

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding in Article 2 of Chapter 3 of Title 40.1 a section*
3 *numbered 40.1-33.1, relating to prohibiting employers from retaliating against employees for*
4 *reporting employee misclassification; civil penalty.*

5 [S 662]

6 Approved

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

8 **1. That the Code of Virginia is amended by adding in Article 2 of Chapter 3 of Title 40.1 a**
9 **section numbered 40.1-33.1 as follows:**

10 **§ 40.1-33.1. Retaliatory actions prohibited; civil penalty.**

11 *A. An employer shall not discharge, discipline, threaten, discriminate against, or penalize an*
12 *employee or independent contractor, or take other retaliatory action regarding an employee or*
13 *independent contractor's compensation, terms, conditions, location, or privileges of employment, because*
14 *the employee or independent contractor:*

15 *1. Has reported or plans to report to an appropriate authority that an employer, or any officer or*
16 *agent of the employer, has failed to properly classify an individual as an employee and failed to pay*
17 *required benefits or other contributions; or*

18 *2. Is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing,*
19 *or inquiry by an appropriate authority or in a court action.*

20 *B. The provisions of subsection A shall apply only if an employee or independent contractor who*
21 *discloses information about suspected worker misclassification has done so in good faith and upon a*
22 *reasonable belief that the information is accurate. Disclosures that are reckless or the employee knew or*
23 *should have known were false, confidential by law, or malicious shall not be deemed good faith reports*
24 *and shall not be subject to the protections provided by subsection A.*

25 *C. Any employee who is discharged, disciplined, threatened, discriminated against, or penalized in a*
26 *manner prohibited by this section may file a complaint with the Commissioner. The Commissioner, with*
27 *the written and signed consent of such an employee, may institute proceedings against the employer for*
28 *appropriate remedies for such action, including reinstatement of the employee and recovering lost*
29 *wages.*

30 *D. Any employer who discharges, disciplines, threatens, discriminates against, or penalizes an*
31 *employee in a manner prohibited by this section shall be subject to a civil penalty not to exceed the*
32 *amount of the employee's wages that are lost as a result of the violation. Civil penalties under this*
33 *section shall be assessed by the Commissioner and paid to the Literary Fund.*

ENROLLED

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