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SENATE BILL NO. 21

Offered January 11, 2006

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A BILL to amend and reenact §§ 2.2-1201, 2.2-3707.1, 2.2-3801, 17.1-276, 22.1-70.2, 24.2-105.1, 24.2-914.1, 42.1-36.1, 58.1-609.5, and 58.1-3122.2 of the Code of Virginia, relating to references to the Internet.

Patrons—Mims and Edwards; Delegate: Landes

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1201, 2.2-3707.1, 2.2-3801, 17.1-276, 22.1-70.2, 24.2-105.1, 24.2-914.1, 42.1-36.1, 58.1-609.5, and 58.1-3122.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1201. Duties of Department.

The Department shall have the following duties:

1. Make recommendations to the Governor regarding the establishment and maintenance of a classification plan for the service of the Commonwealth, and recommend necessary amendments thereto.

2. Make recommendations to the Governor regarding the establishment and administration of a compensation plan for all employees, and recommend necessary amendments thereto.

3. Design and maintain a personnel information system that shall support the operational needs of the Department and of state agencies, and that shall provide for the management information needs of the Governor, his secretaries, and the General Assembly. The system shall provide at a minimum a roster of all employees in the service of the Commonwealth, in which there shall be set forth as to each employee, the employing agency, the class title, pay, status and such other data as may be deemed desirable to produce significant facts pertaining to personnel administration.

4. Establish and direct a program of employee-management relations designed to improve communications between employees and agencies of the Commonwealth.

5. Establish and administer a system of performance evaluation for all employees in the service of the Commonwealth, based on the quality of service rendered, related where practicable to specific standards of performance. In no event shall workers' compensation leave affect the total number of hours credited during a performance cycle for purposes of calculating incentive increases in salary based on such performance evaluations.

6. Establish and administer a system of recruitment designed to attract high quality employees to the service of the Commonwealth. In administering this system, applicants shall be rated on the basis of relative merit and classified in accordance with their suitability for the various classes of positions in the service of the Commonwealth, and a record thereof shall be maintained in the open register.

7. Design and utilize an application form which shall include, but not be limited to, information on prior volunteer work performed by the applicant.

8. Establish and administer a comprehensive and integrated program of employee training and management development.

9. Establish and administer a program of evaluation of the effectiveness of performance of the personnel activities of the agencies of the Commonwealth.

10. Establish and administer a program to ensure equal employment opportunity to applicants for state employment and to state employees in all incidents of employment.

11. Establish and administer regulations relating to disciplinary actions; however, no disciplinary action shall include the suspension without pay for more than 10 days of any state employee who is under investigation without a hearing conducted either by a level of supervision above the employee's immediate supervisor or by his agency head.

12. Adopt and implement a centralized program to provide awards to employees who propose procedures or ideas that are adopted and that will result in eliminating or reducing state expenditures or improving operations, provided such proposals are placed in effect. The centralized program shall be designed to (i) protect the identity of the individual making the proposal while it is being evaluated for implementation by a state agency, (ii) publicize the acceptance of proposals and financial awards to state employees, and (iii) include a reevaluation process that individuals making proposals may access if their proposals are rejected by the evaluating agency. The reevaluation process must include individuals from the private sector. State employees who make a suggestion or proposal under this section shall receive initial confirmation of receipt within 30 days. A determination of the feasibility of the suggestion or proposal shall occur within 60 days of initial receipt.

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59 13. Develop state personnel policies and, after approval by the Governor, disseminate and interpret
60 state personnel policies and procedures to all agencies. Such personnel policies shall permit an
61 employee, with the written approval of his agency head, to substitute (i) up to 33 percent of his accrued
62 paid sick leave, (ii) up to 100 percent of any other paid leave, or (iii) any combination of accrued paid
63 sick leave and any other paid leave for leave taken pursuant to the Family and Medical Leave Act of
64 1993 (29 U.S.C. § 2601 et seq.). On and after December 1, 1999, such personnel policy shall include an
65 acceptable use policy for the ~~international network of computer systems commonly known as the~~
66 Internet. At a minimum, the Department's acceptable use policy shall contain provisions that (i) prohibit
67 use by state employees of the Commonwealth's computer equipment and communications services for
68 sending, receiving, viewing, or downloading illegal material via the Internet and (ii) establish strict
69 disciplinary measures for violation of the acceptable use policy. An agency head may supplement the
70 Department's acceptable use policy with such other terms, conditions, and requirements as he deems
71 appropriate. The Director of the Department shall have the final authority to establish and interpret
72 personnel policies and procedures and shall have the authority to ensure full compliance with such
73 policies. However, unless specifically authorized by law, the Director of the Department shall have no
74 authority with respect to the state grievance procedures.

