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SENATE BILL NO. 411

Senate Amendments in [] — February 11, 1994

A *BILL to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 10.01, consisting of sections numbered 2.1-116.01 through 2.1-116.06; relating to the Virginia Whistle Blower Protection Act.*

Patrons—Robb and Wampler; Delegate: Way

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 10.01, consisting of sections numbered 2.1-116.01 through 2.1-116.06, as follows:

*CHAPTER 10.01.**THE VIRGINIA WHISTLE BLOWER PROTECTION ACT.**§ 2.1-116.01. Legislative intent.*

It shall be the policy of the Commonwealth that employees of public entities shall freely be able to come forward with information pertaining to violations of the law, mismanagement amounting to gross waste or abuse of authority, and threats to the public health and safety committed by [state] agencies, their employees, or independent contractors of such agencies.

§ 2.1-116.02. Application of Act; good faith requirement.

A. Employees of any entity supported in whole or in part by public funds shall be covered by the provisions of this Act. Protection shall be provided for disclosure of the following types of information: (i) violations or suspected violations of the law, (ii) mismanagement amounting to gross waste or abuse of authority and (iii) threats to the public health and safety.

B. To be protected under this Act, employees who disclose information about suspected wrongdoing shall do so (i) in good faith and (ii) upon a reasonable belief that their allegations are accurate. Employees need not make personal investigations to determine the accuracy of their charges before disclosure information.

[~~C. Disclosures which are (i) false or reckless, (ii) confidential by law, or (iii) malicious shall not be protected.~~]

§ 2.1-116.03. Notification requirements.

A. An employee shall give prior written or oral notification of the suspected wrongdoing to his agency head before disclosing the alleged wrongdoing to parties outside [of state government the agency] , except in situations where: (i) the agency head is the subject of the complaint, (ii) the employee has a specific reason to believe that internal disclosure will be ineffective, or (iii) the employee has a specific reason to believe that the agency head is already aware of the problem.

B. An employee shall then disclose the alleged wrongdoing to one of the following: a federal, state or local law-enforcement agency, the Attorney General, the Commonwealth's attorney in the jurisdiction where the suspected wrongdoing occurred, legislative bodies or the members thereof, [the state internal auditor, the state auditor of public accounts,] or other oversight or regulatory agencies.

C. Disclosure of alleged improper governmental actions to the news media will not be considered a protected activity under this statute.

§ 2.1-116.04. Violation of Act; grievance procedure.

[A. Discriminatory and retaliatory acts prohibited.

No employer shall discharge, threaten or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location or privileges of employment because the employee made a good faith report pursuant to this act or participated in an investigation, hearing, official inquiry, or court action related thereto.]

[A. B.] Any employee covered by a grievance procedure pursuant to § 2.1-114.5:1, § 15.1-7.1, or § 15.1-7.2, may initiate a grievance alleging a violation of this section. In addition to reinstatement, back pay, and restoration of benefits, the employee may be reimbursed for any costs associated with the grievance, including attorney fees. Such reimbursement shall be made out of moneys appropriated to such agency.

[~~B. C.~~] Whenever it is determined that an appointing authority or supervisor has violated this section, an entry shall be made in the appointing authority or supervisor's personnel record to that effect.

[~~C. D.~~] Whenever the Department of Employee Relations Counselors learns that a grievance has been initiated under this section which involves information concerning waste of public funds or

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60 *mismanagement of a state agency, it shall transmit a copy of the grievance to the state [internal]*
61 *auditor for an investigation.*

62 *[~~D~~ E.] If an employee elects to pursue a grievance, the decision of the panel shall be the exclusive*
63 *remedy.*

64 *§ 2.1-116.05. Violation of Act; grievance procedure.*

65 *[~~Any~~ Within one hundred eighty days, an] employee may file an action in the circuit court alleging*
66 *a violation of this section. If the employee prevails, the employee may recover damages, court costs,*
67 *attorney fees, and other such relief that the court deems appropriate.*

68 *§ 2.1-116.06. Notice of employee rights.*

69 *All employers covered by this Act will prominently display notice of employee rights under this*
70 *statute. Employers shall also make available a written summary of this statute to new employees.*