

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section*
3 *numbered 40.1-28.7:7, relating to the misclassification of workers; cause of action.*

4
5 Approved

[S 894]

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

7 **1. That the Code of Virginia is amended by adding in Article 1 of Chapter 3 of Title 40.1 a**
8 **section numbered 40.1-28.7:7 as follows:**

9 **§ 40.1-28.7:7. Misclassification of workers.**

10 *A. An individual who has not been properly classified as an employee may bring a civil action for*
11 *damages against his employer for failing to properly classify the employee if the employer had*
12 *knowledge of the individual's misclassification. An individual's representative may bring the action on*
13 *behalf of the individual. If the court finds that the employer has not properly classified the individual as*
14 *an employee, the court may award the individual damages in the amount of any wages, salary,*
15 *employment benefits, including expenses incurred by the employee that would otherwise have been*
16 *covered by insurance, or other compensation lost to the individual, a reasonable attorney fee, and the*
17 *costs incurred by the individual in bringing the action.*

18 *B. In a proceeding under subsection A, an individual who performs services for a person for*
19 *remuneration shall be presumed to be an employee of the person that paid such remuneration, and the*
20 *person that paid such remuneration shall be presumed to be the employer of the individual who was*
21 *paid for performing the services, unless it is shown that the individual is an independent contractor as*
22 *determined under the Internal Revenue Service guidelines.*

23 *C. As used in this section, "Internal Revenue Service guidelines" means the most recent version of*
24 *the guidelines published by the Internal Revenue Service for evaluating independent contractor status,*
25 *including its interpretation of common law doctrine on independent contractors, and any regulations*
26 *that the Internal Revenue Service may promulgate regarding determining whether an employee is an*
27 *independent contractor, including 26 C.F.R. § 31.3121(d)-1.*

ENROLLED

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