

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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 prohibiting employer seeking wage or salary history of prospective employees; wage or salary range transparency; cause of action; civil penalty.

[S 215]

Approved

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. Seeking wage or salary history of prospective employees prohibited; wage or salary range transparency; cause of action; civil penalty.

A. As used in this section:
"Wage or salary history" means the wage or salary paid to the prospective employee by the prospective employee's current or previous employer.

"Wage or salary range" means the minimum and maximum wage or salary for the position, set in good faith by reference to any applicable pay scale, any previously determined wage or salary range for the position, the actual range of wages or salaries for persons currently holding equivalent positions, or the budgeted amount available for the position, as applicable.

B. No employer shall:
1. Seek the wage or salary history of a prospective employee;
2. Rely on the wage or salary history of a prospective employee in considering the prospective employee for employment;

3. Except as provided in subsection D, rely on the wage or salary history of a prospective employee in determining the wages or salary the prospective employee is to be paid upon hire;

4. Refuse to interview, hire, employ, or promote or otherwise retaliate against a prospective or current employee for not providing wage or salary history or requesting a wage or salary range;

5. Fail or refuse to disclose in each public and internal posting for each job, promotion, transfer, or other employment opportunity the wage, salary, or wage or salary range for the position; or

6. Fail to set a wage or salary range in good faith. Any analysis of whether the wage or salary range has been set in good faith shall consider, among other things, the breadth of such wage or salary range.

C. The provisions of subsection B shall not be construed to prevent a prospective employee from voluntarily disclosing wage or salary history, including for the purpose of negotiating wages or salary after an initial offer of employment with an offer of compensation.

D. If a prospective employee voluntarily provides his wage or salary history to an employer without the employer's prompting, then (i) the employer may rely on such wage or salary history to support a wage or salary higher than the employer's initial offer of compensation only to the extent that the higher wage or salary does not violate the provisions of § 40.1-28.6 or federal law and (ii) the employer may seek to confirm the wage or salary history of the prospective employee to support a wage or salary higher than the wage or salary offered by the employer only to the extent that the higher wage or salary does not violate the provisions of § 40.1-28.6 or federal law.

E. The Attorney General may bring a civil action to enforce the provisions of this section. An employer that violates the provisions of this section shall be subject to a civil penalty of up to \$1,000 for the first violation and up to \$5,000 for any subsequent violation. The court may award any other legal and equitable relief it deems appropriate. Any civil penalties assessed under this subsection shall be paid into the general fund.

F. An aggrieved prospective employee or employee may bring an action in a court of competent jurisdiction within one year of when the prospective employee's or employee's rights under subsection B were violated. However, an employer shall be afforded an opportunity to correct a violation of subdivision B 5 or 6 before a prospective employee may bring an action. Any person may provide written notice to the employer alleging that the employer's posting does not comply with subdivision B 5 or 6. If an employer receives written notice from any person relating to a particular posting, such notice shall constitute adequate notice for the duration of such posting for any prospective employee seeking remedies under this section. If the employer corrects the posting on the original posting locations within 15 business days of receiving such notice, no action for a violation of subdivision B 5 or 6 shall be brought. An employer that violates the provisions of this section shall be liable to the prospective employee or employee for actual damages and any other legal and equitable relief as the court deems appropriate.