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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 _____)
(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.).

26 "Wrongful incarceration" or "wrongfully incarcerated" means incarceration for a felony conviction
27 for which (i) the conviction has been vacated pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) or 19.3 (§
28 19.2-327.10 et seq.) of Title 19.2, or the person incarcerated has been granted an absolute pardon for the
29 commission of a crime that he did not commit; (ii) the person incarcerated shall have entered a final plea
30 of not guilty or an Alford plea, or, regardless of the plea, the person incarcerated was convicted of a Class
31 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life; and (iii)
32 the person incarcerated did not by any act or omission on his part intentionally contribute to his conviction
33 for the felony for which he was incarcerated.

34 **§ 8.01-195.11. Compensation for wrongful incarceration.**

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

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

52 compensation. All payments or costs of annuities under this section shall be made by check issued by the
53 State Treasurer on warrant of the Comptroller.

54 Notwithstanding the foregoing, in the event that the person wrongfully incarcerated is 60 years of
55 age or older or is terminally ill, the General Assembly may (i) pay 100 percent of the compensation
56 computed pursuant to subsection A as a lump sum to the person wrongfully incarcerated or (ii) purchase
57 an annuity for a period certain that is less than ~~25~~ 10 years. For the purposes of this section, "terminally
58 ill" means that the individual has a medical prognosis, as certified by a licensed physician, that his life
59 expectancy is five years or less if the illness runs its normal course.

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

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

77 **§ 58.1-322.02. Virginia taxable income; subtractions.**

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

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

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

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

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

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

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

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

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

101 9. Amounts received by an individual, not to exceed \$1,000 for taxable years beginning on or
102 before December 31, 2019, and \$5,000 for taxable years beginning on or after January 1, 2020, as a reward
103 for information provided to a law-enforcement official or agency, or to a nonprofit corporation created
104 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of

105 perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an employee
106 of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which
107 the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

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

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

119 12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract
120 or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-
121 700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income
122 attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

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

128 14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange
129 of real property or the sale or exchange of an easement to real property which results in the real property
130 or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a
131 period of time not less than 30 years. To the extent that a subtraction is taken in accordance with this

132 subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for
133 three years following the year in which the subtraction is taken.

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

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

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

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

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

153 As used in this subdivision:

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

157 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution
158 by the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or

159 omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath,
160 (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution,
161 or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II
162 and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual forced
163 into labor against his will, under the threat of death, during World War II and its prelude and direct
164 aftermath.

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

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

174 22. Any gain recognized from the sale of launch services to space flight participants, as defined in
175 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of a
176 launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch
177 services must be performed in Virginia or originate from an airport or spaceport in Virginia.

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

182 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income
183 taxed as investment services partnership interest income (otherwise known as investment partnership
184 carried interest income) for federal income tax purposes. To qualify for a subtraction under this
185 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in §

186 58.1-339.4, or in any other technology business approved by the Secretary of Administration, provided
187 that the business has its principal office or facility in the Commonwealth and less than \$3 million in annual
188 revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the
189 investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has
190 claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the
191 subtraction under this subdivision for an investment in the same business.

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

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

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

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

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

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

224 b. As used in this subdivision 27:

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

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

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

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

250 b. As used in this subdivision 28:

251 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of §
252 2.2-115.

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

255 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.
256 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be
257 certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department
258 prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia
259 and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If
260 the Department determines that the trust satisfies the preceding criteria, the Department shall certify the
261 trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent
262 of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed
263 or double distressed.

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

