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HOUSE BILL NO. 731

Offered January 8, 2014

Prefiled January 7, 2014

A *BILL to amend and reenact §§ 8.01-216.5 and 8.01-216.8 of the Code of Virginia, relating to the Virginia Fraud Against Taxpayers Act; civil damages for employment discrimination.*

Patron—Lingamfelter

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-216.5 and 8.01-216.8 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-216.5. Civil actions filed by private persons; Commonwealth may intervene.

A. A person may bring a civil action for a violation of § 8.01-216.3 for the person and for the Commonwealth. The action shall be brought in the name of the Commonwealth. *The person bringing the suit may also include as a named party the officer or employee of the Commonwealth alleged to have committed the violation of § 8.01-216.3.* The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

B. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Commonwealth. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The Commonwealth may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.

C. The Commonwealth may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any motion for judgment filed under this section until twenty-one days after the complaint is unsealed and served upon the defendant.

D. Before the expiration of the 120-day period or any extensions obtained under subsection C, the Commonwealth shall proceed with the action, in which case the action shall be conducted by the Commonwealth, or notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to prosecute the action.

E. When a person brings an action under this section, no person other than the Commonwealth may intervene or bring a related action based on the facts underlying the pending action.

§ 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.

The court shall dismiss an action or claim under § 8.01-216.5 unless opposed by the Commonwealth if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil or administrative hearing in which the Commonwealth or its agent is a party, in a Virginia legislative, administrative, or Auditor of Public Accounts' report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information. For purposes of this section,

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59 "original source" means an individual (i) who either prior to a public disclosure has voluntarily disclosed
60 to the Commonwealth the information on which the allegations or transactions in a claim are based or
61 (ii) who has knowledge that is independent of and materially adds to the publicly disclosed allegations
62 or transactions and who has voluntarily provided the information to the Commonwealth before filing an
63 action under this article.

64 Except as otherwise provided in this section, the Commonwealth shall not be liable for expenses a
65 person incurs in bringing an action under this article.

66 Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee,
67 contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended,
68 threatened, harassed, or in any other manner discriminated against in the terms and conditions of
69 employment because of lawful acts done by the employee, contractor, agent, or associated others in
70 furtherance of an action under this article or other efforts to stop one or more violations of this article.
71 Relief shall include reinstatement with the same seniority status that employee, contractor, or agent
72 would have had but for the discrimination, two times the amount of back pay, interest on the back pay,
73 and compensation for any special damages sustained as a result of the discrimination, including litigation
74 costs and reasonable attorney fees. Any relief awarded to an employee under this section shall be
75 reduced by any amount awarded to the employee through a state or local grievance process. *If the court*
76 *finds that an individual named as a party pursuant to subsection A of § 8.01-216.5 knowingly or*
77 *willfully discriminated against the employee, contractor, or agent, the court shall order that such*
78 *individual contribute to any relief awarded to be paid by the Commonwealth in an amount not to exceed*
79 *\$2,500. Such contribution shall be paid directly by the individual.*

80 An action under this section may be brought in a court of competent jurisdiction for the relief
81 provided in this section, but may not be brought more than three years after the date the discrimination
82 occurred. This paragraph shall constitute a waiver of sovereign immunity and creates a cause of action
83 by an employee against the Commonwealth if the Commonwealth is the employer responsible for the
84 adverse employment action that would entitle the employee to the relief set forth in this paragraph.