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**HOUSE BILL NO. 1109**

Offered January 10, 2018

Prefiled January 10, 2018

*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 40.1-29.1, relating to the payment of wages for overtime work; penalties.*

Patrons—Tran and Guzman

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 and that the Code of Virginia is amended by adding a section numbered 40.1-29.1 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 *or* § 40.1-29.1 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 *or* § 40.1-29.1 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. An employer, upon request of his employee, shall furnish the latter 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.

E. An employer who willfully and with intent to defraud fails or refuses to pay wages in accordance with this section *or* § 40.1-29.1:

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

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

62 For purposes of this section, the determination as to the "value of the wages earned" shall be made  
63 by combining all wages the employer failed or refused to pay pursuant to this section *and* § 40.1-29.1.

64 F. The Commissioner may require a written complaint of the violation of this section *or* § 40.1-29.1  
65 and, with the written and signed consent of an employee, may institute proceedings on behalf of an  
66 employee to enforce compliance with this section *or* § 40.1-29.1, and to collect any moneys unlawfully  
67 withheld from such employee which shall be paid to the employee entitled thereto. In addition,  
68 following the issuance of a final order by the Commissioner or a court, the Commissioner may engage  
69 private counsel, approved by the Attorney General, to collect any moneys owed to the employee or the  
70 Commonwealth. Upon entry of a final order of the Commissioner, or upon entry of a judgment, against  
71 the employer, the Commissioner or the court shall assess attorney's fees of one-third of the amount set  
72 forth in the final order or judgment.

73 G. In addition to being subject to any other penalty provided by the provisions of this section, any  
74 employer who fails to make payment of wages in accordance with subsection A *or* § 40.1-29.1 shall be  
75 liable for the payment of all wages due, plus interest at an annual rate of eight percent accruing from  
76 the date the wages were due.

77 H. Civil penalties owed under this section *and* § 40.1-29.1 shall be paid to the Commissioner for  
78 deposit into the general fund of the State Treasurer. The Commissioner shall prescribe procedures for  
79 the payment of proposed assessments of penalties which are not contested by employers. Such  
80 procedures shall include provisions for an employer to consent to abatement of the alleged violation and  
81 pay a proposed penalty or a negotiated sum in lieu of such penalty without admission of any civil  
82 liability arising from such alleged violation.

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

86 **§ 40.1-29.1. Payment of wages for overtime work.**

87 A. Every employer shall pay wages to each of its employees who are entitled to overtime  
88 compensation pursuant to 29 U.S.C. § 207 at a rate not less than one and one-half times the employee's  
89 regular rate of pay for any hours worked in excess of 40 hours in any one workweek.

90 B. Every employer shall pay wages to each of its employees who are entitled to overtime  
91 compensation pursuant to 29 U.S.C. § 207 at a rate not less than twice the employee's regular rate of  
92 pay for (i) any hours worked in excess of 12 hours in one workday and (ii) any hours worked on the  
93 seventh day of work in any workweek to the extent that the hours worked on such day exceed 40 hours  
94 worked in such week.

95 C. Nothing in this section requires an employer to combine more than one rate of overtime  
96 compensation in order to calculate the amount to be paid to an employee for any hour of overtime  
97 work.

98 2. That the provisions of this act may result in a net increase in periods of imprisonment or  
99 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot  
100 be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter  
101 836 of the Acts of Assembly of 2017 requires the Virginia Criminal Sentencing Commission to  
102 assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the  
103 necessary appropriation cannot be determined for periods of commitment to the custody of the  
104 Department of Juvenile Justice.