

23103054D

HOUSE BILL NO. 1895

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 40.1-27.3 and 40.1-28.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 40.1-28.02, relating to employee protection; prohibited retaliation; prohibited nondisclosure and nondisparagement provisions; civil penalty.

Patrons—Filler-Corn and Guzman

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-27.3 and 40.1-28.01 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 40.1-28.02 as follows:

§ 40.1-27.3. Retaliatory action against employee prohibited.

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

1. Or a person acting on behalf of the employee in good faith reports a violation of any federal or state law or regulation to a supervisor or to any governmental body or law-enforcement official;

2. Is requested by a governmental body or law-enforcement official to participate in an investigation, hearing, or inquiry;

3. Refuses to engage in a criminal act that would subject the employee to criminal liability;

4. Refuses an employer's order to perform an action that violates any federal or state law or regulation and the employee informs the employer that the order is being refused for that reason; or

5. Provides information to or testifies before any governmental body or law-enforcement official conducting an investigation, hearing, or inquiry into any alleged violation by the employer of federal or state law or regulation; or

6. *Discloses or discusses conduct that the employee reasonably believes to be discrimination, including harassment, retaliation, a wage or hour violation, sexual assault, a fraud (against taxpayers, shareholders, the government, consumers, or other employees), or other conduct that is recognized as against a clear mandate of public policy.*

B. This section does not:

1. Authorize an employee to make a disclosure of data otherwise protected by law or any legal privilege;

2. Permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth; or

3. Permit disclosures that would violate federal or state law; or

4. *Permit disclosures that would diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law, unless such disclosures relate to an employee's experience of unlawful workplace conduct as protected under § 40.1-28.01.*

C. A person who alleges a violation of this section may bring a civil action in a court of competent jurisdiction within one year of the employer's prohibited retaliatory action. The court may order as a remedy to the employee (i) an injunction to restrain continued violation of this section, (ii) the reinstatement of the employee to the same position held before the retaliatory action or to an equivalent position, and (iii) compensation for lost wages, benefits, and other remuneration, together with interest thereon, as well as reasonable attorney fees and costs.

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

A. ~~No employer shall require an employee or a prospective employee to execute or renew any A provision in a nondisclosure or confidentiality agreement that has the purpose or effect of concealing the details relating to a claim 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. Any such provision is against public policy and is void and unenforceable.~~

B. ~~This A provision in any employment contract that waives an employee's substantive or procedural right or remedy relating to a claim of discrimination, including harassment, retaliation, or whistleblowing is against public policy and unenforceable.~~

C. ~~A provision in any employment contract, independent contractor agreement, agreement to pay compensation in exchange for the release of a legal claim, settlement agreement or any other agreement between an employer and an employee that prevents the disclosure or discussion of conduct, or the~~

INTRODUCED

HB1895

59 existence of a settlement involving conduct, that the employee reasonably believed under state, federal,
60 or common law to be discrimination, including harassment, retaliation, a wage or hour violation, sexual
61 assault, a fraud (against taxpayers, shareholders, the government, consumers, or other employees), or
62 other conduct that is recognized as against a clear mandate of public policy, is void and unenforceable.
63 This includes nondisclosure and nondisparagement provisions that prevent the disclosure or discussion
64 of such conduct occurring at the workplace, at work-related events coordinated by or through the
65 employer, between employees, or between an employer and an employee, whether on or off the
66 employment premises.

67 D. No employer shall discharge or otherwise discriminate or retaliate against an employee for
68 disclosing or discussing conduct that the employee reasonably believes to be discrimination, including
69 harassment, retaliation, a wage or hour violation, sexual assault, a fraud (against taxpayers,
70 shareholders, the government, consumers, or other employees), or other conduct that is recognized as
71 against a clear mandate of public policy, occurring in the workplace, at work-related events coordinated
72 by or through the employer, between employers, or between an employer and an employee, whether on
73 or off the employment premises.

74 E. No employer shall require an employee to enter into any agreement provision that is prohibited
75 by this section. No employer shall attempt to enforce a provision of an agreement prohibited by this
76 section, whether through a lawsuit, a threat to enforce, or any other attempt to influence a party to
77 comply with a provision in any agreement that is prohibited by this section.

78 F. Nothing in this section shall be construed to (i) prohibit the inclusion or enforcement of a
79 provision in any agreement that restricts an employer from revealing the identity of an employee and
80 the existence of and circumstances surrounding the employee's complaint about workplace practices,
81 except as required by law, or (ii) prohibit an employer and an employee from protecting trade secrets,
82 proprietary information, or any other confidential information that does not involve illegal acts.

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

85 H. An employer that violates the provisions of this section after July 1, 2023, shall be liable in a
86 civil cause of action for actual damages or statutory damages of \$10,000, whichever is greater, as well
87 as reasonable attorney fees and costs.

88 I. For the purposes of this section, "employee" includes a prospective employee and an independent
89 contractor.

90 **§ 40.1-28.02. Employment agreements and settlement agreements; required disclaimer.**

91 In any settlement agreement reached between an employer and an employee and in any employment
92 agreement executed between an employer and an employee at the commencement of employment, the
93 employer shall include a written disclaimer stating that nothing in the agreement prohibits an employee
94 from disclosing or discussing conduct that an employee reasonably believes under state, federal, or
95 common law to be discrimination, including harassment, retaliation, a wage or hour violation, sexual
96 assault, a fraud (against taxpayers, shareholders, the government, consumers, or other employees), or
97 other conduct that is recognized as against a clear mandate of public policy.

98 **2. That the provisions of this act shall apply to all contracts and agreements described in**
99 **§ 40.1-28.01 of the Code of Virginia, as amended by this act, that are entered into, renewed,**
100 **modified, or amended on or after July 1, 2023.**

101 **3. That the provisions of this act shall apply retroactively to any provision in a contract or**
102 **agreement that is deemed void and unenforceable pursuant to § 40.1-28.01 of the Code of Virginia,**
103 **as amended by this act, that was entered into before July 1, 2023, thereby rendering any such**
104 **provision severable, void, and unenforceable.**