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HOUSE BILL NO. 1051

Offered January 11, 2006

Prefiled January 11, 2006

A *BILL to amend the Code of Virginia by adding in Chapter 1 of Title 40.1 a section numbered 40.1-11.2, relating to the regulation and funding of employment service centers; penalty.*

Patrons—Reid, Albo, Athey, Cosgrove, Frederick, Gear, Gilbert, Hargrove, Kilgore and Landes

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 Chapter 1 of Title 40.1 a section numbered 40.1-11.2 as follows:

§ 40.1-11.2. Recruitment and employment service centers; funding and operation; penalty.

A. For purposes of this section:

"Covered entity" means (i) a locality, (ii) an individual at least 17 years of age, or (iii) an organization that provides employment services within the Commonwealth to 10 or more persons in any calendar year; however, the term does not include any secondary or postsecondary educational institution that provides employment services to students enrolled at the institution, to persons receiving public assistance, or to disabled or handicapped persons.

"Day labor" means labor or employment that is occasional or irregular for which an individual is employed for not longer than the time period required to complete the assignment for which the individual was hired and in which wage payments are made directly or indirectly to the individual for work undertaken by that individual.

"Employment service center" means any facility at which a covered entity provides employment services.

"Employment services" means pairing, placing, recruiting, hiring, or referring individuals at least 17 years of age for work either as a temporary employee of a third party or as a short-term independent contractor, and includes, but is not limited to, conducting a hiring site at which individuals are retained for day labor within the Commonwealth. The term also includes activities that assist or are in furtherance of any of the foregoing.

"Establish an employment service center" includes constructing, equipping, financing, improving, insuring, leasing as lessee, maintaining, operating, regulating, or acquiring title to, or any real property interest in, an employment service center (i) directly or indirectly, including through an authority or instrumentality acting on behalf of the locality or acting for the benefit of the locality; or (ii) by itself, through a partnership or joint venture, or by contract, resale, or otherwise.

B. Notwithstanding the provisions of § 40.1-11.1, public funds shall not be used by a covered entity to provide employment services to any individual unless the covered entity is provided, by each individual seeking or obtaining employment services, documents indicating that such individual is legally eligible for employment in the United States.

C. A covered entity providing employment services shall:

1. Comply at all times with applicable local, state, and federal laws;

2. Post in a prominent location at any employment service center at which it provides employment services a notice, visible to each individual seeking to receive such services, stating that only individuals providing documents indicating that they are legally eligible for employment in the United States shall be permitted to receive such services;

3. Require each individual seeking to receive employment services to authorize the covered entity to verify that the individual is legally eligible for employment in the United States prior to the commencement of delivery of employment services by means of the federal Electronic Work Verification Program or, if the federal Electronic Work Verification Program is not available, by other means that are authorized by federal immigration law; and

4. Maintain a database or file containing the identity of each individual who applied for employment services and documentation confirming that the individual provided documents indicating that he was legally eligible for employment in the United States, which database or file shall be accessible for inspection by the Department or law-enforcement officials.

D. The Department shall promptly investigate any signed written complaint received from a resident of the Commonwealth alleging that a covered entity operating an employment service center has violated any requirement of this section.

E. If the Department determines that a violation has occurred, the Commissioner shall have the

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59 power to issue special orders to a covered entity directing the covered entity to cease and desist from
60 such violation and to comply with the provisions of this section. Such special orders are to be issued:

61 1. Only after a hearing with reasonable notice to the affected owners of the time, place and purpose
62 thereof, and the orders shall become effective not less than five days after service as provided in
63 subdivision 2; and

64 2. Any special order issued under the provisions of this section need not be filed with the Secretary
65 of the Commonwealth, but the covered entity to whom such special order is directed shall be notified by
66 certified mail, return receipt requested, sent to the last known address of the covered entity, or by
67 personal delivery by an agent of the Commissioner, and the time limits specified shall be counted from
68 the date of receipt.

69 F. If a covered entity does not cease and desist from the violation as directed by a special order
70 issued under the provisions of this section, the covered entity or any officer or principal employee
71 thereof may, in the case of second or subsequent violation, be compelled in a proceeding instituted in
72 any appropriate court by the Commissioner or Department to enjoin the operation of the employment
73 service center for not more than seven days.

74 G. Any covered entity, or officer or principal employee thereof, that violates any special order issued
75 under the provisions of this section, or commits a second or subsequent violation of this section, is
76 guilty of a Class 2 misdemeanor.

77 H. If the covered entity has demonstrated a disregard for the wages, working conditions, or business
78 opportunities of citizens of the Commonwealth, the covered entity may be compelled in a proceeding
79 instituted in any appropriate court by the Commissioner or Department to permanently enjoin the
80 operation of the employment service center, and its officers or principal employees may be compelled in
81 a proceeding instituted in any appropriate court by the Commissioner or Department not to operate any
82 other employment service center for a period of not more than 270 days.