

# 2020 SPECIAL SESSION I

INTRODUCED

20200391D

## HOUSE BILL NO. 5130

Offered August 25, 2020

*A BILL to amend and reenact § 40.1-29 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 40.1-29.2 and by adding in Article 5 of Chapter 3 a section numbered 40.1-51.4:6, relating to essential workers; hazard pay; personal protective equipment; civil penalty.*

Patrons—Ayala, Bagby, Cole, J.G., Hayes, Kory, Levine, McQuinn, Plum and Subramanyam

Referred to Committee on Labor and Commerce

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

**1. That § 40.1-29 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 40.1-29.2 and by adding in Article 5 of Chapter 3 a section numbered 40.1-51.4:6 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. 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.

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, each employer other than an employer engaged in agricultural employment including agribusiness and forestry shall provide to each employee a written statement, by a paystub or online accounting, that shows the name and address of the employer; the number of hours worked during the pay period if the employee is paid on the basis of (i) the number of hours worked or (ii) a salary that is less than the standard salary level adopted by regulation of the U.S. Department of Labor pursuant to § 13(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), as amended, establishing an exemption from the Act's overtime premium pay requirements; the rate of pay; the gross wages earned by the employee during the pay period; and the amount and purpose of any deductions therefrom. The paystub or online accounting shall include sufficient information to enable the employee to determine how the gross and net pay were calculated. An employer engaged in agricultural employment including agribusiness and forestry, upon request of its employee, shall furnish the employee a written statement of 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.

INTRODUCED

HB5130

59 E. An employer who willfully and with intent to defraud fails or refuses to pay wages in accordance  
60 with this section, unless the failure to pay was because of a bona fide dispute between the employer and  
61 its employee:

62 1. To an employee or employees is guilty of a Class 1 misdemeanor if the value of the wages earned  
63 and not paid by the employer is less than \$10,000; and

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

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

69 F. The Commissioner may require a written complaint of the violation of this section *or* § 40.1-29.2  
70 and, with the written and signed consent of an employee, may institute proceedings on behalf of an  
71 employee to enforce compliance with this section *or* § 40.1-29.2, and to collect any moneys unlawfully  
72 withheld from such employee which shall be paid to the employee entitled thereto. In addition,  
73 following the issuance of a final order by the Commissioner or a court, the Commissioner may engage  
74 private counsel, approved by the Attorney General, to collect any moneys owed to the employee or the  
75 Commonwealth. Upon entry of a final order of the Commissioner, or upon entry of a judgment, against  
76 the employer, the Commissioner or the court shall assess attorney fees of one-third of the amount set  
77 forth in the final order or judgment.

78 G. In addition to being subject to any other penalty provided by the provisions of this section, any  
79 employer who fails to make payment of wages in accordance with subsection A *or* § 40.1-29.2 shall be  
80 liable for the payment of all wages due, and an additional equal amount as liquidated damages, plus  
81 interest at an annual rate of eight percent accruing from the date the wages were due.

82 H. Any employer who knowingly fails to make payment of wages in accordance with subsection A  
83 *or* § 40.1-29.2 shall be subject to a civil penalty not to exceed \$1,000 for each violation. The  
84 Commissioner shall notify any employer that he alleges has violated any provision of this section by  
85 certified mail. Such notice shall contain a description of the alleged violation. Within 15 days of receipt  
86 of notice of the alleged violation, the employer may request an informal conference regarding such  
87 violation with the Commissioner. In determining the amount of any penalty to be imposed, the  
88 Commissioner shall consider the size of the business of the employer charged and the gravity of the  
89 violation. The decision of the Commissioner shall be final. Civil penalties owed under this section shall  
90 be paid to the Commissioner for deposit into the general fund of the State Treasurer. The Commissioner  
91 shall prescribe procedures for the payment of proposed assessments of penalties that are not contested by  
92 employers. Such procedures shall include provisions for an employer to consent to abatement of the  
93 alleged violation and pay a proposed penalty or a negotiated sum in lieu of such penalty without  
94 admission of any civil liability arising from such alleged violation.

