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SENATE BILL NO. 747

Offered January 12, 2011

Prefiled October 29, 2010

A BILL to amend and reenact § 2.2-3004 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-2901.1, relating to nondiscrimination in state government employment.

Patrons—McEachin; Delegates: Carr, Dance, Englin, Kory and McClellan

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3004 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-2901.1 as follows:

§ 2.2-2901.1. Employment discrimination prohibited.

No state agency, institution, board, bureau, commission, council, or instrumentality of the Commonwealth shall discriminate in employment based on race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, or status as a special disabled veteran or other veteran covered by the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. § 4212).

For the purposes of this section, "sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression. Sexual orientation shall not include any person's attraction toward persons with whom sexual conduct would be illegal due to the age of the parties.

§ 2.2-3004. Grievances qualifying for a grievance hearing; grievance hearing generally.

A. A grievance qualifying for a hearing shall involve a complaint or dispute by an employee relating to the following adverse employment actions in which the employee is personally involved, including but not limited to (i) formal disciplinary actions, including suspensions, demotions, transfers and assignments, and dismissals resulting from formal discipline or unsatisfactory job performance; (ii) the application of all written personnel policies, procedures, rules and regulations where it can be shown that policy was misapplied or unfairly applied; (iii) discrimination on the basis of race, color, religion, political affiliation, age, disability, national origin or sex, pregnancy, childbirth or related medical conditions, marital status, sexual orientation, or status as a special disabled veteran or other veteran covered by the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. § 4212); (iv) arbitrary or capricious performance evaluations; (v) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement; and (vi) retaliation for exercising any right otherwise protected by law.

B. Management reserves the exclusive right to manage the affairs and operations of state government. Management shall exercise its powers with the highest degree of trust. In any employment matter that management precludes from proceeding to a grievance hearing, management's response, including any appropriate remedial actions, shall be prompt, complete, and fair.

C. Complaints relating solely to the following issues shall not proceed to a hearing: (i) establishment and revision of wages, salaries, position classifications, or general benefits; (ii) work activity accepted by the employee as a condition of employment or which may reasonably be expected to be a part of the job content; (iii) contents of ordinances, statutes or established personnel policies, procedures, and rules and regulations; (iv) methods, means, and personnel by which work activities are to be carried on; (v) termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vi) hiring, promotion, transfer, assignment, and retention of employees within the agency; and (vii) relief of employees from duties of the agency in emergencies.

D. Decisions regarding whether a grievance qualifies for a hearing shall be made in writing by the agency head or his designee within five workdays of the employee's request for a hearing. A copy of the decision shall be sent to the employee. The employee may appeal the denial of a hearing by the agency head to the Director of the Department of Employment Dispute Resolution (the "Director"). Upon receipt of an appeal, the agency shall transmit the entire grievance record to the Department of Employment Dispute Resolution within five workdays. The Director shall render a decision on whether the employee is entitled to a hearing upon the grievance record and other probative evidence.

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59 E. Proceedings for review of the decision of the Director may be made by an employee filing a
60 notice of appeal within five workdays of receipt of the decision. Within five workdays thereafter, the
61 agency shall transmit to the clerk of the circuit court in the jurisdiction in which the grievance arose a
62 copy of the grievance record. The court, on motion of the grievant, may issue a writ of certiorari
63 requiring the Director to transmit the record on or before a certain date. Within ~~thirty~~ 30 days of receipt
64 of such records, the court, sitting without a jury, shall hear the appeal on the record and such additional
65 evidence as may be necessary to resolve any controversy as to the correctness of the record. The court,
66 in its discretion, may receive such other evidence as the ends of justice require. The court may affirm
67 the decision of the Director or may reverse or modify the decision. The decision of the court shall be
68 rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of
69 the court shall be final and shall not be appealable. The circuit court hearing shall be at no cost to the
70 Commonwealth or the grievant.

71 F. The hearing pursuant to § 2.2-3005 shall be held in the locality in which the employee is
72 employed or in any other locality agreed to by the employee, employer, and hearing officer. The
73 employee and the agency may be represented by legal counsel or a lay advocate, the provisions of
74 § 54.1-3904 notwithstanding. The employee and the agency may call witnesses to present testimony and
75 be cross-examined.