

HOUSE BILL NO. 944

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute—Delegate Clark)

A BILL to amend and reenact § 40.1-27.3 of the Code of Virginia and to amend the Code of Virginia by adding in Article 5 of Chapter 3 of Title 40.1 a section numbered 40.1-51.4:6, relating to workplace violence policy required for certain employers; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-27.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 5 of Chapter 3 of Title 40.1 a section numbered 40.1-51.4:6 as follows:

§ 40.1-27.3. Retaliatory action against employee prohibited.

A. An employer shall not discharge, discipline, threaten, discriminate against, or penalize an employee, or take other retaliatory action regarding an employee's compensation, terms, conditions, location, or privileges of employment, because the employee:

1. Or a person acting on behalf of the employee in good faith reports a violation of any federal or state law or regulation to a supervisor or to any governmental body or law-enforcement official;

2. Is requested by a governmental body or law-enforcement official to participate in an investigation, hearing, or inquiry;

3. Refuses to engage in a criminal act that would subject the employee to criminal liability;

4. Refuses an employer's order to perform an action that violates any federal or state law or regulation and the employee informs the employer that the order is being refused for that reason; ~~or~~

5. Provides information to or testifies before any governmental body or law-enforcement official conducting an investigation, hearing, or inquiry into any alleged violation by the employer of federal or state law or regulation; *or*

6. *Reports a workplace violence incident, threat, or concern to, or seeks assistance or intervention with respect to such incident, threat, or concern from, the employer, law enforcement, local emergency services, or a local, state, or federal government agency or exercises any other rights under § 40.1-51.4:6.*

B. This section does not:

1. Authorize an employee to make a disclosure of data otherwise protected by law or any legal privilege;

2. Permit an employee to make statements or disclosures knowing that they are false or that they are in

reckless disregard of the truth; or

3. Permit disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law.

C. A person who alleges a violation of this section may bring a civil action in a court of competent jurisdiction within one year of the employer's prohibited retaliatory action. The court may order as a remedy to the employee (i) an injunction to restrain continued violation of this section, (ii) the reinstatement of the employee to the same position held before the retaliatory action or to an equivalent position, and (iii) compensation for lost wages, benefits, and other remuneration, together with interest thereon, as well as reasonable attorney fees and costs.

§ 40.1-51.4:6. Workplace violence; employer policy required; civil penalty.

A. For the purposes of this section:

"Employer" means an employer of 100 or more employees.

"Workplace violence" means any act of violence or threat of violence, without regard to intent, that occurs at an employer's workplace while an employee performs work duties. "Workplace violence" includes (i) the threat or use of physical force against an employee that directly results in injury, clinically diagnosed psychological trauma, or clinically diagnosed acute stress disorder or post-traumatic stress disorder, regardless of whether the employee sustains an injury, and (ii) the use of weapons to threaten or harm others. "Workplace violence" does not include suicidal ideation or threats, general workplace conflicts or disagreements, performance management discussions, or harassment complaints handled through separate processes.

B. No later than January 1, 2027, each employer shall develop, implement, and maintain an effective workplace violence policy that provides a mechanism for employees to report workplace violence and measures to protect employees from workplace violence based on the requirements of this section.

C. An employer's workplace violence policy shall be tailored and specific to conditions and hazards for the employer's workplace, including specific risk factors applicable to the type of workplace. Such policy shall be suitable for the size, complexity, and type of operations at the employer's workplace and shall remain in effect at all times. Such policy may be developed in consultation with stakeholders or experts who specialize in workplace violence prevention, emergency response, or other related areas of expertise for all relevant aspects of the policy.

D. Each workplace violence policy developed pursuant to this section shall include procedures and methods for (i) identifying the individual or team responsible for implementation of the policy; (ii) reporting

instances, threats, concerns, risks, and hazards of workplace violence to the responsible individual or team; (iii) incident response and post-incident investigation, including procedures for employers to respond to reports of workplace violence; (iv) emergency response, including procedures for threats of incidents involving a firearm or dangerous weapon; (v) communicating with and training employees on workplace violence hazards and threats, work practice controls, the employer's policy, and procedures for deescalating and reporting workplace violence threats, incidents, and concerns; (vi) assessing risks of workplace violence and hazards to employees exposed to such risks and hazards; and (vii) hazard prevention, engineering controls, or work practice controls to correct hazards in a timely manner. The employer training required by this section may be integrated into existing employer safety training programs.

E. An employer shall document all reports of incidents of workplace violence, any incident response or post-incident investigation undertaken following such a report, and any corrective measures taken for each investigation conducted pursuant to the policy required by this section. Such documentation shall include, at a minimum, a description of (i) the violent incident; (ii) the date, time, and location of the incident and the names and job titles of involved employees; (iii) the nature and extent of injuries to covered employees; and (iv) if applicable, how the incident was abated.

F. If an employer learns of a workplace violence incident for which a report has not been submitted, the employer shall document the incident no later than 30 days after the employer learns of such incident. Each employer shall maintain the documentation required by subsection E for not less than five years and make such documentation available upon request to law enforcement.

G. An employer shall ensure that its policy for mitigating workplace violence developed pursuant to the requirements of this section is made available at all times to its employees.

H. An employer shall provide information regarding its policy for mitigating workplace violence and associated procedures and methods for submitting a report under such policy to each employee upon commencement of employment as part of the employer's onboarding process. This information shall be appropriate in content and vocabulary to the language, educational level, and literacy of the employee.

I. On or after July 1, 2027, an employer that fails to comply with the requirements of this section shall be subject to a civil penalty of not more than \$1,000 per violation and not more than \$10,000 in any calendar year. No civil penalty shall be assessed if an employer abates the violation within 30 days of being provided notice by the Department for either (i) an other-than-serious citation or (ii) a serious citation that did not involve a hospitalization or a fatality. Such 30-day period shall not apply for willful or repeat violations. Civil penalties under this subsection shall be assessed by the Department and paid to the Literary Fund.

94 *J. The provisions of § 40.1-51.4:5 that provide immunity from all civil liability to any employee who*
95 *truthfully reports threatening conduct at the workplace shall apply to any employee who truthfully reports*
96 *workplace violence under a policy developed pursuant to this section or subsection F of § 32.1-127.*

97 *K. Nothing in this section shall be construed to limit or prevent employees from reporting violent*
98 *incidents to appropriate law enforcement or to limit or diminish any other employee protections in local,*
99 *state, or federal law.*

100 *L. A workplace violence policy and incident reporting system adopted in compliance with the*
101 *requirements of subsections F and G of § 32.1-127 shall be deemed to satisfy the requirements of subsections*
102 *B through F.*

103 **2. That the provisions of the first enactment of this act shall become effective on January 1, 2027.**

104 **3. That no later than January 1, 2027, the Department of Labor and Industry shall adopt regulations to**
105 **implement the provisions of § 40.1-51.4:6 of the Code of Virginia, as created by this act.**