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SENATE BILL NO. 326

Offered January 8, 2014

Prefiled January 6, 2014

A BILL to amend and reenact §§ 2.2-3010, 2.2-3011, and 8.01-216.2 of the Code of Virginia, relating to the Virginia Fraud Against Taxpayers Act and the Fraud and Abuse Whistle Blower Protection Act; inclusion of deputy sheriffs; discriminatory and retaliatory action prohibited; remedies.

Patrons—Deeds, Edwards and Petersen

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3010, 2.2-3011, and 8.01-216.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3010. Definitions.

As used in this chapter:

"Abuse" means an employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government sources.

"Appropriate authority" means a federal or state agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or abuse; or a member, officer, agent, representative, or supervisory employee of the agency or organization. The term also includes the Office of the Attorney General, the Office of the State Inspector General, and the General Assembly and its committees having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or abuse.

"Employee" means any person who is regularly employed full time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of and whose compensation is payable, no more often than biweekly, in whole or in part, by a state agency. *The term shall include a deputy sheriff employed by a city or county sheriff's office.*

"Employer" means a person supervising one or more employees, including the employee filing a good faith report, a superior of that supervisor, or an agent of the state agency. *The term shall include a city or county sheriff's office.*

"Good faith report" means a report of conduct defined in this chapter as wrongdoing or abuse which is made without malice and which the person making the report has reasonable cause to believe is true.

"Misconduct" means conduct or behavior by an employee that is inconsistent with state or agency standards for which specific corrective or disciplinary action is warranted.

"State agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act.

"Whistle blower" means an employee who witnesses or has evidence of wrongdoing or abuse and who makes or demonstrates by clear and convincing evidence that he is about to make a good faith report of, or testifies or is about to testify to, the wrongdoing or abuse to one of the employee's superiors, an agent of the employer, or an appropriate authority.

"Wrongdoing" means a violation, which is not of a merely technical or minimal nature, of a federal or state law or regulation or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or employee.

§ 2.2-3011. Discrimination and retaliatory actions against whistle blowers prohibited; good faith required; remedies.

A. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle blower whether acting on his own or through a person acting on his behalf or under his direction.

B. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle blower because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action.

C. To be protected by the provisions of this chapter, an employee who discloses information about suspected wrongdoing or abuse shall do so in good faith and upon a reasonable belief that the information is accurate. Disclosures that are reckless or the employee knew or should have known were false, confidential by law, or malicious shall not be deemed good faith reports and shall not be protected.

D. *In addition to the remedies provided in § 2.2-3012, any whistle blower may bring a civil action for violation of this section in the circuit court where the whistle blower is employed or the City of*

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59 *Richmond. In a proceeding commenced against any employer under this section, the court, if it finds*
60 *that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member*
61 *in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil*
62 *penalty of not less than \$500 nor more than \$2,500, which amount shall be paid into the Fraud and*
63 *Abuse Whistle Blower Reward Fund. The court may also order appropriate remedies, including (i)*
64 *reinstatement to the same position or, if the position is filled, to an equivalent position; (ii) back pay;*
65 *(iii) full reinstatement of fringe benefits and seniority rights; or (iv) any combination of these remedies.*
66 *The whistle blower shall be entitled to recover reasonable attorney fees and costs. No action brought*
67 *under this subsection shall be brought more than three years after the date the unlawful discharge,*
68 *discrimination, or retaliation occurs. Any whistle blower proceeding under this subsection shall not be*
69 *required to exhaust existing internal procedures or other administrative remedies.*

70 *E. Nothing in this chapter shall prohibit an employer from disciplining or discharging a whistle*
71 *blower for his misconduct or any violation of criminal law.*

72 **§ 8.01-216.2. Definitions.**

73 As used in this article, unless the context requires otherwise:

74 "Attorney General" means the Attorney General of Virginia, the Chief Deputy, other deputies,
75 counsels or assistant attorneys general employed by the Office of the Attorney General and designated
76 by the Attorney General to act pursuant to this article.

77 "Claim" means any request or demand, whether under a contract or otherwise, for money or property,
78 regardless of whether the Commonwealth has title to the money or property, that (i) is presented to an
79 officer, employee, or agent of the Commonwealth or (ii) is made to a contractor, grantee, or other
80 recipient (a) if the money or property is to be spent or used on the Commonwealth's behalf or to
81 advance a governmental program or interest and (b) if the Commonwealth provides or has provided any
82 portion of the money or property requested or demanded or will reimburse such contractor, grantee, or
83 other recipient for any portion of the money or property that is requested or demanded. For purposes of
84 this article, "claim" does not include requests or demands for money or property that the Commonwealth
85 has paid to an individual as compensation for employment with the Commonwealth or as income
86 subsidy with no restriction on that individual's use of the money or property.

87 "Commonwealth" means the Commonwealth of Virginia, any agency of state government, and any
88 political subdivision of the Commonwealth.

89 "Documentary material" means the original or any copy of any book, record, report, memorandum,
90 paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible
91 through computer or other information retrieval systems, together with instructions and all other
92 materials necessary to use or interpret such data compilations, and any product of discovery.

93 "Employee" includes an employee or officer of the Commonwealth. *The term shall also include a*
94 *deputy sheriff employed by a city or county sheriff's office.*

95 "Employer" includes the Commonwealth. *The term shall also include a city or county sheriff's office.*

96 "Investigation" means any inquiry conducted by an investigator for the purpose of ascertaining
97 whether any person is or has been engaged in any violation of this article.

98 "Material" means having a natural tendency to influence, or be capable of influencing, the payment
99 or receipt of money or property.

100 "Obligation" means an established duty, whether or not fixed, arising from (i) an express or implied
101 contractual, grantor-grantee, or licensor-licensee relationship; (ii) a fee-based or similar relationship; (iii)
102 a statute or regulation; or (iv) the retention of any overpayment.

103 "Official use" means any use that is consistent with the law, regulations, and policies of the
104 Commonwealth, including use in connection with (i) internal memoranda and reports of the Office of
105 the Attorney General; (ii) communications between the Office of the Attorney General and a federal,
106 state, or local government agency, or a contractor of a federal, state, or local government agency,
107 undertaken in furtherance of an Office of the Attorney General investigation or prosecution of a case;
108 (iii) interviews of any qui tam relator or other witness; (iv) oral examinations; (v) depositions; (vi) the
109 preparation for and response to civil discovery requests; (vii) the introduction into the record of a case
110 or proceeding; (viii) applications, motions, memoranda, and briefs submitted to a court or other tribunal;
111 and (ix) communications with government investigators, auditors, consultants, experts, the counsel of
112 other parties, arbitrators, and mediators, concerning an investigation, case, or proceeding.

113 "Person" includes any natural person, corporation, firm, association, organization, partnership, limited
114 liability company, business or trust.

115 "Product of discovery" means (i) the original or duplicate of any deposition, interrogatory, document,
116 thing, result of the inspection of land or other property, examination, or admission, which is obtained by
117 any method of discovery in any judicial or administrative proceeding of an adversarial nature; (ii) any
118 digest, analysis, selection, compilation, or derivation of any item listed in clause (i); and (iii) any index
119 or other manner of access to any item listed in clause (i).