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HOUSE BILL NO. 397

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 7, 2022)

(Patron Prior to Substitute—Delegate Sullivan)

*A BILL to amend and reenact §§ 8.01-195.10, 8.01-195.11, and 58.1-322.02 of the Code of Virginia, relating to compensation for wrongful incarceration.***Be it enacted by the General Assembly of Virginia:****1. That §§ 8.01-195.10, 8.01-195.11, and 58.1-322.02 of the Code of Virginia are amended and reenacted as follows:****§ 8.01-195.10. Purpose; action by the General Assembly required; definitions.**

A. The purpose of this article is to provide directions and guidelines for the compensation of persons who have been wrongfully incarcerated in the Commonwealth. Compensation for wrongful incarceration is governed by Article IV, Section 14 of the Constitution of Virginia, which prohibits the General Assembly from granting relief in cases in which the courts or other tribunals may have jurisdiction and any individual seeking payment of state funds for wrongful incarceration shall be deemed to have waived all other claims. The payment and receipt of any compensation for wrongful incarceration shall be contingent upon the General Assembly appropriating funds for that purpose. This article shall not provide an entitlement to compensation for persons wrongfully incarcerated or require the General Assembly to appropriate funds for the payment of such compensation. No estate of or personal representative for a decedent shall be entitled to seek a claim for compensation for wrongful incarceration.

B. As used in this article:

"Incarceration" or "incarcerated" means confinement in a local or regional correctional facility, juvenile correctional center, state correctional facility, residential detention center, or facility operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.).

"Wrongful incarceration" or "wrongfully incarcerated" means incarceration for a felony conviction for which (i) the conviction has been vacated pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) or 19.3 (§ 19.2-327.10 et seq.) of Title 19.2, or the person incarcerated has been granted an absolute pardon for the commission of a crime that he did not commit; (ii) the person incarcerated shall have entered a final plea of not guilty *or an Alford plea*, or, regardless of the plea, the person incarcerated was convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life; and (iii) the person incarcerated did not by any act or omission on his part intentionally contribute to his conviction for the felony for which he was incarcerated.

§ 8.01-195.11. Compensation for wrongful incarceration.

A. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth and is wrongfully incarcerated for such felony may be awarded compensation in an amount equal to 90 percent of the inflation adjusted Virginia per capita personal income as reported by the Bureau of Economic Analysis of the U.S. Department of Commerce for each year of incarceration, or portion thereof.

B. Any compensation computed pursuant to subsection A and approved by the General Assembly shall be paid by the Comptroller by his warrant on the State Treasurer in favor of the person found to have been wrongfully incarcerated. The person wrongfully incarcerated shall be paid an initial lump sum equal to 20 25 percent of the compensation award with the remaining 80 75 percent of the principal of the compensation award to be used by the State Treasurer to purchase an annuity from any A+ rated company, including any A+ rated company from which the Virginia Lottery may purchase an annuity, to provide equal monthly payments to such person for a period certain of 25 10 years commencing no later than one year after the effective date of the appropriation; however, if such person's life expectancy, as calculated pursuant to the provisions of § 8.01-419 based on his age on the effective date of the appropriation, is less than 25 10 years, then, upon his election, the annuity period shall be equal to his life expectancy. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages by the person awarded compensation. The annuity shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the event of the death of the person awarded compensation. All payments or costs of annuities under this section shall be made by check issued by the State Treasurer on warrant of the Comptroller.

Notwithstanding the foregoing, in the event that the person wrongfully incarcerated is 60 years of age or older or is terminally ill, the General Assembly may (i) pay 100 percent of the compensation computed pursuant to subsection A as a lump sum to the person wrongfully incarcerated or (ii) purchase an annuity for a period certain that is less than 25 10 years. For the purposes of this section, "terminally

60 ill" means that the individual has a medical prognosis, as certified by a licensed physician, that his life
61 expectancy is five years or less if the illness runs its normal course.

