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SENATE BILL NO. 179

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend the Code of Virginia by adding sections numbered 2.2-2901.1, 2.2-2901.2, and 2.2-3901.1, relating to the Virginia Human Rights Act; prohibition of discrimination in employment based on certain criminal convictions.

Patron—Locke

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 2.2-2901.1, 2.2-2901.2, and 2.2-3901.1 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, pregnancy, childbirth or related medical conditions, age, marital status, or disability.

§ 2.2-2901.2. Employment discrimination based on certain criminal convictions prohibited.

A. No state agency, institution, board, bureau, commission, council, or instrumentality of the Commonwealth shall discriminate in employment based on an individual's criminal conviction record unless the conviction directly relates to the circumstances of the particular position, occupation, trade, or profession for which the individual is seeking employment.

B. In determining whether a criminal conviction directly relates to the circumstances of the particular position, occupation, trade, or profession, the employer shall consider (i) the nature and seriousness of the crime, (ii) the extent to which the position may offer an opportunity to engage in further criminal activity of the same type as that in which the individual had been involved, and (iii) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the position.

C. In addition to the factors to be considered under subsection B, the employer in determining the present fitness of an individual shall also consider (i) the extent and nature of the person's past criminal activity, (ii) the age of the person at the time of the commission of the crime, (iii) the amount of time that has elapsed since the conviction, (iv) the conduct and work record of the individual prior to and following the conviction, and (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated for the crime, if applicable, or following the individual's release.

§ 2.2-3901.1. Discrimination based on conviction record prohibited.

A. It shall be an unlawful discriminatory practice for any person to deny employment to any individual based on such individual's criminal conviction record unless the conviction directly relates to the circumstances of the particular position, occupation, trade, or profession for which the individual is seeking employment.

B. In determining whether a criminal conviction directly relates to the circumstances of the particular position, occupation, trade, or profession, the employer shall consider (i) the nature and seriousness of the crime, (ii) the extent to which the position may offer an opportunity to engage in further criminal activity of the same type as that in which the individual had been involved, and (iii) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the position.

C. In addition to the factors to be considered under subsection B, the employer in determining the present fitness of an individual shall also consider (i) the extent and nature of the person's past criminal activity, (ii) the age of the person at the time of the commission of the crime, (iii) the amount of time that has elapsed since the conviction, (iv) the conduct and work record of the individual prior to and following the conviction, and (v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated for the crime, if applicable, or following the individual's release.