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HOUSE BILL NO. 930

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)

(Patron Prior to Substitute—Delegate Simon)

A *BILL to amend and reenact § 40.1-27.3 of the Code of Virginia, relating to protection of employees; retaliatory action prohibited.*

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-27.3 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-27.3. Retaliatory action against employee prohibited.

A. As used in this section:

"Employee" includes a current or former employee.

"Federal or state law or regulation" means any federal law, any law of the Commonwealth, and any regulation published as a final rule in the Federal Register or the Virginia Administrative Code.

"In good faith" means having a reasonable belief that a violation of law is occurring or has occurred.

B. 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 or blacklist or otherwise retaliate against an employee, because the employee:

1. Or a person acting on behalf of the employee reports any information or allegation in good faith reports that, if true, amounts to a violation of any federal or state law or regulation to a supervisor, manager, officer, or other employee, or to any governmental body or law-enforcement official, including a report made in the ordinary course of the employee's employment. Such a report is protected pursuant to this subdivision regardless of whether such report refers to a particular law or regulation;

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, or inquiry into any alleged violation by the employer of federal or state law or regulation.

~~B.~~ C. This section does not:

1. Authorize an employee to make a disclosure to a party other than the employer 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 diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law.

~~C.~~ D. No employer shall (i) take any action or include any policy in an employee handbook, employment contract, or separation agreement that impedes an employee from disclosing possible or actual illegal activity to the public, a governmental body, or his employer, including disclosures regarding violations of civil rights or antidiscrimination laws, or (ii) take any disciplinary action in retaliation against an employee for reporting to the public, a governmental body, or his employer any possible or actual violation of any federal or state law or regulation.

E. The Commissioner, the Attorney General, or any person who alleges a violation of this section may bring a civil action in a court of competent jurisdiction, with a right to a jury trial, within one year after such person learns of the employer's prohibited retaliatory action such violation. The person alleging such violation shall prevail upon a showing that protected activity under this section was a contributing factor in the employer's decision to take a retaliatory action. An employer shall only avoid liability upon such showing if the employer proves by clear and convincing evidence that the employer would have taken the same action in the absence of such protected activity. The court may shall order as a remedy to the employee such legal or equitable relief as may be appropriate to effectuate the purposes of this section, including: (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 reasonable attorney fees and costs.

F. No right or remedy provided under this section shall be waived by any employment agreement, policy, term, or condition.

G. No provision of this section shall be construed to invalidate, alter, or diminish the rights, privileges, or remedies of any employee under any law, regulation, collective bargaining agreement, or employment

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