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HOUSE BILL NO. 626

Offered January 10, 2018

Prefiled January 8, 2018

A *BILL to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:6, relating to a prohibition on employers' limiting employees' sharing of wage information; civil penalty.*

Patrons—Ayala, Lopez, Boysko, Carter, Delaney, Hurst, Krizek, Levine, Plum, Rodman and Watts

Referred to Committee on Commerce and Labor

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 40.1-28.7:6 as follows:

§ 40.1-28.7:6. Limiting employees' sharing wage information with other persons prohibited; civil penalty.

A. An employer shall not require, as a condition of employment, that an employee refrain from inquiring about, discussing, or disclosing information about either the employee's own wages or about any other employee's wages.

B. An employer shall not discharge from employment or take other retaliatory action against an employee because the employee (i) inquired about, discussed, or disclosed information about either the employee's own wages or about any other employee's wages or (ii) filed a complaint with the Department alleging a violation of this section.

C. Nothing in this section shall obligate an employer to disclose an employee's wages to another employee or a third party.

D. Any person who violates the provisions of this section shall be subject to a civil penalty of \$100 per violation. The Commissioner shall notify any employer who he alleges has violated any provision of this section by certified mail or overnight delivery service. Such notice shall contain a description of the alleged violation. Within 21 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. If the employer fails to contest the violation by requesting such an informal conference within 21 days following its receipt of the notice of the alleged violation, the violation and proposed penalty shall become a final order of the Commissioner and shall not be subject to review by any court or agency except upon a showing of good cause. Such informal conference shall result in a decision by the Commissioner that will be appealable to the appropriate circuit court. The Department shall send a copy of the Commissioner's decision to the employer by certified mail or overnight delivery service. The employer may file a notice of an appeal only within 30 days from the receipt of the decision. The appeal shall be on the agency record. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support the Commissioner's findings of fact. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the state treasury. The Commissioner shall prescribe procedures for the payment of proposed penalties that are not contested by employers.

E. The Commissioner or his authorized representative shall have the right to petition a circuit court for injunctive or such other relief as may be necessary for enforcement of this section.

INTRODUCED

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