

HOUSE BILL NO. 923

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute—Delegate Lopez)

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; stay or pay contracts prohibited; 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. Stay or pay contracts prohibited; exceptions; civil penalty.

A. As used in this section:

"Debt" means a monetary obligation or liability of any employee arising out of a stay or pay contract, including costs relating to employment, education, or consumer financial products or services.

"Employee" includes a former or prospective employee.

"Employer" includes a former or prospective employer.

"Stay or pay contract" means any agreement or provision of an employment contract that:

1. Requires an employee to pay an employer, training provider, or debt collector a debt upon the termination of employment;

2. Authorizes an employer, training provider, or debt collector to initiate or resume the collection of or end forbearance on an employee's debt upon the termination of employment; or

3. Imposes any penalty, fee, or cost on an employee upon the termination of employment.

"Penalty, fee, or cost" includes any reimbursement of costs incurred for on-the-job training or skills training, replacement hire fee, retraining fee, or quit fee or reimbursement of costs relating to immigration or visas, liquidated damages, lost goodwill, lost profit, or other amount, as identified by regulation of the Commissioner, for which the employee did not receive compensation or other due consideration benefitting the employee.

"Training provider" means an entity that provides an education program, a job training program, or a skills training program, regardless of affiliation with an employer.

"Transferable credential" means a degree, certification, qualification, specialty training, or other bona fide credential commonly recognized by employers that is offered by an accredited school, institution of higher education, or bona fide training program established by an employer or training provider that meets

requirements set by a recognized accrediting body, licensing board, professional society, or regulatory agency, is not required for an employee's current employment, and is transferable and beneficial for other employment.

B. Except as provided in subsection C or regulations adopted pursuant thereto, no employer shall enter into, enforce, or threaten to enforce a stay or pay contract with any employee.

C. No provision of this section, nor any regulation of the Commissioner adopted pursuant thereto, shall apply to or restrict any contract:

1. Entered into under any loan repayment assistance program or loan forgiveness program provided by a federal, state, or local governmental agency;

2. Relating to the lease, financing, or purchase of residential property;

3. Relating to enrollment in a bona fide apprenticeship or bona fide training program recognized by the Commonwealth or its agencies, a local government or political subdivision, including any local and state apprenticeship committee, the Virginia Department of Workforce Development and Advancement, the State Council of Higher Education for Virginia, the State Board for Community Colleges, the Virginia Community College System, or the United States Department of Labor;

4. Relating to the payment or repayment of tuition or other actual expenses incurred by the employer or employee in the pursuit of a transferable credential, provided that the employee is not required to obtain such transferable credential as a condition of current employment and that such contract (i) is offered separately from any contract for employment, (ii) specifies the total amount of repayment or a pre-determined formula for calculating the amount of repayment that does not exceed the actual cost to the employer for the tuition or other actual expense incurred in pursuit of a transferrable credential, (iii) provides for a prorated repayment schedule during any required duration of employment through monetary payment or forgiveness satisfied by a work commitment that is proportional to such duration and the total amount of repayment and that offers alternatives to accelerated payment upon the termination of employment, and (iv) does not require the employee to repay an employer unless such employee is terminated for cause or leaves voluntarily while payment remains owed; or

5. For the receipt of a discretionary or unearned monetary payment, including a financial bonus, relocation fee, incentive payment, or guarantee of income above a base salary, provided to an employee at the start of employment or as an incentive to begin future employment or remain employed that is not tied to specific job performance, provided that (i) such contract is offered separately from any contract for employment; (ii) the employee is notified of his right to consult an attorney regarding the contract and given

a time period of at least five business days to review such contract; (iii) any repayment obligation for early termination of employment is (a) not subject to pre-termination interest accrual; (b) not subject to interest greater than the maximum legal rate of interest pursuant to § 6.2-301; and (c) prorated based on the remaining term of any retention period, which shall not exceed three years after the commencement of the applicable retention period; (iv) the employee may defer receipt of payment to the end of the retention period without any obligation of repayment for amounts not received; and (v) employment is terminated for cause or the employee leaves voluntarily during the retention period.

D. An employee may bring a civil action in a court of competent jurisdiction against any employer or other person that attempts to enforce a stay or pay contract 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 stay or pay contract was signed, (ii) the date the employee learns of the stay or pay contract, (iii) the date the employment relationship is terminated, or (iv) the date the employer takes any step to enforce the stay or pay contract. The court shall have jurisdiction to void any stay or pay contract with 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 an employee for bringing a civil action pursuant to this section.

E. If the court finds a violation of the provisions of this section, the plaintiff shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorney fees from the employer or other person who attempts to enforce a stay or pay contract against such plaintiff.

F. Any employer that violates the provisions of subsection B as determined by the Commissioner shall be subject to a civil penalty of \$1,000 for each violation. Civil penalties owed under this subsection shall be paid to the Commissioner for deposit in the general fund. The Commissioner shall prescribe procedures for the payment of proposed assessments of penalties that are not contested by employers. Such procedures shall include provisions for an employer to consent to abatement of the alleged violation and to pay a proposed penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such alleged violation.

G. The Commissioner may promulgate regulations to effectuate the provisions of this section.

2. That the provisions of this act shall apply to contracts, covenants, or agreements entered into or renewed on or after July 1, 2026.