

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 11-4.6 of the Code of Virginia, relating to nonpayment of wages;*  
3 *defense of contractor.*

4 [H 889]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 11-4.6 of the Code of Virginia is amended and reenacted as follows:**8 **§ 11-4.6. Liability of contractor for wages of subcontractor's employees.**

9 A. As used in this section, unless the context requires a different meaning:

10 "Construction contract" means a contract between a general contractor and a subcontractor relating to  
11 the construction, alteration, repair, or maintenance of a building, structure, or appurtenance thereto,  
12 including moving, demolition, and excavation connected therewith, or any provision contained in any  
13 contract relating to the construction of projects other than buildings.

14 "General contractor" and "subcontractor" have the meanings ascribed thereto in § 43-1, except that  
15 those terms shall not include persons solely furnishing materials.

16 B. Any construction contract, *including any prime contract between an owner and a general*  
17 *contractor, any subcontract between a general contractor and its subcontractor, and any lower tier*  
18 *subcontract*, entered into on or after July 1, 2020, shall be deemed to include a provision under which  
19 the general contractor, *its subcontractor*, and the subcontractor at any *lower tier* are jointly and severally  
20 liable to pay ~~any subcontractor's~~ *the employees of any subcontractor* at any *lower tier* the greater of (i)  
21 all wages due to a subcontractor's employees *or to the lower tier subcontractor's employees* at such rate  
22 and upon such terms as shall be provided in the employment agreement between the subcontractor and  
23 its employees or (ii) the amount of wages that the subcontractor *or any lower tier subcontractor* is  
24 required to pay to its employees under the provisions of applicable law, including the provisions of the  
25 Virginia Minimum Wage Act (§ 40.1-28.8 et seq.) and the federal Fair Labor Standards Act (29 U.S.C.  
26 § 201 et seq.).

27 C. A general contractor shall be deemed to be the employer of a subcontractor's employees at any  
28 tier for purposes of § 40.1-29. If the wages due to the subcontractor's employees under the terms of the  
29 employment agreement between a subcontractor and its employees are not paid, the general contractor  
30 shall be subject to all penalties, criminal and civil, to which an employer that fails or refuses to pay  
31 wages is subject under § 40.1-29. Any liability of a general contractor pursuant to § 40.1-29 shall be  
32 joint and several with the subcontractor that failed or refused to pay the wages to its employees.

33 D. Except as otherwise provided in a contract between the general contractor and the subcontractor,  
34 the subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or  
35 attorney fees owed as a result of the subcontractor's failure to pay wages to the subcontractor's  
36 employees as provided in subsection B, unless the subcontractor's failure to pay the wages was due to  
37 the general contractor's failure to pay moneys due to the subcontractor in accordance with the terms of  
38 their construction contract.

39 E. The provisions of this section shall only apply if (i) it can be demonstrated that the general  
40 contractor knew or should have known that the subcontractor was not paying his employees all wages  
41 due, (ii) the construction contract is related to a project other than a single family residential project, and  
42 (iii) the value of the project, or an aggregate of projects under one construction contract, is greater than  
43 \$500,000. As evidence a general contractor *or subcontractor, regardless of tier*, may offer a written  
44 certification, under oath, from the subcontractor in direct privity of contract with the general contractor  
45 *or subcontractor* stating that (a) the subcontractor and each of his sub-subcontractors has paid all  
46 employees all wages due for the period during which the wages are claimed for the work performed on  
47 the project and (b) to the subcontractor's knowledge all sub-subcontractors below the subcontractor,  
48 regardless of tier, have similarly paid their employees all such wages. Any person who falsely signs  
49 such certification shall be personally liable to the general contractor *or subcontractor* for fraud and any  
50 damages the general contractor *or subcontractor* may incur.

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