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HOUSE BILL NO. 1344

Offered January 12, 2024

A BILL to amend and reenact §§ 40.1-27.3 and 40.1-28.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 40.1-28.02, relating to employee protection; prohibited nondisclosure and nondisparagement provisions; civil action.

Patron—McQuinn; Senator: Favola

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-27.3 and 40.1-28.01 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 40.1-28.02 as follows:

§ 40.1-27.3. Retaliatory action against employee prohibited.

A. An employer shall not discharge, discipline, threaten, discriminate against, or penalize an employee, or take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges of employment, because the employee:

1. Or a person acting on behalf of the employee in good faith reports a potential violation of any federal or state law or regulation to a supervisor, to a management or company official, or to any governmental official or body or law-enforcement official, including a report made in the ordinary course of such employee's job duties;

2. Is requested by a governmental body or law-enforcement official to participate in an investigation, hearing, or inquiry;

3. Refuses to engage in a criminal act that would subject the employee to criminal liability;

4. Refuses an employer's order to perform an action that violates any federal or state law or regulation and the employee informs the employer that the order is being refused for that reason; or

5. Provides information to or testifies before any governmental body or law-enforcement official conducting an investigation, hearing, judicial or administrative action, or inquiry into any alleged violation by the employer of federal or state law or regulation; or

6. Discloses or discusses conduct that the employee reasonably believes to be discrimination, including harassment, retaliation, a wage or hour violation, sexual assault, fraud against taxpayers, shareholders, the government, consumers, or other employees, or other conduct that is against a clear mandate of public policy

B. This section does not:

1. Authorize an employee to make a disclosure of data otherwise protected by law or any legal privilege;

2. Permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth; or

3. Permit disclosures that would violate federal or state law; or

4. Permit disclosures that would diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law, unless such disclosures relate to an employee's experience of unlawful workplace conduct as protected under § 40.1-28.01.

C. A person An employee who alleges a violation of this section may bring a civil action in a court of competent jurisdiction within one year of the employer's prohibited retaliatory action. Such employee shall prevail upon a showing that the protected activity of such employee was a contributing factor in the employer's decision to take retaliatory action. The court may order as a remedy to the employee (i) an injunction to restrain continued violation of this section, (ii) the reinstatement of the employee to the same position held before the retaliatory action or to an equivalent position, and (iii) compensation for lost wages, benefits, and other remuneration, together with interest thereon, as well as other compensatory damages, and punitive damages. The court shall award reasonable attorney fees and costs to a prevailing plaintiff employee

§ 40.1-28.01. Nondisclosure or confidentiality agreement; provisions regarding discrimination and sexual assault or sexual harassment; condition of employment.

A. For the purposes of this section, "employee" includes a prospective, current, or former employee and an independent contractor.

B. No employer shall require an employee or a prospective employee to execute or renew any agreement that includes a provision in a nondisclosure or confidentiality agreement, including any provision relating to nondisparagement, that has the purpose or effect of concealing the details relating to a claim of sexual assault pursuant to § 18.2-61, 18.2-67.1, 18.2-67.3, or 18.2-67.4 or a claim of illegal activity or activity an employee believes to be unlawful, including unlawful sexual harassment as defined in § 30-129.4 as a condition of

59 ~~employment~~, discrimination as described in the Virginia Human Rights Act (§ 2.2-3900 et seq.), wage theft
60 as described in § 40.1-28.7:7 or 40.1-29 or the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), and
61 protected whistleblowing as described in § 40.1-27.3. Any such provision is against public policy and is void
62 and unenforceable.

63 ~~B. This~~ C. Nothing in this section shall be construed to (i) prohibit the inclusion, at the request of an
64 employee, of a provision in any agreement involving a release of claims that shields the identity of such
65 employee and all facts that could lead to the discovery of such employee's identity or (ii) prohibit an
66 employer or employee from protecting trade secrets, proprietary information, or any other confidential
67 information immaterial to unlawful conduct.

68 D. The provisions of this section shall in no way limit other grounds that exist at law or in equity for the
69 unenforceability of any such agreement or any provision of such agreement.

70 E. An employer that violates the provisions of this section shall be liable in a civil cause of action for
71 actual damages or statutory damages of \$10,000, whichever is greater, as well as reasonable attorney fees
72 and costs.

73 **§ 40.1-28.02. Employment agreements and settlement agreements; required disclaimer.**

74 In any settlement agreement between an employer and an employee and in any employment agreement
75 executed between an employer and an employee, such employer shall include a written disclaimer stating
76 that nothing in the agreement prohibits an employee from disclosing or discussing conduct that such
77 employee reasonably believes under state, federal, or common law to be unlawful, including unlawful sexual
78 harassment as defined in § 30-129.4, discrimination as described in the Virginia Human Rights Act (§ 2.2-
79 3900 et seq.), wage theft as described in § 40.1-28.7:7 or 40.1-29 or the Virginia Minimum Wage Act (§ 40.1-
80 28.8 et seq.), and protected whistleblowing as described in § 40.1-27.3.

81 **2. That the provisions of this act shall apply to all contracts and agreements described in § 40.1-28.01 of**
82 **the Code of Virginia, as amended by this act, that are entered into, renewed, modified, or amended on**
83 **or after July 1, 2024.**