

2026 SESSION

INTRODUCED

26100840D

1 **SENATE BILL NO. 128**

2 Offered January 14, 2026

3 Prefiled January 6, 2026

4 *A BILL to amend and reenact § 40.1-28.7:8 of the Code of Virginia, relating to covenants not to compete;*
5 *health care professionals; civil penalty.*

6 Patron—VanValkenburg

7 Referred to Committee on Commerce and Labor

8 **Be it enacted by the General Assembly of Virginia:**

9 **1. That § 40.1-28.7:8 of the Code of Virginia is amended and reenacted as follows:**

10 **§ 40.1-28.7:8. Covenants not to compete prohibited; exceptions; civil penalty.**

11 A. As used in this section:

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

17 "Health care professional" means any person licensed, registered, or certified by the Board of Medicine,
18 Nursing, Counseling, Optometry, Psychology, or Social Work.

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

34 B. No employer shall enter into, enforce, or threaten to enforce a covenant not to compete with any
35 low-wage employee or health care professional.

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

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

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

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

INTRODUCED

SB128

59 G. Every employer shall post a copy of this section or a summary approved by the Department in the same
60 location where other employee notices required by state or federal law are posted. An employer that fails to
61 post a copy of this section or an approved summary of this section shall be issued by the Department a
62 written warning for the first violation, shall be subject to a civil penalty not to exceed \$250 for a second
63 violation, and shall be subject to a civil penalty not to exceed \$1,000 for a third and each subsequent violation
64 as determined by the Commissioner. Civil penalties owed under this subsection shall be paid to the
65 Commissioner for deposit in the general fund.

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