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HOUSE BILL NO. 728

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 7, 2014)

(Patron Prior to Substitute—Delegate Lingamfelter)

A *BILL to amend and reenact § 2.2-3011 of the Code of Virginia, relating to the Fraud and Abuse Whistle Blower Protection Act; discriminatory and retaliatory action against whistle blower; remedies.*

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3011 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3011. Discrimination and retaliatory actions against whistle blowers prohibited; good faith required; remedies.

A. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle blower whether acting on his own or through a person acting on his behalf or under his direction.

B. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle blower, *in whole or in part*, because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action.

C. To be protected by the provisions of this chapter, an employee who discloses information about suspected wrongdoing or abuse shall do so in good faith and upon a reasonable belief that the information is accurate. Disclosures that are reckless or the employee knew or should have known were false, confidential by law, or malicious shall not be deemed good faith reports and shall not be protected.

D. *In addition to the remedies provided in § 2.2-3012, any whistle blower may bring a civil action for violation of this section in the circuit court of the jurisdiction where the whistle blower is employed. In a proceeding commenced against any employer under this section, the court, if it finds that a violation was willfully and knowingly made, may impose upon such employer that is a party to the action, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500 nor more than \$2,500, which amount shall be paid into the Fraud and Abuse Whistle Blower Reward Fund. The court may also order appropriate remedies, including (i) reinstatement to the same position or, if the position is filled, to an equivalent position; (ii) back pay; (iii) full reinstatement of fringe benefits and seniority rights; or (iv) any combination of these remedies. The whistle blower may be entitled to recover reasonable attorney fees and costs. No action brought under this subsection shall be brought more than three years after the date the unlawful discharge, discrimination, or retaliation occurs. Any whistle blower proceeding under this subsection shall not be required to exhaust existing internal procedures or other administrative remedies.*

E. Nothing in this chapter shall prohibit an employer from disciplining or discharging a whistle blower for his misconduct or any violation of criminal law.