

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 40.1-29 of the Code of Virginia, relating to nonpayment of wages; cause*
 3 *of action; penalties.*

4 [H 123]
 5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 40.1-29 of the Code of Virginia is amended and reenacted as follows:**8 **§ 40.1-29. Time and medium of payment; withholding wages; written statement of earnings;**
 9 **agreement for forfeiture of wages; proceedings to enforce compliance; penalties.**

10 A. ~~1.~~ All employers operating a business shall establish regular pay periods and rates of pay for
 11 employees except executive personnel. All such employers shall pay salaried employees at least once
 12 each month and employees paid on an hourly rate at least once every two weeks or twice in each
 13 month, except that (i) a student who is currently enrolled in a work-study program or its equivalent
 14 administered by any secondary school, institution of higher education, or trade school, and (ii)
 15 employees whose weekly wages total more than 150 percent of the average weekly wage of the
 16 Commonwealth as defined in § 65.2-500, upon agreement by each affected employee, may be paid once
 17 each month if the institution or employer so chooses. Upon termination of employment an employee
 18 shall be paid all wages or salaries due him for work performed prior thereto; such payment shall be
 19 made on or before the date on which he would have been paid for such work had his employment not
 20 been terminated.

21 ~~2.~~ Any such employer who knowingly fails to make payment of wages in accordance with this
 22 section shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner
 23 shall notify any employer who he alleges has violated any provision of this section by certified mail.
 24 Such notice shall contain a description of the alleged violation. Within 15 days of receipt of notice of
 25 the alleged violation, the employer may request an informal conference regarding such violation with the
 26 Commissioner. In determining the amount of any penalty to be imposed, the Commissioner shall
 27 consider the size of the business of the employer charged and the gravity of the violation. The decision
 28 of the Commissioner shall be final.

29 B. Payment of wages or salaries shall be (i) in lawful money of the United States, (ii) by check
 30 payable at face value upon demand in lawful money of the United States, (iii) by electronic automated
 31 fund transfer in lawful money of the United States into an account in the name of the employee at a
 32 financial institution designated by the employee, or (iv) by credit to a prepaid debit card or card account
 33 from which the employee is able to withdraw or transfer funds with full written disclosure by the
 34 employer of any applicable fees and affirmative consent thereto by the employee. However, an employer
 35 that elects not to pay wages or salaries in accordance with clause (i) or (ii) to an employee who is hired
 36 after January 1, 2010, shall be permitted to pay wages or salaries by credit to a prepaid debit card or
 37 card account in accordance with clause (iv), even though such employee has not affirmatively consented
 38 thereto, if the employee fails to designate an account at a financial institution in accordance with clause
 39 (iii) and the employer arranges for such card or card account to be issued through a network system
 40 through which the employee shall have the ability to make at least one free withdrawal or transfer per
 41 pay period, which withdrawal may be for any sum in such card or card account as the employee may
 42 elect, using such card or card account at financial institutions participating in such network system.

43 C. No employer shall withhold any part of the wages or salaries of any employee except for payroll,
 44 wage, or withholding taxes or in accordance with law, without the written and signed authorization of
 45 the employee. On each regular pay date, each employer other than an employer engaged in agricultural
 46 employment including agribusiness and forestry shall provide to each employee a written statement, by a
 47 paystub or online accounting, that shows the name and address of the employer, the number of hours
 48 worked during the pay period, the rate of pay, the gross wages earned by the employee during the pay
 49 period, and the amount and purpose of any deductions therefrom. An employer engaged in agricultural
 50 employment including agribusiness and forestry, upon request of its employee, shall furnish the
 51 employee a written statement of the gross wages earned by the employee during any pay period and the
 52 amount and purpose of any deductions therefrom.

53 D. No employer shall require any employee, except executive personnel, to sign any contract or
 54 agreement which provides for the forfeiture of the employee's wages for time worked as a condition of
 55 employment or the continuance therein, except as otherwise provided by law.

56 E. An employer who willfully and with intent to defraud fails or refuses to pay wages in accordance

57 with this section:

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

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

63 For purposes of this section, the determination as to the "value of the wages earned" shall be made
64 by combining all wages the employer failed or refused to pay pursuant to this section.

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

74 G. In addition to being subject to any other penalty provided by the provisions of this section, any
75 employer who fails to make payment of wages in accordance with subsection A shall be liable for the
76 payment of all wages due, *and an additional equal amount as liquidated damages*, plus interest at an
77 annual rate of eight percent accruing from the date the wages were due.

78 H. *Any employer who knowingly fails to make payment of wages in accordance with subsection A*
79 *shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner shall*
80 *notify any employer that he alleges has violated any provision of this section by certified mail. Such*
81 *notice shall contain a description of the alleged violation. Within 15 days of receipt of notice of the*
82 *alleged violation, the employer may request an informal conference regarding such violation with the*
83 *Commissioner. In determining the amount of any penalty to be imposed, the Commissioner shall*
84 *consider the size of the business of the employer charged and the gravity of the violation. The decision*
85 *of the Commissioner shall be final. Civil penalties owed under this section shall be paid to the*
86 *Commissioner for deposit into the general fund of the State Treasurer. The Commissioner shall prescribe*
87 *procedures for the payment of proposed assessments of penalties ~~which~~ that are not contested by*
88 *employers. Such procedures shall include provisions for an employer to consent to abatement of the*
89 *alleged violation and pay a proposed penalty or a negotiated sum in lieu of such penalty without*
90 *admission of any civil liability arising from such alleged violation.*

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

94 J. *In addition to any civil or criminal penalty provided by this section, and without regard to any*
95 *exhaustion of alternative administrative remedies provided for in this section, if an employer fails to pay*
96 *wages to an employee in accordance with this section, the employee may bring an action, individually,*
97 *jointly, with other aggrieved employees, or on behalf of similarly situated employees as a collective*
98 *action consistent with the collective action procedures of the Fair Labor Standards Act (29 U.S.C.*
99 *§ 216(b)) against the employer in a court of competent jurisdiction to recover payment of the wages and*
100 *the court shall award the wages owed, an additional equal amount as liquidated damages, plus*
101 *prejudgment interest thereon as provided in subsection G, and reasonable attorney fees and costs. If the*
102 *court finds that the employer knowingly failed to pay wages to an employee in accordance with this*
103 *section, the court shall award the employee an amount equal to triple the amount of wages due and*
104 *reasonable attorney fees and costs.*

105 K. *As used in this section, a person acts "knowingly" if the person, with respect to information, (i)*
106 *has actual knowledge of the information, (ii) acts in deliberate ignorance of the truth or falsity of the*
107 *information, or (iii) acts in reckless disregard of the truth or falsity of the information. Establishing that*
108 *a person acted knowingly shall not require proof of specific intent to defraud.*

109 L. *An action under this section shall be commenced within three years after the cause of action*
110 *accrued. The period for filing is tolled upon the filing of an administrative action under subsection F*
111 *until the employee has been informed that the action has been resolved or until the employee has*
112 *withdrawn the complaint, whichever is sooner.*

113 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
114 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
115 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
116 **correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia**
117 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to**

118 § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be
119 determined for periods of commitment to the custody of the Department of Juvenile Justice.

ENROLLED

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