75 13a. Develop state personnel policies, with the approval of the Governor, that permit any full-time
76 state employee who is also a member of the organized reserve forces of any of the armed services of
77 the United States or of the Virginia National Guard to carry forward from year to year the total of his
78 accrued annual leave time without regard to the regulation or policy of his agency regarding the
79 maximum number of hours allowed to be carried forward at the end of a calendar year. Any amount
80 over the usual amount allowed to be carried forward shall be reserved for use only as leave taken
81 pursuant to active military service as provided by § 2.2-2903.1. Such leave and its use shall be in
82 addition to leave provided under § 44-93. Any leave carried forward for the purposes described
83 remaining upon termination of employment with the Commonwealth or any department, institution or
84 agency thereof that has not been used in accordance with § 2.2-2903.1 shall not be paid or credited in
85 any way to the employee.

86 14. Ascertain and publish on an annual basis, by agency, the number of employees in the service of
87 the Commonwealth, including permanent full-time and part-time employees, those employed on a
88 temporary or contractual basis, and constitutional officers and their employees whose salaries are funded
89 by the Commonwealth. The publication shall contain the net gain or loss to the agency in personnel
90 from the previous fiscal year and the net gains and losses in personnel for each agency for a three-year
91 period.

92 15. Submit a report to the members of the General Assembly on or before September 30 of each
93 year showing (i) the total number of full- and part-time employees, (ii) contract temporary employees,
94 (iii) hourly temporary employees, and (iv) the number of employees who voluntarily and involuntarily
95 terminated their employment with each department, agency or institution in the previous fiscal year.

96 16. Administer the workers' compensation insurance plan for state employees in accordance with
97 § 2.2-2821.

98 § 2.2-3707.1. Posting of minutes for state boards and commissions.

99 All boards, commissions, councils, and other public bodies created in the executive branch of state
100 government and subject to the provisions of this chapter shall post minutes of their meetings on the
101 ~~global information system known as the~~ Internet. Those executive branch public bodies that promulgate
102 regulations may post minutes of their meetings on a web site administered by the Department of
103 Planning and Budget. Executive branch public bodies that do not promulgate regulations may post
104 minutes on an electronic calendar maintained by the Virginia Information Technologies Agency. Draft
105 minutes of meetings shall be posted as soon as possible but no later than ten working days after the
106 conclusion of the meeting. Final approved meeting minutes shall be posted within three working days of
107 final approval of the minutes.

108 § 2.2-3801. Definitions.

109 As used in this chapter, unless the context requires a different meaning:

110 1. "Information system" means the total components and operations of a record-keeping process,
111 including information collected or managed by means of computer networks and the ~~global information~~
112 ~~system known as the~~ Internet, whether automated or manual, containing personal information and the
113 name, personal number, or other identifying particulars of a data subject.

114 2. "Personal information" means all information that describes, locates or indexes anything about an
115 individual including his real or personal property holdings derived from tax returns, and his education,
116 financial transactions, medical history, ancestry, religion, political ideology, criminal or employment
117 record, or that affords a basis for inferring personal characteristics, such as finger and voice prints,
118 photographs, or things done by or to such individual; and the record of his presence, registration, or
119 membership in an organization or activity, or admission to an institution. "Personal information" shall
120 not include routine information maintained for the purpose of internal office administration whose use

could not be such as to affect adversely any data subject nor does the term include real estate assessment information.

3. "Data subject" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system.

4. "Disseminate" means to release, transfer, or otherwise communicate information orally, in writing, or by electronic means.

5. "Purge" means to obliterate information completely from the transient, permanent, or archival records of an organization.

6. "Agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns, regional governments, and the departments thereof, and includes constitutional officers, except as otherwise expressly provided by law. "Agency" shall also include any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function. Any such entity included in this definition by reason of a contractual relationship shall only be deemed an agency as relates to services performed pursuant to that contractual relationship, provided that if any such entity is a consumer reporting agency, it shall be deemed to have satisfied all of the requirements of this chapter if it fully complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services performed pursuant to such contractual relationship.

§ 17.1-276. Fee allowed for providing remote access to certain records.

Any clerk who provides electronic access, including access through the ~~global information system known as the~~ Internet, to nonconfidential court records or other records pursuant to §§ 17.1-225 and 17.1-226 may charge a fee established by the clerk or by the agency of the county, city or town providing computer support to cover the operational expenses of such electronic access, including, but not limited to, computer support, maintenance, enhancements, upgrades, and replacements. The fee may be assessed for each inquiry, upon actual connect time, or as a flat rate fee. If charged, the fee shall be charged each user, paid to the clerk's office, and deposited by the clerk into a special nonreverting local fund to be used to cover the operational expenses of such electronic access. In addition, the clerk may charge users a clerk's fee not to exceed \$25 per month.

