

23104186D

SENATE BILL NO. 1136

Senate Amendments in [] - February 2, 2023

Prefiled January 10, 2023

A *BILL to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:10, relating to prohibition on employer seeking wage or salary history of prospective employees; cause of action; civil penalty.*

Patrons Prior to Engrossment—Senators Boysko, Surovell, Favola, Hashmi and Locke; Delegate: Shin

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:10 as follows:

§ 40.1-28.7:10. Seeking wage or salary history of prospective employees prohibited; civil penalty.

A. As used in this section:

"Wage or salary history" means the wage or salary paid to the prospective employee by the prospective employee's current employer or previous employer.

"Wage or salary range" means the minimum and maximum wage or salary for the position, set in good faith by reference to any applicable pay scale, any previously determined wage or salary range for the position, the actual range of wages or salaries for those currently holding comparable positions, or the budgeted amount for the position, as applicable.

B. No employer shall:

1. Seek the wage or salary history of a prospective employee;

2. Rely on the wage or salary history of a prospective employee in considering the prospective employee for employment;

3. Except as provided in subsection D, rely on the wage or salary history of a prospective employee in determining the wages or salary the prospective employee is to be paid upon hire;

4. Refuse to interview, hire, employ, or promote a prospective employee or otherwise retaliate against a prospective employee for not providing wage or salary history or for requesting a wage or salary range;

5. Fail or refuse to provide a prospective employee the wage or salary range for the position for which the prospective employee is applying prior to discussing compensation and at any time upon the prospective employee's request; or

6. Fail to set a wage or salary range in good faith. Any analysis of whether the [~~range~~ wage] or salary range has been set in good faith shall consider, among other things, the breadth of the wage or salary.

C. The provisions of subsection B shall not be construed to prevent a prospective employee from voluntarily disclosing wage or salary history, including for the purpose of negotiating wages or salary after an initial offer of employment with an offer of compensation.

D. If wage or salary history is voluntarily provided by a prospective employee without prompting from the employer, then (i) the employer may rely on such wage or salary history to support a wage or salary higher than the employer's initial offer of compensation only to the extent that the higher wage or salary does not create an unlawful pay differential in violation of § 40.1-28.6 or federal law and (ii) the employer may seek to confirm the wage or salary history of the prospective employee to support a wage or salary higher than the wage or salary offered by the employer only to the extent that the higher wage or salary does not create an unlawful pay differential in violation of § 40.1-28.6 or federal law.

E. An employer that violates the provisions of this section shall be liable to the prospective employee or employee who was the subject of the violation for statutory damages between \$1,000 and \$10,000 or actual damages, whichever is greater; reasonable attorney fees and costs; and any other legal and equitable relief as may be appropriate. An aggrieved prospective employee or employee may bring an action, individually, jointly, with other aggrieved prospective employees or employees, or on behalf of similarly situated prospective employees or employees as a collective action against the employer in a court of competent jurisdiction within two years of when the prohibited action occurred. For the purpose of this section, a prohibited action occurs when (i) a prohibited wage or salary decision or practice is adopted; (ii) an individual is subject to a prohibited wage or salary decision or practice; or (iii) an individual is affected by the application of a prohibited wage or salary decision or practice, including each time wages or salaries paid result, in whole or in part, from a prohibited wage or salary decision or practice.

ENGROSSED

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59 *F. Any employer that violates the provisions of this section is subject to a civil penalty not to exceed*
60 *(i) \$1,000 for a first violation, (ii) \$2,000 for a second violation, and (iii) \$4,000 for a third or*
61 *subsequent violation. The Commissioner shall notify any employer that he alleges has violated any*
62 *provision of this section by certified mail. Such notice shall contain a description of the alleged*
63 *violation. Within 15 days of receipt of notice of the alleged violation, the employer may request an*
64 *informal conference regarding such violation with the Commissioner. In determining the amount of any*
65 *penalty to be imposed, the Commissioner shall consider the size of the business of the employer charged*
66 *and the gravity of the violation. The decision of the Commissioner shall be final. Civil penalties under*
67 *this section shall be assessed by the Commissioner and paid to the Literary Fund. The Commissioner*
68 *shall prescribe procedures for the payment of proposed penalties that are not contested by employers.*