

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 40.1-28.7:8 of the Code of Virginia, relating to protection of employees;*
 3 *covenants not to compete; discharged employees.*

4 [S 170]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 40.1-28.7:8 of the Code of Virginia is amended and reenacted as follows:**8 **§ 40.1-28.7:8. Covenants not to compete prohibited; exceptions; civil penalty.**

9 A. As used in this section:

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

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

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

32 C. *No covenant not to compete between an employer and an employee is enforceable if such employer*
 33 *discharges such employee from employment without providing severance benefits or other monetary payment*
 34 *to such employee, unless such employer discharges such employee for cause. Such severance benefits or*
 35 *other monetary payment shall be disclosed upon execution of the covenant not to compete.*

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

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

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

56 ~~G. H.~~ Every employer shall post a copy of this section or a summary approved by the Department in the

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

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

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