§ 22.1-70.2. Acceptable Internet use policies for public and private schools.

A. Every two years, each division superintendent shall file with the Superintendent of Public Instruction an acceptable use policy, approved by the local school board, for the ~~international network of computer systems commonly known as the~~ Internet. At a minimum, the policy shall contain provisions that (i) are designed to prohibit use by division employees and students of the division's computer equipment and communications services for sending, receiving, viewing, or downloading illegal material via the Internet; (ii) seek to prevent access by students to material that the school division deems to be harmful to juveniles as defined in § 18.2-390; (iii) select a technology for the division's computers having Internet access to filter or block Internet access through such computers to child pornography as set out in § 18.2-374.1:1 and obscenity as defined in § 18.2-372; and (iv) establish appropriate measures to be taken against persons who violate the policy. The policy may include such other terms, conditions, and requirements as deemed appropriate, such as requiring written parental authorization for Internet use by juveniles or differentiating acceptable uses among elementary, middle, and high school students.

B. The superintendent shall take such steps as he deems appropriate to implement and enforce the division's policy.

C. On or before December 1, 2000, and biennially thereafter, the Superintendent of Public Instruction shall submit a report to the Chairmen of the House Committee on Education, the House Committee on Science and Technology, and the Senate Committee on Education and Health which summarizes the acceptable use policies filed with the Superintendent pursuant to this section and the status thereof.

D. In addition to the foregoing requirements regarding public school Internet use policies, the principal or other chief administrator of any private school that satisfies the compulsory school attendance law pursuant to § 22.1-254 and accepts federal funds for Internet access shall select a technology for its computers having Internet access to filter or block Internet access through such computers to child pornography as set out in § 18.2-374.1:1 and obscenity as defined in § 18.2-372.

§ 24.2-105.1. Election information on the Internet.

Beginning with the general election in November 1998, the State Board shall implement a system by which it shall furnish lists of candidates for all elections in the Commonwealth, and information on proposed constitutional amendments and statewide referenda prepared pursuant to §§ 30-19.9 and 30-19.10, electronically through the ~~global information system known as the~~ Internet. The Board may list other referenda issues on the Internet. The lists and information shall be made available on the Internet as far in advance of the election as practicable and remain available on the Internet at least until the day after the election.

182 § 24.2-914.1. Standards and requirements for electronic preparation and transmittal of campaign
183 finance disclosure reports; database.

184 A. The State Board of Elections shall review or cause to be developed and shall approve standards
185 for the preparation, production, and transmittal by computer or electronic means of the reports of
186 contributions and expenditures required by this article (§ 24.2-914 et seq.). The State Board may
187 prescribe the method of execution and certification of electronically filed statements and the procedures
188 for receiving statements in the office of the State Board or by the local electoral boards.

189 B. 1. The State Board shall accept any report of contributions and expenditures filed by candidates
190 for the General Assembly, Governor, Lieutenant Governor, and Attorney General by computer or
191 electronic means in accordance with the standards approved by the State Board and using software
192 meeting standards approved by it.

193 2. A local electoral board may accept reports of contributions and expenditures filed by computer or
194 electronic means from any candidate or political committee that is required to file reports with that
195 board. Such reports shall be filed in accordance with, and using software that meets, standards approved
196 by the State Board. The electoral board shall promptly make the information that it accepts in this
197 manner available to the public through the ~~global information system known as the~~ Internet.

198 3. The State Board may provide software to filers without charge or at a reasonable cost.

199 C. On and after January 1, 2001, the State Board shall enter or cause to be entered into a campaign
200 finance database, available to the public through the ~~global information system known as the~~ Internet,
201 the information from required reports of contributions and expenditures filed by computer, electronic, or
202 other means by candidates for the General Assembly, Governor, Lieutenant Governor, and Attorney
203 General.

204 D. Candidates for Governor, Lieutenant Governor, and Attorney General shall file by computer or
205 electronic means in accordance with the standards approved by the State Board the reports required by
206 this article. Candidates for the General Assembly may file the reports required by this article with the
207 State Board by computer or electronic means in accordance with the standards approved by the State
208 Board. This information shall be made available to the public promptly by the State Board through the
209 ~~global information system known as the~~ Internet.

210 E. Other committee reports required by this chapter to be filed with the State Board or a local
211 electoral board, or both, may be filed electronically on terms agreed to by the committee and Board.

