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**HOUSE BILL NO. 802**

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend the Code of Virginia by adding a section numbered 40.1-27.3 and by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:7, relating to the wage history of applicants for employment; prohibited actions; protection of employees from retaliatory actions.*

Patrons—Delaney, Guzman, Hope, Levine, Lopez and Rasoul; Senators: Bell and Morrissey

Referred to Committee on Labor and Commerce

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 40.1-27.3 and by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:7 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 or suspected 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 the employee believes, which belief has an objective basis in fact, violates any federal or state law or regulation and the employee informs the employer that the order is being refused for that reason;

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. Violates § 40.1-28.7:7 with respect to any applicant for employment.

B. This section does not:

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

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. The court may award to the prevailing party reasonable attorney fees and costs.

**§ 40.1-28.7:7. Wage history inquiries.**

A. As used in this section:

"Employer" includes the Commonwealth and each of its agencies, institutions, and political subdivisions.

"Wage history" means information regarding the amount of wages that was paid or is being paid to an applicant for employment by any current or former employer of the applicant.

B. No employer shall:

1. Refuse to interview, hire, or employ an applicant for employment because the applicant does not provide wage history;

2. Discharge, discipline, threaten, discriminate against, or penalize an applicant for employment, or take other retaliatory action set forth in § 40.1-27.3, because the applicant for employment does not provide wage history; or

3. Rely on the wage history of an applicant to determine the wages offered by the employer to such individual.

C. Nothing in this section shall prohibit an employer from asking an applicant about the individual's wage or salary expectation for the position for which the individual is applying.

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59       *D. An applicant or current or former employee aggrieved by a violation of this section may bring a*  
60 *civil action for compensation for any damages sustained as a result of such violation in a court of*  
61 *competent jurisdiction. Such damages shall include the wages, and interest thereon at the legal rate of*  
62 *interest, of which such applicant or employee is deprived by reason of the violation. The court may*  
63 *award injunctive relief as well as reasonable attorney fees to an individual who prevails in a civil*  
64 *action brought under this subsection.*