62 C. *In addition to the compensation awarded pursuant to subsection A, the person wrongfully*
63 *incarcerated (i) shall be entitled to receive the amount of any unreimbursed fine, fee, court cost, or*
64 *restitution imposed and paid and reasonable attorney fees and costs incurred to receive an award*
65 *pursuant to this section and (ii) may also be awarded other nonmonetary relief sought, including*
66 *counseling, housing assistance, employment assistance, health care and dental care, and personal*
67 *financial literacy assistance, as appropriate.*

68 D. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth
69 and is wrongfully incarcerated for such felony shall receive a transition assistance grant of \$15,000 to be
70 paid from the Criminal Fund, which amount shall be deducted from any award received pursuant to
71 subsection B, within 30 days of receipt of the written request for the disbursement of the transition
72 assistance grant to the Executive Secretary of the Supreme Court of Virginia. Payment of the transition
73 assistance grant from the Criminal Fund shall be made by the State Treasurer on warrants issued by the
74 Comptroller upon written request signed by the Executive Secretary of the Supreme Court of Virginia.
75 In addition, such person shall be entitled to receive reimbursement up to \$10,000 for tuition for career
76 and technical training within the Virginia Community College System contingent upon successful
77 completion of the training. Reimbursement for tuition shall be provided by the comprehensive
78 community college at which the career or technical training was completed.

79 **§ 58.1-322.02. Virginia taxable income; subtractions.**

80 In computing Virginia taxable income pursuant to § 58.1-322, to the extent included in federal
81 adjusted gross income, there shall be subtracted:

82 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States
83 and on obligations or securities of any authority, commission, or instrumentality of the United States to
84 the extent exempt from state income taxes under the laws of the United States, including, but not
85 limited to, stocks, bonds, treasury bills, and treasury notes but not including interest on refunds of
86 federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

87 2. Income derived from obligations, or on the sale or exchange of obligations, of the Commonwealth
88 or of any political subdivision or instrumentality of the Commonwealth.

89 3. Benefits received under Title II of the Social Security Act and other benefits subject to federal
90 income taxation solely pursuant to § 86 of the Internal Revenue Code.

91 4. Up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code;
92 however, any person who claims a deduction under subdivision 5 of § 58.1-322.03 may not also claim a
93 subtraction under this subdivision.

94 5. The amount of any refund or credit for overpayment of income taxes imposed by the
95 Commonwealth or any other taxing jurisdiction.

96 6. The amount of wages or salaries eligible for the federal Work Opportunity Credit which was not
97 deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

98 7. Any amount included therein less than \$600 from a prize awarded by the Virginia Lottery.

99 8. The wages or salaries received by any person for active and inactive service in the National Guard
100 of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar days
101 of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3
102 and below shall be entitled to the deductions specified in this subdivision.

103 9. Amounts received by an individual, not to exceed \$1,000 for taxable years beginning on or before
104 December 31, 2019, and \$5,000 for taxable years beginning on or after January 1, 2020, as a reward for
105 information provided to a law-enforcement official or agency, or to a nonprofit corporation created
106 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of
107 perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an
108 employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime
109 for which the reward was paid, or any person who is compensated for the investigation of crimes or
110 accidents.

111 10. The amount of "qualified research expenses" or "basic research expenses" eligible for deduction
112 for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the
113 Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and
114 members of limited liability companies to the extent and in the same manner as other deductions may
115 pass through to such partners, shareholders, and members.

116 11. Any income received during the taxable year derived from a qualified pension, profit-sharing, or
117 stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account
118 or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as
119 defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the
120 contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the
121 extent the contributions to such plan or program were subject to taxation under the income tax in

another state.

12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

13. All military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted, or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent that a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

15. Fifteen thousand dollars of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount by which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds \$30,000.

16. The first \$15,000 of salary for each federal and state employee whose total annual salary from all employment for the taxable year is \$15,000 or less.

17. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

18. Any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.

19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from, hidden from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from, or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, surviving spouse, or child or stepchild of such victim.

