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HOUSE BILL NO. 675
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Delegate Maldonado)

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:12, relating to protection of employees; coercion or threat based on immigration status; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:12 as follows:

§ 40.1-28.7:12. Coercion or threat based on immigration status; civil penalty.

A. As used in this section:

"Coercion" means a threat to compel or induce a person to engage in conduct that the person has a legal right to abstain from or to abstain from conduct that the person has a legal right to engage in.

"Threat" means any implicit or explicit communication specifically pertaining to an employee's or an employee's family member's immigration status that is made by an employer to deter an employee from engaging in protected activities or exercising a right under this chapter or any rules issued by the Department pursuant to this chapter.

B. Notwithstanding the provisions of § 40.1-2.1, for the purposes of this section, "employer" shall include the Commonwealth and any of its agencies, institutions, or political subdivisions.

C. No employer shall use coercion or issue a threat to an employee based on immigration status in furtherance of committing a violation of any provision of Article 1.1 (§ 40.1-28.8 et seq.) or Article 2 (§ 40.1-29 et seq.), including rules issued by the Department pursuant to Article 1.1 (§ 40.1-28.8 et seq.) or Article 2 (§ 40.1-29 et seq.). In addition to any other penalty that may be imposed by the Department against an employer for such violation, an employer that uses coercion or issues a threat to an employee in furtherance of committing a violation of any provision of Article 1.1 (§ 40.1-28.8 et seq.) or Article 2 (§ 40.1-29 et seq.) shall be subject to a civil penalty pursuant to subsection F.

D. An employee who believes that he was subject to coercion or issued a threat by his employer based on the employee's immigration status may file a complaint with the Commissioner within 180 days of the alleged coercive action or threat.

E. The Commissioner shall receive and acknowledge complaints from individuals and interested third

33 *parties. The Commissioner may initiate an investigation (i) upon the receipt of a complaint from an*
34 *employee, (ii) upon the receipt of a complaint from an interested third party, or (iii) at the Commissioner's*
35 *discretion. The Commissioner shall not disclose a complainant's identity unless such complainant consents to*
36 *disclosure. Unless otherwise resolved, the Commissioner may commence administrative or court proceedings*
37 *based on the good faith belief of violations of this section under the process set forth in § 40.1-29. In*
38 *conducting investigations, the Commissioner may (a) require individuals to submit a statement or report in*
39 *writing under oath that contains all necessary information, (b) examine under oath any person alleged to*
40 *have participated in or to have knowledge of the violation, or (c) issue subpoenas.*

41 *F. If the Commissioner determines the employer has violated this section, the Commissioner shall assess a*
42 *civil penalty for each act of coercion or threat issued in the following amounts:*

- 43 *1. For the first violation, a civil penalty not to exceed \$5,000;*
- 44 *2. For the second violation, a civil penalty not to exceed \$9,000; and*
- 45 *3. For any subsequent violation, a civil penalty not to exceed \$12,000.*

46 *Each act of coercion or threat issued against each affected employee shall constitute a separate violation*
47 *of this section. In determining the amount of any penalty to be imposed, the Commissioner shall consider the*
48 *size of the business of the employer charged and the gravity of the violation. Civil penalties assessed under*
49 *this section shall be paid to the Commissioner for deposit into the general fund.*

50 *G. If, during an investigation of any other complaint, the Commissioner discovers information that*
51 *suggests an employer has used coercion or issued a threat against an employee based on immigration status,*
52 *the Commissioner may investigate and take appropriate enforcement action without requiring the employee*
53 *to file a new or separate complaint.*

54 *H. The Commissioner or his authorized representative shall have the right to petition a circuit court for*
55 *injunctive or such other relief as may be necessary for enforcement of this section.*

56 *I. Nothing in this section shall be construed to reduce the rights or remedies for relief otherwise available*
57 *under this title, including under § 40.1-27.3, to an individual, the Commissioner, or the Attorney General.*