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1 **SENATE BILL NO. 170**

2 Offered January 14, 2026

3 Prefiled January 8, 2026

4 *A BILL to amend and reenact § 40.1-28.7:8 of the Code of Virginia, relating to protection of employees;*
5 *covenants not to compete; discharged employees.*

6 Patron—McPike

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 "Low-wage employee" means an employee (i) whose average weekly earnings, calculated by dividing the
18 employee's earnings during the period of 52 weeks immediately preceding the date of termination of
19 employment by 52, or if an employee worked fewer than 52 weeks, by the number of weeks that the
20 employee was actually paid during the 52-week period, are less than the average weekly wage of the
21 Commonwealth as determined pursuant to subsection B of § 65.2-500 or (ii) who, regardless of his average
22 weekly earnings, is entitled to overtime compensation under the provisions of 29 U.S.C. § 207 for any hours
23 worked in excess of 40 hours in any one workweek. "Low-wage employee" includes interns, students,
24 apprentices, or trainees employed, with or without pay, at a trade or occupation in order to gain work or
25 educational experience. "Low-wage employee" also includes an individual who has independently contracted
26 with another person to perform services independent of an employment relationship and who is compensated
27 for such services by such person at an hourly rate that is less than the median hourly wage for the
28 Commonwealth for all occupations as reported, for the preceding year, by the Bureau of Labor Statistics of
29 the U.S. Department of Labor. For the purposes of this section, "low-wage employee" shall not include any
30 employee whose earnings are derived, in whole or in predominant part, from sales commissions, incentives,
31 or bonuses paid to the employee by the employer.32 B. No employer shall enter into, enforce, or threaten to enforce a covenant not to compete with any low-
33 wage employee.34 C. *No covenant not to compete between an employer and an employee is enforceable if such employer*
35 *discharges such employee from employment without providing severance benefits to such employee. If the*
36 *employer provides severance benefits after such discharge, such covenant not to compete is only enforceable*
37 *for the duration of such benefits.*38 D. Nothing in this section shall serve to limit the creation or application of nondisclosure agreements
39 intended to prohibit the taking, misappropriating, threatening to misappropriate, or sharing of certain
40 information to which an employee has access, including trade secrets, as defined in § 59.1-336, and
41 proprietary or confidential information.42 D. A low wage E. An employee may bring a civil action in a court of competent jurisdiction against any
43 former employer or other person that attempts to enforce a covenant not to compete against such employee in
44 violation of this section. An action under this section shall be brought within two years of the latter of (i) the
45 date the covenant not to compete was signed, (ii) the date the low wage employee learns of the covenant not
46 to compete, (iii) the date the employment relationship is terminated, or (iv) the date the employer takes any
47 step to enforce the covenant not to compete. The court shall have jurisdiction to void any covenant not to
48 compete with a low wage an employee and to order all appropriate relief, including enjoining the conduct of
49 any person or employer, ordering payment of liquidated damages, and awarding lost compensation, damages,
50 and reasonable attorney fees and costs. No employer may discharge, threaten, or otherwise discriminate or
51 retaliate against a low wage an employee for bringing a civil action pursuant to this section.52 E. F. Any employer that violates the provisions of subsection B or C as determined by the Commissioner
53 shall be subject to a civil penalty of \$10,000 for each violation. Civil penalties owed under this subsection
54 shall be paid to the Commissioner for deposit in the general fund.55 F. G. If the court finds a violation of the provisions of this section, the plaintiff shall be entitled to recover
56 reasonable costs, including costs and reasonable fees for expert witnesses, and attorney fees from the former

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59 employer or other person who attempts to enforce an unlawful covenant not to compete against such plaintiff.

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

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

71 **2. That nothing in this act shall invalidate, alter, or otherwise affect any contract, covenant, or
72 agreement entered into, amended, or renewed prior to July 1, 2026.**