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SENATE BILL NO. 1271

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend the Code of Virginia by adding in Chapter 65 of Title 3.2 an article numbered 13.1, consisting of sections 3.2-6593.2 through 3.2-6593.7, relating to animal testing; annual report; whistle blower protections created; Animal Welfare Whistle Blower Reward Fund established; civil penalty.

Patrons—Boysko, Stanley, Morrissey and Surovell

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 65 of Title 3.2 an article numbered 13.1, consisting of sections 3.2-6593.2 through 3.2-6593.7, as follows:

Article 13.1.

Report and Animal Welfare Whistle Blower Protections.

§ 3.2-6593.2. Definitions.

For the purposes of this article unless the context requires a different meaning:

"Animal" means any live vertebrate nonhuman animal.

"Animal testing facility" means any facility, including a private entity, state agency, or institution of higher education that confines and uses animals for research, education, testing, or experimental, scientific, or medical purposes.

"Animal test method" means a process or procedure that uses animals to obtain information on the characteristics of a chemical or agent or the biological effect of exposure to a chemical or agent under specified conditions.

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

"Contract testing facility" means any partnership, corporation, association, or other legal relationship that tests chemicals, ingredients, product formulations, or products on behalf of another entity.

"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 an animal testing facility, contract testing facility, or manufacturer that uses an animal test method.

"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 animal testing facility, contract testing facility, or manufacturer that uses an animal test method.

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

"Manufacturer" means any partnership, corporation, association, or other legal entity that produces chemicals, ingredients, product formulations, or products.

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

"Whistle blower" means an employee who witnesses or has evidence of wrongdoing 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 to one of the employee's superiors, an agent of the employer, or an appropriate authority. "Whistle blower" includes any individual who witnesses or has evidence of wrongdoing 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 to 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, local ordinance, or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or an employee.

§ 3.2-6593.3. Animal testing; annual report.

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59 A. Any animal testing facility, contract testing facility, or manufacturer that uses an animal test
60 method shall submit an annual report on or before December 1 for the preceding year to the
61 Department in a form it prescribes. The annual report shall include the following information:

62 1. The total number of animals used for research, education, testing, or experimentation, scientific,
63 or medical purposes with such animals identified and grouped according to species;

64 2. A detailed methodology for obtaining such a count of animals;

65 3. The percentage of funds expended by such facility or manufacturer on such research that involved
66 the use of animals in comparison to funds spent on such research that did not involve the use of
67 animals; and

68 4. A plan outlining how such facility or manufacturer will reduce the use of animals in such
69 research that includes an estimate of the percentage reduction of such use over the next 10 years.

70 B. Any whistle blower who reports a violation of this section shall be protected in accordance with
71 §§ 3.2-6593.4 and 3.2-6593.5.

72 **§ 3.2-6593.4. Whistle blower protections; animal testing; civil penalty.**

73 A. No employer shall discharge, threaten, or otherwise discriminate or retaliate against a whistle
74 blower, in whole or in part, who discloses information about suspected wrongdoing in connection with
75 the annual report requirements in § 3.2-6593.3, or any animal care requirements in this chapter whether
76 such whistle blower acts on his own or through a person acting on his behalf or under his direction.

77 B. No employer shall discharge, threaten, or otherwise discriminate or retaliate against a whistle
78 blower, in whole or in part, because the whistle blower is requested or subpoenaed by an appropriate
79 authority to participate in an investigation, hearing, or inquiry by such appropriate authority or in a
80 court action.

81 C. To be protected by the provisions of this section, an employee who discloses information about
82 suspected wrongdoing in connection with the annual report requirements in § 3.2-6593.3 or any animal
83 care requirements in this chapter shall do so in good faith and upon a reasonable belief that the
84 information is accurate. Disclosures that are reckless or that the employee knew or should have known
85 were false, confidential by law, or malicious shall not be deemed good faith reports and shall not be
86 protected pursuant to this section.

87 D. In addition to the remedies provided in § 3.2-6593.5, any whistle blower may bring a civil action
88 for a violation of § 3.2-6593.3 or any animal care requirements in this chapter in the circuit court of
89 the jurisdiction where the whistle blower is employed. In a proceeding commenced against an employer,
90 the court, if it finds that a violation was recklessly made, shall impose upon such employer that is a
91 party to the action, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of
92 not less than \$500 nor more than \$2,500, which amount shall be paid into the Animal Welfare Whistle
93 Blower Reward Fund established in § 3.2-6593.7. Where the employer has taken adverse employment
94 action against the whistle blower, the court may also order appropriate remedies, including (i)
95 reinstatement to the same position or, if the position is filled, to an equivalent position; (ii) back pay;
96 (iii) full reinstatement of fringe benefits and seniority rights; or (iv) any combination of these remedies.
97 The whistle blower shall be entitled to recover reasonable attorney fees and costs. No action brought
98 under this subsection shall be brought more than three years after the wrongdoing occurred. Any
99 whistle blower proceeding under this subsection shall not be required to exhaust existing internal
100 procedures or other administrative remedies.

101 E. Nothing in this section shall prohibit an employer from disciplining or discharging a whistle
102 blower for his misconduct or any violation of criminal law.

103 **§ 3.2-6593.5. State or local grievance procedure; other remedies.**

104 A. Any whistle blower covered by the state grievance procedure pursuant to Chapter 30 (§ 2.2-3000
105 et seq.) of Title 2.2 or a local grievance procedure established under § 15.2-1506 may initiate a
106 grievance alleging retaliation and requesting relief through that procedure.

107 B. Any whistle blower disclosing information of wrongdoing in connection with the annual report
108 requirements in § 3.2-6593.3 or violations of any animal care requirements in this chapter where the
109 disclosure results in a recovery of at least \$5,000 may file a claim for reward under the Animal Welfare
110 Whistle Blower Reward Fund established in § 3.2-6593.7.

111 **§ 3.2-6593.6. Whistle blower protection; notice to employees.**

112 An animal testing facility, contract testing facility, or manufacturer that uses an animal test method
113 shall post notices and use other appropriate means to notify its employees and keep them informed of
114 the protections and obligations set forth in the provisions of §§ 3.2-6593.4 and 3.2-6593.5.

115 **§ 3.2-6593.7. Animal Welfare Whistle Blower Reward Fund.**

116 A. From funds authorized by the General Assembly, there is hereby created in the state treasury a
117 special nonreverting fund to be known as the Animal Welfare Whistle Blower Reward Fund, hereafter
118 referred to as "the Fund." The Fund shall be established on the books of the Comptroller and shall be
119 administered by the Department. All moneys recovered by the Department as the result of whistle blower
120 activity shall be deposited in the Fund. Interest earned on moneys in the Fund shall remain in the Fund

121 *and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each*
122 *fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall*
123 *be used solely to (i) provide monetary rewards to persons who have disclosed information of*
124 *wrongdoing under § 3.2-6593.4 or 3.2-6593.5 and such disclosure results in a recovery of at least*
125 *\$5,000 or (ii) support the administration of the Fund or defray Fund advertising costs.*
126 *B. The Department shall promulgate regulations for the proper administration of the Fund, including*
127 *eligibility requirements and procedures for filing a claim. The Department shall submit an annual report*
128 *to the General Assembly summarizing the activities of the Fund.*

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