

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered*
 3 *40.1-28.7:12, relating to prohibiting employer seeking wage or salary history of prospective employees;*
 4 *wage or salary range transparency; cause of action.*

5 [H 636]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That the Code of Virginia is amended by adding in Article 1 of Chapter 3 of Title 40.1 a section**
 9 **numbered 40.1-28.7:12 as follows:**10 **§ 40.1-28.7:12. *Seeking wage or salary history of prospective employees prohibited; wage or salary***
 11 ***range transparency; cause of action.***12 *A. As used in this section:*13 *"Wage or salary history" means the wage or salary paid to the prospective employee by the prospective*
 14 *employee's current or previous employer.*15 *"Wage or salary range" means the minimum and maximum wage or salary for the position, set in good*
 16 *faith by reference to any applicable pay scale, any previously determined wage or salary range for the*
 17 *position, the actual range of wages or salaries for persons currently holding equivalent positions, or the*
 18 *budgeted amount available for the position, as applicable.*19 *B. No employer shall:*20 *1. Seek the wage or salary history of a prospective employee;*21 *2. Rely on the wage or salary history of a prospective employee in considering the prospective employee*
 22 *for employment;*23 *3. Except as provided in subsection D, rely on the wage or salary history of a prospective employee in*
 24 *determining the wages or salary the prospective employee is to be paid upon hire;*25 *4. Refuse to interview, hire, employ, or promote or otherwise retaliate against a prospective or current*
 26 *employee for not providing wage or salary history or requesting a wage or salary range;*27 *5. Fail or refuse to disclose in each public and internal posting for each job, promotion, transfer, or other*
 28 *employment opportunity the wage, salary, or wage or salary range for the position; or*29 *6. Fail to set a wage or salary range in good faith. Any analysis of whether the wage or salary range has*
 30 *been set in good faith shall consider, among other things, the breadth of such wage or salary range.*31 *C. The provisions of subsection B shall not be construed to prevent a prospective employee from*
 32 *voluntarily disclosing wage or salary history, including for the purpose of negotiating wages or salary after*
 33 *an initial offer of employment with an offer of compensation.*34 *D. If a prospective employee voluntarily provides his wage or salary history to an employer without the*
 35 *employer's prompting, then (i) the employer may rely on such wage or salary history to support a wage or*
 36 *salary higher than the employer's initial offer of compensation only to the extent that the higher wage or*
 37 *salary does not create an unlawful pay differential in violation of § 40.1-28.6 or federal law and (ii) the*
 38 *employer may seek to confirm the wage or salary history of the prospective employee to support a wage or*
 39 *salary higher than the wage or salary offered by the employer only to the extent that the higher wage or*
 40 *salary does not create an unlawful pay differential in violation of § 40.1-28.6 or federal law.*41 *E. An employer that violates the provisions of this section shall be liable to the prospective employee or*
 42 *employee who was the subject of such violation for statutory damages of between \$1,000 and \$10,000 or*
 43 *actual damages, whichever is greater, reasonable attorney fees and costs, and any other legal and equitable*
 44 *relief as may be appropriate. An aggrieved prospective employee or employee may bring an action,*
 45 *individually, jointly with other aggrieved prospective employees or employees, or on behalf of similarly*
 46 *situated prospective employees or employees as a collective action against the employer in a court of*
 47 *competent jurisdiction within two years of when the prohibited action occurred. However, an employer shall*
 48 *be afforded an opportunity to correct a violation of subdivision B 5 or 6 before a prospective employee may*
 49 *bring an action. Any person may provide written notice to the employer alleging that the employer's posting*
 50 *does not comply with subdivision B 5 or 6. If an employer receives written notice from any person relating to*
 51 *a particular posting, such notice shall constitute adequate notice for the duration of such posting for any*
 52 *prospective employee seeking remedies under this section. If the employer corrects the posting within 15*
 53 *business days of receiving such notice or, where applicable, contacts any third-party posting entity with a*
 54 *demand to correct such posting, no action for a violation of B 5 or 6 shall be brought. For the purpose of this*
 55 *section, a prohibited action occurs when (i) a prohibited wage or salary decision or practice is adopted; (ii)*
 56 *an individual is subject to a prohibited wage or salary decision or practice; or (iii) an individual is affected*

57 *by the application of a prohibited wage or salary decision or practice, including each time wages or salaries*
58 *paid result, in whole or in part, from a prohibited wage or salary decision or practice.*