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HOUSE BILL NO. 2137

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Barker
on February 25, 2021)

(Patron Prior to Substitute—Delegate Guzman)

A BILL to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 2.1, consisting of sections numbered 40.1-33.3 through 40.1-33.6, relating to employees; paid sick leave.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3 of Title 40.1 an article numbered 2.1, consisting of sections numbered 40.1-33.3 through 40.1-33.6, as follows:

Article 2.1.

Paid Sick Leave.

§ 40.1-33.3. Definitions.

As used in this article, unless the context requires a different meaning:

"Employee" means a home health worker who works on average at least 20 hours per week or 90 hours per month. "Employee" does not include an individual who (i) is licensed, registered, or certified by a health regulatory board within the Department of Health Professions; (ii) is employed by a hospital licensed by the Department of Health; and (iii) works, on average, no more than 30 hours per month.

"Employer" has the same meaning as provided in § 40.1-2. "Employer" does not include any agency of the federal government.

"Family member" means:

1. Regardless of age, a biological child, adopted or foster child, stepchild, legal ward, child to whom the employee stands in loco parentis, or individual to whom an employee stood in loco parentis when the individual was a minor;

2. A biological parent, foster parent, stepparent, adoptive parent, legal guardian of an employee or an employee's spouse, or individual who stood in loco parentis to an employee when the employee or employee's spouse was a minor child;

3. An individual to whom an employee is legally married under the laws of any state;

4. A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of an employee or the employee's spouse;

5. An individual for whom an employee is responsible for providing or arranging care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment; or

6. Any other individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

"Home health worker" means an individual who provides personal care, respite, or companion services to an individual who receives consumer-directed services under the state plan for medical assistance services.

"Paid sick leave" means leave that is compensated at the same hourly rate and with the same benefits, including health care benefits, as an employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in § 40.1-33.5; however, such hourly rate shall not be less than the minimum wage amount set forth in § 40.1-28.10 without reduction for any tip credit that the employer would otherwise be permitted to claim.

§ 40.1-33.4. Accrual of paid sick leave.

A. All employees shall accrue a minimum of one hour of paid sick leave for every 30 hours worked. Paid sick leave shall be carried over to the year following the year in which it was accrued. An employee shall not accrue or use more than 40 hours of paid sick leave in a year, unless the employer selects a higher limit.

B. Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., will be assumed to work 40 hours in each workweek for purposes of paid sick leave accrual unless their normal workweek is less than 40 hours, in which case paid sick leave accrues on the basis of that normal workweek.

C. Paid sick leave as provided in this section shall begin to accrue at the commencement of employment. An employer may provide all paid sick leave that an employee is expected to accrue in a year at the beginning of the year.

D. Any employer with a paid leave policy, such as a paid time off policy, that provides an employee an amount of paid leave sufficient to meet the requirements of this section and that may be used for the same purposes and under the same conditions as paid sick leave under this article shall not be required to provide additional paid sick leave to any employee that is eligible for paid leave under the policy.

60 E. Any employer that has entered into a bona fide collective bargaining agreement that requires the
61 employer to provide an amount of paid leave sufficient to meet the requirements of this section and that
62 may be used for the same purposes and under the same conditions as paid sick leave under this article
63 shall not be required to provide additional paid sick leave to any employee covered by such collective
64 bargaining agreement.

65 **§ 40.1-33.5. Use of paid sick leave.**

66 A. Paid sick leave shall be provided to an employee by an employer for:

67 1. An employee's mental or physical illness, injury, or health condition; an employee's need for
68 medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an
69 employee's need for preventive medical care; or

70 2. Care of a family member with a mental or physical illness, injury, or health condition; care of a
71 family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury,
72 or health condition; or care of a family member who needs preventive medical care.

73 B. Paid sick leave shall be provided upon the request of an employee. Such request may be made
74 orally, in writing, by electronic means, or by any other means acceptable to the employer. When
75 possible, the request shall include the expected duration of the absence.

76 C. When the use of paid sick leave is foreseeable, the employee shall make a good faith effort to
77 provide notice of the need for such leave to the employer in advance of the use of the paid sick leave
78 and shall make a reasonable effort to schedule the use of paid sick leave in a manner that does not
79 unduly disrupt the operations of the employer.

80 D. An employer that requires notice of the need to use paid sick leave shall provide a written policy
81 that contains procedures for its employees to provide notice. An employer that has not provided to an
82 employee a copy of its written policy for providing such notice shall not deny paid sick leave to the
83 employee based on noncompliance with such a policy.

84 E. An employer shall not require, as a condition of an employee's taking paid sick leave, that an
85 employee search for or find a replacement worker to cover the hours during which the employee is
86 using paid sick leave. An employer shall not require an employee to work an alternate shift to make up
87 for the use of sick leave.

88 F. For paid sick leave of three or more consecutive work days, an employer may require reasonable
89 documentation that the paid sick leave has been used for a purpose for which such leave is required to
90 be provided as set forth in subsection A.

91 **§ 40.1-33.6. Retaliatory action prohibited.**

92 No employer shall discharge, discipline, threaten, discriminate against, or penalize an employee, or
93 take other retaliatory action regarding an employee's compensation, terms, conditions, location, or
94 privileges of employment, because the employee (i) has requested or exercised the benefits provided for
95 in this article or (ii) has alleged a violation of this article.