



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 324 (Patron – Ebbin)

LD#: 16100807

Date: 12/15/2015

Topic: Employers who willfully fail to pay wages

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
Cannot be determined **
- **Juvenile Detention Facilities:**
Cannot be determined **

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the 2015 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends § 40.1-29 of the *Code of Virginia*, relating to the failure to pay wages. Under the proposal, any employer who willfully and with intent to defraud fails or refuses to pay wages to more than one employee may be charged with a separate Class 6 felony for each employee for whom the value of wages earned and not paid is \$10,000 or more.

Currently, under § 40.1-29, an employer who willfully and with intent to defraud fails or refuses to pay wages is guilty of a Class 1 misdemeanor if the value of the unpaid wages is less than \$10,000. If the combined value of the unpaid wages is \$10,000 or more, the penalty is increased to a Class 6 felony. A second or subsequent conviction, regardless of the value of the wages, is a Class 6 felony. For purposes of this section, the determination as to the value of the wages is made by combining all wages the employer failed or refused to pay (§ 40.1-29(E)).

Analysis:

According to fiscal year (FY) 2014 and FY2015 General District Court Case Management System (CMS) data, two offenders were convicted of a misdemeanor under § 40.1-29 for unlawfully withholding wages. No felony charges for a violation of § 40.1-29 were filed in General District Court during the two-year period. However, persons charged with felony offenses can be directly indicted in Circuit Court, and charges handled in that manner never appear in the General District Court data.

Circuit Court CMS data for FY2010 to FY2015 indicate that there were no felony convictions under § 40.1-29 during this time period. The Virginia Department of Labor and Industry (DOLI) reports that, as of November 13, 2015, there is currently one felony case for an alleged violation of § 40.1-29 initiated by their agency that is pending in the courts.

Impact of Proposed Legislation:

State adult correctional facilities. Under the proposal, offenders who can currently be convicted of a Class 6 felony for failing to pay wages valued at a total of \$10,000 or more could be convicted of multiple felonies (one for each employee for whom wages were valued at \$10,000 or more). Unless otherwise specified by the court, sentences for multiple offenses are run consecutively. Thus, the proposal could result in longer sentences for individuals convicted of felony violations of § 40.1-29. In this way, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Data are not available to estimate the number of additional felony convictions that would result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions that may result from enactment of the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated.

Adult community corrections programs. The proposal is unlikely to increase the need for adult community corrections resources, since individuals affected by the proposal would be convicted of at least one felony under current provisions.

Virginia's sentencing guidelines. Felony convictions under § 40.1-29 are not covered by the sentencing guidelines when the offense is the primary, or most serious, offense in a case. However, convictions under this statute could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the 2015 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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