

23106730D

## HOUSE BILL NO. 1895

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Commerce and Labor  
on February 13, 2023)

(Patron Prior to Substitute—Delegate Filler-Corn)

A BILL to amend and reenact § 40.1-28.01 of the Code of Virginia, relating to employee protection; prohibited retaliation; prohibited nondisclosure and nondisparagement provisions; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-28.01 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-28.01. Prohibited nondisclosure and nondisparagement provisions; retaliatory action prohibited; civil penalty.

A. No employer shall require an employee or a former employee, prospective employee, or independent contractor to execute or renew any provision in a nondisclosure, nondisparagement, or confidentiality agreement that has the purpose or effect of concealing the details relating to a claim an allegation of sexual assault pursuant to § 18.2-61, 18.2-67.1, 18.2-67.3, or 18.2-67.4 as a condition of employment or discrimination, including sexual harassment. Any such provision is against public policy and is void and unenforceable.

B. ~~This~~ No employer shall retaliate against an employee, former employee, prospective employee, or independent contractor for disclosing or discussing conduct that the employee reasonably believed under state, federal, or common law to be sexual assault or discrimination, including sexual harassment.

C. Nothing in this section shall be construed to (i) prohibit the inclusion or enforcement of a provision in any agreement, at the request of an employee, former employee, prospective employee, or independent contractor that shields the identity of the employee, former employee, prospective employee, or independent contractor and all facts that could lead to the discovery of his identity, including pleadings filed in court, or (ii) prohibit an employer and an employee from protecting trade secrets, proprietary information, or any other confidential information that does not involve illegal acts.

D. The provisions of this section shall in no way limit other grounds that exist at law or in equity for the unenforceability of any such agreement or any provision of such agreement.

E. An employer that violates the provisions of this section shall be liable in a civil cause of action for actual damages or statutory damages of \$10,000, whichever is greater, as well as reasonable attorney fees and costs.