

13104714D

SENATE BILL NO. 1178

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Ruff
on January 29, 2013)

(Patron Prior to Substitute—Senator Ruff)

A *BILL to amend and reenact §§ 2.2-1202.1, 2.2-3014, 2.2-3705.3, and 2.2-3802 of the Code of Virginia, relating to the Fraud and Abuse Whistle Blower Reward Fund; amount of reward; duties of the State Inspector General.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1202.1, 2.2-3014, 2.2-3705.3, and 2.2-3802 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1202.1. Additional powers and duties of Director; employment dispute resolution.

The Director shall:

1. Establish a comprehensive program of employee relations management that includes alternative processes for resolving employment disputes;

2. Establish the grievance procedure and a statewide mediation program;

3. Adopt rules and set hearing officer fees for grievance hearings;

4. For employees who are covered by the grievance procedure, (i) provide forms necessary for the proper use of the grievance procedure; (ii) direct full compliance with the grievance procedure process; and (iii) investigate allegations of retaliation as the result of use of or participation in the grievance procedure or of reporting, in good faith, an allegation of fraud, waste, or abuse to the State Employee Fraud, Waste and Abuse Hotline and advise the agency head of the findings;

5. Render final decisions, containing the reasons for such decision, on all matters related to access to the grievance procedure, procedural compliance with the grievance procedure, and qualification for hearing;

6. Establish a process to select, on a rotating basis, hearing officers for grievance hearings from (i) the list maintained by the Executive Secretary of the Supreme Court or (ii) attorneys hired as classified employees by the Department through a competitive selection process; train and assign such hearing officers to conduct grievance hearings; evaluate the quality of their services to determine eligibility for continued selection; and, if deemed ineligible for continued selection, establish policies for removing such hearing officers from consideration for future selection;

7. Publish hearing officer decisions and Department rulings;

8. Establish a training program for human resources personnel on employee relations management and employment rights and responsibilities;

9. Implement a comprehensive training and instructional program for all supervisory personnel that includes the role of the grievance procedure in harmonious employee relations management. The training program shall also include methods for supervisors to instruct nonsupervisory personnel in the use of the grievance procedure. Use of the grievance procedure to resolve disputes shall be encouraged. In-house resources shall be developed to allow the Department and its personnel to conduct onsite training of this nature for units and agencies of state government throughout Virginia. The Department shall assist agencies in establishing performance criteria for such supervisory personnel;

10. Provide information upon the request of any employee concerning personnel policies, regulations, and law applicable to the grievance procedure and counsel employees in the resolution of conflict in the workplace;

11. Establish and maintain a toll-free telephone number to facilitate access by employees to the services of the Department;

12. Collect information and statistical data regarding the use of the grievance procedure and the effectiveness of employee relations management in the various state agencies;

13. Make recommendations to the Governor and the General Assembly to improve the grievance procedure and employee relations management;

14. Conduct such training seminars and educational programs for the members and staff of agencies and public bodies and other interested persons on the use of dispute resolution proceedings as the Director determines appropriate;

15. Exercise such other powers and perform such other duties as may be requested by the Governor; and

16. Perform all acts and employ such personnel as may be required, necessary, or convenient to carry out the provisions of this section.

§ 2.2-3014. Fraud and Abuse Whistle Blower Reward Fund.

A. From such funds as may be appropriated authorized by the General Assembly, there is hereby

created in the state treasury a special nonreverting fund to be known as the Fraud and Abuse Whistle Blower Reward Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller and shall be administered by the State Inspector General. All moneys recovered by the State Inspector General as the result of whistle blower activity and alerts originating with the Office of the State Inspector General shall be deposited in the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. ~~Any~~ Except as provided in subsection B, any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to (i) provide monetary rewards to persons who have disclosed information of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.) and the disclosure results in a savings recovery of at least ~~\$10,000~~ \$5,000 or (ii) support the administration of the Fund, defray Fund advertising costs, or subsidize the operation of the Fraud, Waste and Abuse Hotline (previously known as the State Employee Fraud, Waste and Abuse Hotline).

B. By the end of each calendar quarter and upon authorization of the State Inspector General, 85 percent of all sums recovered shall be remitted to the institutions or agencies on whose behalf the recovery was secured by the State Inspector General unless otherwise directed by a court of law. Each such institution or agency on whose behalf the recovery was secured by the State Inspector General shall receive an amount equal to 85 percent of the actual amount recovered by the State Inspector General on its behalf.

C. The amount of the reward shall be ~~equal up to one percent (1%) of the total amount of savings realized~~ 10 percent of the actual sums recovered by the Commonwealth as a result of the disclosure of the wrongdoing or abuse, ~~not to exceed \$5,000. Expenditures and~~ Regardless of the sums recovered, at no time shall the amount of any reward, even if less than 10 percent, exceed the balance of the Fund. Reward disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the State Inspector General. In the event that multiple whistle blowers contemporaneously report the same qualifying incident or occurrence of wrongdoing or abuse, the State Inspector General in his sole discretion may split the reward of up to 10 percent among the multiple whistle blowers. The decision of the State Inspector General regarding the allocation of the rewards shall be final and binding on all parties and shall not be appealable.

D. Five percent of all sums recovered shall be retained in the Fund to support the administration of the Fund, defray advertising costs, and subsidize the operation of the Fraud, Waste and Abuse Hotline. Expenditures for administrative costs for management of the Fund shall be managed as approved by the State Inspector General.

B.E. The Office of the State Inspector General shall promulgate regulations for the proper administration of the Fund including eligibility requirements and procedures for filing a claim. The Office of the State Inspector General shall submit an annual report to the General Assembly summarizing the activities of the Fund.

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1,

1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vi) the auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, intellectual disability, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

9. Information furnished in confidence to the Department of Human Resource Management with respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

10. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing body.

11. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

12. Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

13. Investigator notes, and other correspondence and information, furnished in confidence with

respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

14. Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses or other individuals involved in the investigation.

§ 2.2-3802. Systems to which chapter inapplicable.

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913;
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;
5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;
6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the Department of Alcoholic Beverage Control;
7. Maintained by the Department of State Police; the police department of the Chesapeake Bay Bridge and Tunnel Commission; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23, and that deal with investigations and intelligence gathering relating to criminal activity; and maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;
8. Maintained by the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1;
9. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;
10. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Department of Forensic Science, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § 9.1-1104 may apply;
11. Maintained by the Department of Corrections or the Office of the State Inspector General that deal with investigations and intelligence gathering by persons acting under the provisions of Chapter 3.2 (§ 2.2-307 et seq.);
12. Maintained by (i) the Office of the State Inspector General or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the State Employee Fraud, Waste, and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town or a school board that deals with local investigations required by § 15.2-2511.2;
13. Maintained by the Department of Social Services or any local department of social services relating to public assistance fraud investigations; and

245 14. Maintained by the Department of Social Services related to child welfare, adult services or adult
246 protective services, or public assistance programs when requests for personal information are made to
247 the Department of Social Services. Requests for information from these systems shall be made to the
248 appropriate local department of social services, which is the custodian of that record. Notwithstanding
249 the language in this section, an individual shall not be prohibited from obtaining information from the
250 central registry in accordance with the provisions of § 63.2-1515.