

FACT SHEET



1716 East Franklin Street, Richmond, VA 23223
804-643-2474 • www.virginiainterfaithcenter.org

SUPPORT: Creating a Private Cause of Action

HB 123: Delegate Carroll Foy
SB 838: Senator Ebbin

Problem:

When workers are not paid wages owed in Virginia, they have very little recourse.

In 1990, the Department of Labor and Industry (DOLI), the Virginia agency that helps workers recover their unpaid wages, had 20 investigative staff for non-payment of wage complaints. Today, the agency has only three. Unless Virginia wants to dramatically increase the number of DOLI investigators, the best way (and most cost-effective way for Virginia) to enforce the payment of wages law is to allow workers to sue their employers directly and ensure that workers can hire attorneys to assist them. Enforcing the law will help businesses that follow the law compete.

Solution:

Creating a Private Cause of Action for Non-Payment of Wages would allow individuals to take their non-payment of wages cases to court.

Currently, workers cannot sue under the Virginia Payment of Wage Act, only DOLI can. With limited resources, DOLI can bring few cases. Although workers can currently sue under a "breach of contract" theory, it makes more sense to allow individuals and their attorneys to enforce the law that is already on the books. The proposed law clearly states that workers will get both their back wages and reasonable attorney fees. Without getting paid, attorneys can't afford to take the cases. And most workers, especially low-wage workers, cannot afford to pay attorney fees out of their unpaid wages. Consequently, the bill explicitly states that the cases can be taken to court and if the employer is found

to have failed to pay workers' wages due, the employer must pay the back wages plus reasonable attorney fees.

Federal wage law has a private cause of action.

Most enforcement of the Fair Labor Standards Act, the main federal wage law, is done by the private bar and not by the federal Department of Labor, because attorneys can take cases to court on behalf of workers and can collect reasonable attorney fees.

Virginia's Consumer Protection Act has a private cause of action and allows for reasonable attorney fees.

Why should attorneys be able to get paid for representing consumers, but not workers?

Proposed legislation creates a private cause of action against an employer who fails to pay wages earned. The measure provides that if the court finds that the employer failed to pay the wages, it shall also award the employee reasonable attorney fees and other costs. If the court finds that the employer's failure to pay wages was willful and with intent to defraud the employee, the court shall award the employee reasonable attorney fees and other costs plus an additional sum equal to three times the amount of wages due.

Moral call to Action:

"You shall not oppress a hired worker who is poor and needy, whether he is one of your brothers or one of the sojourners who are in your land within your towns."

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Sources: Virginia Department of Labor & Industry