95 I. Final orders of the Commissioner, the general district courts, or the circuit courts may be recorded,  
96 enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the  
97 Commissioner or the court as appropriate.

98 J. In addition to any civil or criminal penalty provided by this section, and without regard to any  
99 exhaustion of alternative administrative remedies provided for in this section, if an employer fails to pay  
100 wages to an employee in accordance with this section *or* § 40.1-29.2, the employee may bring an action,  
101 individually, jointly, with other aggrieved employees, or on behalf of similarly situated employees as a  
102 collective action consistent with the collective action procedures of the Fair Labor Standards Act, 29  
103 U.S.C. § 216(b), against the employer in a court of competent jurisdiction to recover payment of the  
104 wages, and the court shall award the wages owed, an additional equal amount as liquidated damages,  
105 plus prejudgment interest thereon as provided in subsection G, and reasonable attorney fees and costs. If  
106 the court finds that the employer knowingly failed to pay wages to an employee in accordance with this  
107 section *or* §40.1-29.2, the court shall award the employee an amount equal to triple the amount of  
108 wages due and reasonable attorney fees and costs.

109 K. As used in this section, a person acts "knowingly" if the person, with respect to information, (i)  
110 has actual knowledge of the information, (ii) acts in deliberate ignorance of the truth or falsity of the  
111 information, or (iii) acts in reckless disregard of the truth or falsity of the information. Establishing that  
112 a person acted knowingly shall not require proof of specific intent to defraud.

113 L. An action under this section shall be commenced within three years after the cause of action  
114 accrued. The period for filing is tolled upon the filing of an administrative action under subsection F  
115 until the employee has been informed that the action has been resolved or until the employee has  
116 withdrawn the complaint, whichever is sooner.

117 **§ 40.1-29.2. Essential workers; hazard pay.**

118 A. As used in this section,

119 "Essential worker" means an individual employed as a health care provider or by an essential retail  
120 business.

121 "Essential retail business" includes (i) grocery stores, pharmacies, and other retailers that sell food  
122 and beverage products or pharmacy products, including dollar stores, and department stores with  
123 grocery or pharmacy operations; (ii) medical, laboratory, and vision supply retailers; (iii) electronic  
124 retailers that sell or service cell phones, computers, tablets, and other communications technology; (iv)  
125 automotive parts, accessories, and tire retailers as well as automotive repair facilities; (v) home  
126 improvement, hardware, building material, and building supply retailers; (vi) lawn and garden  
127 equipment retailers; (vii) retail functions of gas stations and convenience stores; (viii) retail located  
128 within health care facilities; (ix) banks and other financial institutions with retail functions; (x) pet and  
129 feed stores; (xi) printing and office supply stores; and (xii) laundromats and dry cleaners.

130 B. Following the declaration by the Governor of a state of emergency pursuant to § 44-146.17 that  
131 includes or is followed by any additional executive order in furtherance of such declaration that  
132 includes a stay at home or shelter in place order, any employer that is authorized to remain open shall  
133 pay to each of its essential workers at a rate not less than one and one-half times the essential workers  
134 regular rate of pay for any hours worked while the stay at home or shelter in place order is in effect.  
135 This section shall not apply to individuals who are exempt from overtime requirements under 29 U.S.C.  
136 § 213(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

137 **§ 40.1-51.4:6. Personal protective equipment.**

138 Following the declaration by the Governor of a state of emergency pursuant to § 44-146.17 that  
139 includes or is followed by any additional executive order in furtherance of such declaration that  
140 includes a stay at home or shelter in place order, any employer that is authorized to remain open shall  
141 provide each of its essential workers, as defined by § 40.1-29.2, required to work while the stay at home  
142 or shelter in place order is in effect personal protective equipment related to the state of emergency and  
143 recommended for the relevant work site or job task by the Department of Labor and Industry, the  
144 Department of Health, the U.S. Centers for Disease Control and Prevention, or the Occupational Safety  
145 and Health Administration.