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HOUSE BILL NO. 1399

House Amendments in [] - January 24, 2011

A *BILL to amend and reenact §§ 8.01-216.2 and 8.01-216.8 of the Code of Virginia, relating to the Virginia Fraud Against Taxpayers Act; waiver of sovereign immunity.*

Patron Prior to Engrossment—Delegate Janis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-216.2 and 8.01-216.8 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-216.2. Definitions.

As used in this article, unless the context requires otherwise:

"Attorney General" means the Attorney General of Virginia, the Chief Deputy, other deputies, counsels or assistant attorneys general employed by the Office of the Attorney General and designated by the Attorney General to act pursuant to this article.

"Claim" means any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, or other recipient if the Commonwealth provides any portion of the money or property that is requested or demanded, or if the Commonwealth will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

"Commonwealth" means the Commonwealth of Virginia, any agency of state government, and any political subdivision of the Commonwealth.

"Documentary material" means the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

"Employee" includes an employee or officer of the Commonwealth.

"Employer" includes the Commonwealth.

"Investigation" means any inquiry conducted by an investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this article.

"Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business or trust.

"Product of discovery" means (i) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature; (ii) any digest, analysis, selection, compilation, or derivation of any item listed in clause (i); and (iii) any index or other manner of access to any item listed in clause (i).

§ 8.01-216.8. Certain actions barred; relief from employment discrimination [; waiver of sovereign immunity] .

No court shall have jurisdiction over an action brought under § 8.01-216.5 based on information discovered by a present or former employee of the Commonwealth during the course of his employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the Commonwealth failed to act on the information provided within a reasonable period of time.

No court shall have jurisdiction over any action brought under this article by an inmate incarcerated within a state or local correctional facility as defined in § 53.1-1.

No court shall have jurisdiction over an action brought under this article against any department, authority, board, bureau, commission, or agency of the Commonwealth, any political subdivision of the Commonwealth, a member of the General Assembly, a member of the judiciary, or an exempt official if the action is based on evidence or information known to the Commonwealth when the action was brought. For purposes of this section, "exempt official" means the Governor, Lieutenant Governor, Attorney General and the directors or members of any department, authority, board, bureau, commission or agency of the Commonwealth or any political subdivision of the Commonwealth.

In no event may a person bring an action under this article that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the Commonwealth is already a party.

No court shall have jurisdiction over an action under this article based upon the public disclosure of

59 allegations or transactions in a criminal, civil or administrative hearing, in a legislative, administrative,
60 or Auditor of Public Accounts' report, hearing, audit, or investigation, or from the news media, unless
61 the action is brought by the Attorney General or the person bringing the action is an original source of
62 the information. For purposes of this section, "original source" means an individual who has direct and
63 independent knowledge of the information on which the allegations are based and has voluntarily
64 provided the information to the Commonwealth before filing an action under this article that is based on
65 the information.

66 ~~The~~ *Except as otherwise provided in this section, the Commonwealth shall not be liable for expenses*
67 *a person incurs in bringing an action under this article.*

68 Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner
69 discriminated against in the terms and conditions of employment by his employer because he has
70 opposed any practice referenced in § 8.01-216.3 or because he has initiated, testified, assisted, or
71 participated in any manner in any investigation, action or hearing under this article, shall be entitled to
72 all relief necessary to make the employee whole. Such relief shall include reinstatement with the same
73 seniority status such employee would have had but for the discrimination, two times the amount of back
74 pay, interest on the back pay, and compensation for any special damages sustained as a result of the
75 discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an
76 action in a court of competent jurisdiction for the relief provided in this section. *This paragraph [shall*
77 *constitute a waiver of sovereign immunity and] creates a cause of action by an employee against the*
78 *Commonwealth if the Commonwealth is the employer responsible for the adverse employment action that*
79 *would entitle the employee to the relief set forth in this paragraph.*

80 [**2. That the provisions of this act are declarative of existing law.**]