

SENATE BILL NO. 370

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on January 31, 2024)

(Patron Prior to Substitute--Senator Boysko)

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:11, relating to prohibiting employer seeking wage or salary history of prospective employees; wage or salary range transparency; cause of action.

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 40.1-28.7:11 as follows:

§ 40.1-28.7:11. Seeking wage or salary history of prospective employees prohibited; wage or salary range transparency; cause of action.

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 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 persons currently holding equivalent positions, or the budgeted amount available 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;

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

29 5. Fail or refuse to disclose in each public and internal posting for each job, promotion, transfer,
30 or other employment opportunity the wage, salary, or wage or salary range for the position; or

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

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

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

43 E. An employer that violates the provisions of this section shall be liable to the prospective
44 employee or employee who was the subject of such violation for statutory damages between \$1,000 and
45 \$10,000 or actual damages, whichever is greater; reasonable attorney fees and costs; and any other legal
46 and equitable relief as may be appropriate. An aggrieved prospective employee or employee may bring
47 an action, individually, jointly with other aggrieved prospective employees or employees, or on behalf of
48 similarly situated prospective employees or employees as a collective action against the employer in a
49 court of competent jurisdiction within two years of when the prohibited action occurred. For the purpose
50 of this section, a prohibited action occurs when (i) a prohibited wage or salary decision or practice is
51 adopted; (ii) an individual is subject to a prohibited wage or salary decision or practice; or (iii) an
52 individual is affected by the application of a prohibited wage or salary decision or practice, including each
53 time wages or salaries paid result, in whole or in part, from a prohibited wage or salary decision or practice.

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