in like manner as the original, provided the typewritten copy, photograph, photostatic copy or microphotograph is properly authenticated by the individual who would have authority to release or produce in court the original records. Any employer whose records or papers relating to any such employee are subpoenaed for production may comply with the subpoena by a timely mailing to the clerk issuing the subpoena properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena may, after notice to such employer, enter an order requiring production of the originals, if available, of any records or papers whose copies, photographs or microphotographs are not sufficiently legible. The party requesting the subpoena shall be liable for the reasonable charges of the employer for copying and mailing the items produced.

B. Every employer shall, upon receipt of a written request from a current or former employee or employee's attorney, furnish a copy of all records or papers retained by the employer in any format, reflecting (i) the employee's dates of employment with the employer; (ii) the employee's wages or salary during the employment; (iii) the employee's job description and job title during the employment; and (iv) any injuries sustained by the employee during the course of the employment with the employer. Such records or papers shall be provided within 30 days of receipt of such a written request.

If the employer is unable to provide such records or papers within 30 days, the employer shall notify the requester of such records or papers in writing of the reason for the delay and shall have no more than 30 days after the date of such written notice to comply with such request. If the records or papers are kept in paper or hard copy format, the employer may charge a reasonable fee per page for copying. If the records or papers are kept in electronic format, the employer may charge a reasonable fee for the electronic records.

C. Upon failure of any employer to comply with a written request made in accordance with subsection B, the employee or his attorney may cause a subpoena duces tecum to be issued. The subpoena may be issued (i) upon filing a request therefor with the clerk of the circuit court wherein any eventual suit would be required to be filed and upon payment of the fees required by subdivision A 18 of § 17.1-275 and fees for service or (ii) by the employee's attorney in a pending civil case in accordance with § 8.01-407 without payment of the fees established in subdivision A 23 of § 17.1-275.

D. If the court finds that an employer willfully refused to comply with a written request made in accordance with subsection B, either (i) by failing to respond to a second or subsequent written request, properly submitted by the employee in writing, without good cause or (ii) by imposing a charge in excess of the reasonable expense of making the copies and processing the request for records or papers, the court may award damages for all expenses incurred by the employee to obtain such copies, including a refund of fees if payment has been made for such copies, court costs, and reasonable attorney fees.

E. The provisions of this section shall not require copies of an employee's records or papers to be furnished to such employee when the employee's treating physician or clinical psychologist, in the exercise of his professional judgment, has made a part of the employee's records or papers a written statement that in his opinion the furnishing to or review by the employee of such records or papers would be reasonably likely to endanger the life or physical safety of the employee or another person, or that such records or papers make reference to a person, other than a health care provider, and the access requested would be reasonably likely to cause substantial harm to such referenced person. In any such case, if requested by the employee or his attorney or authorized insurer, such records or papers shall be furnished within 30 days of the date of such request to the employee's attorney or authorized insurer, rather than to the employee.