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**SENATE BILL NO. 569**

Offered January 14, 2026

Prefiled January 14, 2026

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

Patron—Sturtevant

Referred to Committee on Commerce and Labor

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

A. As used in this section:

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

*"Employee" includes a current or former employee.*

*"Involuntarily separated" means terminated, laid-off, discharged, or otherwise released from employment due to causes not related to the inadequate job performance or misconduct of the employee. "Involuntarily separated" does not include an employee's voluntary resignation.*

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

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

C. *No covenant not to compete between an employer and an employee entered into, amended, or renewed on or after July 1, 2026, is enforceable if the employee is involuntarily separated from employment. For the purposes of this subsection, an employee that is separated from employment shall be presumed to be involuntarily separated from employment unless the employer provides documentation establishing that such separation is voluntary or due to the employee's inadequate job performance or misconduct.*

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

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

INTRODUCED

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59 ~~E. F.~~ Any employer that violates the provisions of subsection B *or* C as determined by the Commissioner  
60 shall be subject to a civil penalty of \$10,000 for each violation. Civil penalties owed under this subsection  
61 shall be paid to the Commissioner for deposit in the general fund.

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

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

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

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