212 F. On and after January 1, 2004, a political committee that is required by this chapter to file reports
213 with the State Board, and that accepts contributions or makes expenditures in excess of \$10,000 in any
214 calendar year, or that accepted contributions or made expenditures in excess of \$10,000 in the previous
215 calendar year, shall file its reports with the State Board by computer or electronic means in accordance
216 with the standards approved by the State Board until such time as the political committee files a final
217 report. However, a county, city or local district political party committee shall not be required to file by
218 computer or electronic means if it files its reports with the electoral board of that county or city. Any
219 political committee that has been filing electronically, but does not anticipate accepting contributions or
220 making expenditures in excess of \$10,000 in the upcoming calendar year, may sign a waiver, on a form
221 prescribed by the State Board, to exempt the committee from the electronic filing requirement for the
222 calendar year. Such waiver form shall be submitted and received no later than the date the first report is
223 due covering activity for that calendar year.

224 G. The State Board shall have authority to extend any deadline applicable to reports required to be
225 filed by computer or electronic means in the event of a failure of the computer or electronic filing
226 system that prevents timely filing. The extension shall not exceed a period of up to five days after
227 restoration of the filing system to operating order.

228 § 42.1-36.1. Power and duty of library boards and certain governing bodies regarding acceptable
229 Internet use policies.

230 A. On or before December 1, 1999, and biennially thereafter, (i) every library board established
231 pursuant to § 42.1-35 or (ii) the governing body of any county, city, or town which, pursuant to
232 § 42.1-36, has not established a library board pursuant to § 42.1-35, shall file with the Librarian of
233 Virginia an acceptable use policy for the ~~international network of computer systems commonly known~~
234 ~~as the~~ Internet. At a minimum, the policy shall contain provisions which (i) are designed to prohibit use
235 by library employees and patrons of the library's computer equipment and communications services for
236 sending, receiving, viewing, or downloading illegal material via the Internet, (ii) seek to prevent access
237 by library patrons under the age of eighteen to material which is harmful to juveniles, and (iii) establish
238 appropriate measures to be taken against persons who violate the policy. The library board or the
239 governing body may include such other terms, conditions, and requirements in the library's policy as it
240 deems appropriate, such as requiring written parental authorization for Internet use by juveniles or
241 differentiating acceptable uses between elementary, middle, and high school students.

242 B. The library board or the governing body shall take such steps as it deems appropriate to
243 implement and enforce the library's policy which may include, but are not limited to, (i) the use of

software programs designed to block access by (a) library employees and patrons to illegal material or (b) library patrons under the age of eighteen to material which is harmful to juveniles or (c) both; (ii) charging library employees to casually monitor patrons' Internet use; or (iii) installing privacy screens on computers which access the Internet.

C. On or before December 1, 2000, and biennially thereafter, the Librarian of Virginia shall submit a report to the Chairmen of the House Committee on Education, the House Committee on Science and Technology, and the Senate Committee on Education and Health which summarizes the acceptable use policies filed with the Librarian pursuant to this section and the status thereof.

§ 58.1-609.5. Service exemptions.

The tax imposed by this chapter or pursuant to the authority granted in § 58.1-605 or § 58.1-606 shall not apply to the following:

1. Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made; services rendered by repairmen for which a separate charge is made; and services not involving an exchange of tangible personal property which provide access to or use of the international network of computer systems commonly known as the Internet and any other related electronic communication service, including software, data, content and other information services delivered electronically via the Internet.

2. An amount separately charged for labor or services rendered in installing, applying, remodeling or repairing property sold.

3. Transportation charges separately stated.

4. Separately stated charges for alterations to apparel, clothing and garments.

5. Charges for gift wrapping services performed by a nonprofit organization.

6. An amount separately charged for labor or services rendered in connection with the modification of prewritten programs as defined in § 58.1-602.

7. Custom programs as defined in § 58.1-602.

8. The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for more than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space or accommodations are regularly furnished to transients for a consideration.

9. Beginning January 1, 1996, maintenance contracts, the terms of which provide for both repair or replacement parts and repair labor, shall be subject to tax upon one-half of the total charge for such contracts only. Persons providing maintenance pursuant to such a contract may purchase repair or replacement parts under a resale certificate of exemption. Warranty plans issued by an insurance company, which constitute insurance transactions, are subject to the provisions of subdivision 1 above.

§ 58.1-3122.2. Remote access to nonconfidential public records maintained by commissioner.

The commissioner of the revenue may provide remote access, including access through the global information system known as the Internet, to all nonconfidential public records maintained by his office, subject to such limitations as may be imposed by applicable law. Any system of remote access created or maintained pursuant to this section shall include security measures that preclude remote access users from (i) obtaining any data that is required to be maintained as confidential pursuant to § 58.1-3, the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.), the Virginia Public Records Act (§ 42.1-76 et seq.), or other applicable law, and (ii) modifying or destroying any record or data in any manner.