

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 40.1-28.7:8 of the Code of Virginia, relating to labor and employment;*  
 3 *covenants not to compete prohibited; exceptions; civil penalty.*

4 [S 1218]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 40.1-28.7:8 of the Code of Virginia is amended and reenacted as follows:**8 **§ 40.1-28.7:8. Covenants not to compete prohibited; exceptions; civil penalty.**

9 A. As used in this section:

10 "Covenant not to compete" means a covenant or agreement, including a provision of a contract of  
 11 employment, between an employer and employee that restrains, prohibits, or otherwise restricts an  
 12 individual's ability, following the termination of the individual's employment, to compete with his former  
 13 employer. A "covenant not to compete" shall not restrict an employee from providing a service to a customer  
 14 or client of the employer if the employee does not initiate contact with or solicit the customer or client.

15 "Low-wage employee" means an employee (i) whose average weekly earnings, calculated by dividing the  
 16 employee's earnings during the period of 52 weeks immediately preceding the date of termination of  
 17 employment by 52, or if an employee worked fewer than 52 weeks, by the number of weeks that the  
 18 employee was actually paid during the 52-week period, are less than the average weekly wage of the  
 19 Commonwealth as determined pursuant to subsection B of § 65.2-500 or (ii) who, regardless of his average  
 20 weekly earnings, is entitled to overtime compensation under the provisions of 29 U.S.C. § 207 for any hours  
 21 worked in excess of 40 hours in any one workweek. "Low-wage employee" includes interns, students,  
 22 apprentices, or trainees employed, with or without pay, at a trade or occupation in order to gain work or  
 23 educational experience. "Low-wage employee" also includes an individual who has independently contracted  
 24 with another person to perform services independent of an employment relationship and who is compensated  
 25 for such services by such person at an hourly rate that is less than the median hourly wage for the  
 26 Commonwealth for all occupations as reported, for the preceding year, by the Bureau of Labor Statistics of  
 27 the U.S. Department of Labor. For the purposes of this section, "low-wage employee" shall not include any  
 28 employee whose earnings are derived, in whole or in predominant part, from sales commissions, incentives,  
 29 or bonuses paid to the employee by the employer.

30 B. No employer shall enter into, enforce, or threaten to enforce a covenant not to compete with any low-  
 31 wage employee.

32 C. Nothing in this section shall serve to limit the creation or application of nondisclosure agreements  
 33 intended to prohibit the taking, misappropriating, ~~threatening~~ threatening to misappropriate, or sharing of  
 34 certain information to which an employee has access, including trade secrets, as defined in § 59.1-336, and  
 35 proprietary or confidential information.

36 D. A low-wage employee may bring a civil action in a court of competent jurisdiction against any former  
 37 employer or other person that attempts to enforce a covenant not to compete against such employee in  
 38 violation of this section. An action under this section shall be brought within two years of the latter of (i) the  
 39 date the covenant not to compete was signed, (ii) the date the low-wage employee learns of the covenant not  
 40 to compete, (iii) the date the employment relationship is terminated, or (iv) the date the employer takes any  
 41 step to enforce the covenant not to compete. The court shall have jurisdiction to void any covenant not to  
 42 compete with a low-wage employee and to order all appropriate relief, including enjoining the conduct of any  
 43 person or employer, ordering payment of liquidated damages, and awarding lost compensation, damages, and  
 44 reasonable attorney fees and costs. No employer may discharge, threaten, or otherwise discriminate or  
 45 retaliate against a low-wage employee for bringing a civil action pursuant to this section.

46 E. Any employer that violates the provisions of subsection B as determined by the Commissioner shall be  
 47 subject to a civil penalty of \$10,000 for each violation. Civil penalties owed under this subsection shall be  
 48 paid to the Commissioner for deposit in the general fund.

49 F. If the court finds a violation of the provisions of this section, the plaintiff shall be entitled to recover  
 50 reasonable costs, including costs and reasonable fees for expert witnesses, and attorney fees from the former  
 51 employer or other person who attempts to enforce a ~~an~~ unlawful covenant not to compete against such  
 52 plaintiff.

53 G. Every employer shall post a copy of this section or a summary approved by the Department in the same  
 54 location where other employee notices required by state or federal law are posted. An employer that fails to  
 55 post a copy of this section or an approved summary of this section shall be issued by the Department a  
 56 written warning for the first violation, shall be subject to a civil penalty not to exceed \$250 for a second

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57 violation, and shall be subject to a civil penalty not to exceed \$1,000 for a third and each subsequent violation  
58 as determined by the Commissioner. Civil penalties owed under this subsection shall be paid to the  
59 Commissioner for deposit in the general fund.

60 The Commissioner shall prescribe procedures for the payment of proposed assessments of penalties that  
61 are not contested by employers. Such procedures shall include provisions for an employer to consent to  
62 abatement of the alleged violation and to pay a proposed penalty or a negotiated sum in lieu of such penalty  
63 without admission of any civil liability arising from such alleged violation.

64 **2. That nothing in this act shall invalidate, alter, or otherwise affect any contracts, covenants, or**  
65 **agreements entered into or renewed prior to July 1, 2025.**