As used in this subdivision:

"Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath, (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution, or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath.

20. The military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

21. The death benefit payments from an annuity contract that are received by a beneficiary of such contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with an insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under this subdivision shall be allowed only for that portion of the death benefit payment that is included in federal adjusted gross income.

22. Any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

183 23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined
184 in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the
185 National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8,
186 and launched from an airport or spaceport in Virginia.

187 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income
188 taxed as investment services partnership interest income (otherwise known as investment partnership
189 carried interest income) for federal income tax purposes. To qualify for a subtraction under this
190 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in
191 § 58.1-339.4, or in any other technology business approved by the Secretary of Administration, provided
192 that the business has its principal office or facility in the Commonwealth and less than \$3 million in
193 annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this
194 subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No
195 taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4
196 shall be eligible for the subtraction under this subdivision for an investment in the same business.

197 25. For taxable years beginning on and after January 1, 2014, any income of an account holder for
198 the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's
199 first-time home buyer savings account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36
200 and (ii) interest income or other income for federal income tax purposes attributable to such person's
201 first-time home buyer savings account.

202 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction
203 taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys
204 or funds withdrawn from the first-time home buyer savings account were used for any purpose other
205 than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under
206 § 36-174. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable
207 year that was used for other than the payment of eligible costs, computed by multiplying the amount
208 withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in
209 the account at the time of the withdrawal to the total balance in the account at such time.

210 However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i)
211 withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the
212 account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101
213 through 1330; or (iii) transferred from an account established pursuant to Chapter 12 (§ 36-171 et seq.)
214 of Title 36 into another account established pursuant to such chapter for the benefit of another qualified
215 beneficiary.

216 For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings
217 account," and "qualified beneficiary" mean the same as those terms are defined in § 36-171.

218 26. For taxable years beginning on and after January 1, 2015, any income for the taxable year
219 attributable to the discharge of a student loan solely by reason of the student's death. For purposes of
220 this subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal
221 Revenue Code.

222 27. a. Income, including investment services partnership interest income (otherwise known as
223 investment partnership carried interest income), attributable to an investment in a Virginia venture
224 capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or
225 after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this
226 subdivision for an investment in a company that is owned or operated by a family member or an
227 affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has
228 claimed a subtraction under subdivision 24 or a tax credit under § 58.1-339.4 for the same investment.

229 b. As used in this subdivision 27:

230 "Qualified portfolio company" means a company that (i) has its principal place of business in the
231 Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or
232 service other than the management or investment of capital; and (iii) provides equity in the company to
233 the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company"
234 does not include a company that is an individual or sole proprietorship.

235 "Virginia venture capital account" means an investment fund that has been certified by the
236 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital
237 account, the operator of the investment fund shall register the investment fund with the Department prior
238 to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed
239 to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one
240 investor who has at least four years of professional experience in venture capital investment or
241 substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to,
242 an undergraduate degree from an accredited college or university in economics, finance, or a similar
243 field of study. The Department may require an investment fund to provide documentation of the
244 investor's training, education, or experience as deemed necessary by the Department to determine

substantial equivalency. If the Department determines that the investment fund employs at least one investor with the experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital account at such time as the investment fund actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies.

28. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by a family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision 24 or 27 or a tax credit under § 58.1-339.4 for the same investment.

b. As used in this subdivision 28:

"Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of § 2.2-115.

"Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3 of § 2.2-115.

"Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C. § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If the Department determines that the trust satisfies the preceding criteria, the Department shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed.

29. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking of real property by condemnation proceedings.

30. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to \$100,000 of all grant funds received by the taxpayer under the Rebuild Virginia program established by the Governor and administered by the Department of Small Business and Supplier Diversity.

31. *For taxable years beginning on and after January 1, 2022, any compensation for wrongful incarceration awarded pursuant to the procedures established under Article 18.2 (§ 8.01-195.10 et seq.) of Chapter 3 of Title 8.01.*