

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 covenants not to compete;*
 3 *health care professionals; civil penalty.*

4 [S 128]

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 "*Health care professional*" means any person licensed, registered, or certified by the Board of Medicine,
 16 Nursing, Counseling, Optometry, Psychology, or Social Work.

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

32 B. No employer shall enter into, enforce, or threaten to enforce a covenant not to compete with any
 33 low-wage employee *or health care professional*.

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

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

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

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

55 ~~G.~~ F. Every employer shall post a copy of this section or a summary approved by the Department in the
 56 same location where other employee notices required by state or federal law are posted. An employer that

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57 fails to post a copy of this section or an approved summary of this section shall be issued by the Department a
58 written warning for the first violation, shall be subject to a civil penalty not to exceed \$250 for a second
59 violation, and shall be subject to a civil penalty not to exceed \$1,000 for a third and each subsequent violation
60 as determined by the Commissioner. Civil penalties owed under this subsection shall be paid to the
61 Commissioner for deposit in the general fund.

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

66 *G. Nothing in this section shall serve to limit the creation or application of:*

67 *1. Nondisclosure agreements intended to prohibit the taking, misappropriating, threatening to*
68 *misappropriate, or sharing of certain information to which an employee has access, including trade secrets,*
69 *as defined in § 59.1-336, and proprietary or confidential information; or*

70 *2. Covenants not to compete or similarly restrictive covenants with any health care professional or such*
71 *person's business entity as part of a sale of business when the transaction includes the sale of all or*
72 *substantially all of (a) the operating assets together with the goodwill of the health care professional's*
73 *business entity, (b) the operating assets of a division or subsidiary of the health care professional's business*
74 *entity together with the goodwill of that division or subsidiary, or (c) the ownership interest of the health care*
75 *professional's business entity or any division or subsidiary thereof. In such transactions, the seller and buyer*
76 *may enter a covenant not to compete or similarly restrictive covenant for the health care professional or such*
77 *person's business entity, provided that such covenant not to compete or similarly restrictive covenant is*
78 *reasonable in scope, duration, and geographic area.*

79 *H. Nothing in this section shall serve to limit the ability of employers of health care professionals to:*

80 *1. Include provisions in employment agreements, through a promissory note or otherwise, that require*
81 *repayment for all or a prorated portion of recruitment-related costs, including relocation expenses, signing*
82 *or retention bonuses, and other remuneration provided to induce relocation or establishment of a practice in*
83 *a specified geographic area, as well as recruiting, education, or training expenses from a departing health*
84 *care professional who has been employed for fewer than five years, and such provisions shall be valid and*
85 *enforceable by law; or*

86 *2. Include provisions in employment agreements requiring a health care professional, for the benefit of an*
87 *employer and for a stated period of time following termination, to refrain from soliciting or attempting to*
88 *solicit, directly or by assisting others, any business from any of such employer's customers, including actively*
89 *seeking prospective customers, with whom the employee had material contact during his employment, for*
90 *purposes of providing products or services that are the same or substantially similar to those provided by the*
91 *employer, except for any notice or communication as required by state or federal law. Any reference to a*
92 *prohibition against soliciting or attempting to solicit customers shall be narrowly construed to apply only to*
93 *(i) the health care professional's customers, including actively sought prospective customers, with whom the*
94 *health care professional had material contact during employment and (ii) products and services that are the*
95 *same as or substantially similar to those provided by the employer. Such provisions shall be valid and*
96 *enforceable by law.*

97 **2. That nothing in this act shall invalidate, alter, or otherwise affect any contracts, covenants, or**
98 **agreements entered into or renewed prior to July 1, 2026.**