

14100485D

## SENATE BILL NO. 177

Offered January 8, 2014

Prefiled January 2, 2014

A BILL to amend and reenact §§ 3.2-6528, 51.5-40 through 51.5-42, 51.5-44, and 51.5-45 of the Code of Virginia, relating to the definition of "service dog."

Patrons—Reeves and McWaters

Referred to Committee on Agriculture, Conservation and Natural Resources

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.2-6528, 51.5-40 through 51.5-42, 51.5-44, and 51.5-45 of the Code of Virginia are amended and reenacted as follows:**

**§ 3.2-6528. Amount of license tax.**

The governing body of each county or city shall impose by ordinance a license tax on the ownership of dogs within its jurisdiction. The governing body of any locality that has adopted an ordinance pursuant to subsection B of § 3.2-6524 shall impose by ordinance a license tax on the ownership of cats within its jurisdiction. The governing body may establish different rates of taxation for ownership of female dogs, male dogs, spayed or neutered dogs, female cats, male cats, and spayed or neutered cats. The tax for each dog or cat shall not be less than \$1 and not more than \$10 for each year. If the dog or cat has been spayed, the tax shall not exceed the tax provided for a male dog or cat. Any ordinance may provide for a license tax for kennels of 10, 20, 30, 40, or 50 dogs or cats not to exceed \$50 for any one such block of kennels.

No license tax shall be levied on any dog that is trained and serves as a guide dog for a blind person, that is trained and serves as a hearing dog for a deaf or ~~hearing impaired~~ *hearing-impaired* person, or that is trained and serves as a service dog for a ~~mobility impaired~~ *mobility-impaired* or *otherwise disabled* person.

As used in this section, "hearing dog," means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond "mobility-impaired person," "otherwise disabled person," and "service dog" means a dog trained to accompany its owner for the purpose of carrying items, retrieving objects, pulling a wheelchair or other such activities of service or support have the same meanings as assigned in § 51.5-40.1.

**§ 51.5-40. Nondiscrimination under state grants and programs.**

No ~~otherwise qualified~~ person with a disability *who is otherwise qualified* shall, on the basis of his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving state financial assistance or under any program or activity conducted by or on behalf of any state agency.

**§ 51.5-40.1. Definitions.**

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

"Hearing dog" means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond.

"Mental impairment" means (i) a disability attributable to intellectual disability, autism, or any other neurologically handicapping condition closely related to intellectual disability and requiring treatment similar to that required by individuals with intellectual disability; or (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions, including central nervous system disorders or significant discrepancies among mental functions of an individual. ~~For the purposes of § 51.5-41, the term "mental impairment" does not include active alcoholism or current drug addiction and does not include any mental impairment, disease, or defect that has been successfully asserted by an individual as a defense to any criminal charge.~~

"Mobility-impaired person" means any person who has completed training to use a dog for service or support because he is unable to move about without the aid of crutches, a wheelchair, or any other form of support or because of limited functional ability to ambulate, climb, descend, sit, rise, or perform any related function.

"Otherwise qualified person with a disability" means a person with a disability who:

1. For the purposes of § 51.5-41, is qualified to perform the duties of a particular job or position; or
2. For the purposes of § 51.5-42, meets all the requirements for admission to an educational institution or meets all the requirements for participation in its extracurricular programs.

"Otherwise disabled person" means any person who has a physical, sensory, intellectual, developmental, or mental disability or a mental illness.

INTRODUCED

SB177

59 "Person with a disability" means any person who has a physical or mental impairment that  
60 substantially limits one or more of his major life activities; or who has a record of such impairment; ~~and~~  
61 ~~that physical or mental impairment;~~

62 1. For purposes of §- 51.5-41, is unrelated to the individual's ability to perform the duties of a  
63 particular job or position; or is unrelated to the individual's qualifications for employment or promotion;

64 2. For purposes of §- 51.5-42, is unrelated to the individual's ability to utilize and benefit from  
65 educational opportunities, programs, and facilities at an educational institution;

66 3. For purposes of §- 51.5-44, is unrelated to the individual's ability to utilize and benefit from a  
67 place of public accommodation or public service; or

68 4. For purposes of §- 51.5-45, is unrelated to the individual's ability to acquire, rent, or maintain  
69 property.

70 "Physical impairment" means any physical condition, anatomic loss, or cosmetic disfigurement that is  
71 caused by bodily injury, birth defect, or illness.

72 "Service dog" means a dog trained to do work or perform tasks for the benefit of a  
73 mobility-impaired or otherwise disabled person. The work or tasks performed by a service dog shall be  
74 directly related to the individual's disability or disorder. Examples of work or tasks include providing  
75 nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure,  
76 alerting an individual to the presence of allergens, retrieving items, carrying items, providing physical  
77 support and assistance with balance and stability, and preventing or interrupting impulsive or  
78 destructive behaviors. The provision of emotional support, well-being, comfort, or companionship shall  
79 not constitute work or tasks for the purposes of this definition.

80 "Three-unit service dog team" means a team consisting of a trained service dog, a disabled person,  
81 and a person who is an adult and who has been trained to handle the service dog.

82 **§ 51.5-41. Discrimination against otherwise qualified persons with disabilities by employers**  
83 **prohibited.**

84 A. No employer shall discriminate in employment or promotion practices against an otherwise  
85 qualified person with a disability solely because of such disability. *For the purposes of this section, an*  
86 *"otherwise qualified person with a disability" means a person qualified to perform the duties of a*  
87 *particular job or position and whose disability is unrelated to the person's ability to perform such duties*  
88 *or position or is unrelated to the person's qualifications for employment or promotion.*

89 B. It is the policy of the Commonwealth that persons with disabilities shall be employed in the state  
90 service, the service of the political subdivisions of the Commonwealth, in the public schools, and in all  
91 other employment supported in whole or in part by public funds on the same terms and conditions as  
92 other persons unless it is shown that the particular disability prevents the performance of the work  
93 involved.

94 C. An employer shall make reasonable accommodation to the known physical and mental  
95 impairments of an otherwise qualified person with a disability, if necessary to assist such person in  
96 performing a particular job, unless the employer can demonstrate that the accommodation would impose  
97 an undue burden on the employer. *For the purposes of this section, "mental impairment" does not*  
98 *include active alcoholism or current drug addiction and does not include any mental impairment,*  
99 *disease, or defect that has been successfully asserted by an individual as a defense to any criminal*  
100 *charge.*

101 1. In determining whether an accommodation would constitute an undue burden upon the employer,  
102 the following shall be considered:

103 a. Hardship on the conduct of the employer's business, considering the nature of the employer's  
104 operation, including composition and structure of the employer's work force;

105 b. Size of the facility where employment occurs;

106 c. The nature and cost of the accommodations needed, taking into account alternate sources of  
107 funding or technical assistance included under §§ 51.5-165 and 51.5-173;

108 d. The possibility that the same accommodations may be used by other prospective employees;

109 e. Safety and health considerations of the person with a disability, other employees, and the public.

110 2. Notwithstanding the foregoing, any accommodation ~~which~~ *that* would exceed \$500 in cost shall be  
111 rebuttably presumed to impose an undue burden upon any employer with fewer than 50 employees.

112 3. The employer has the right to choose among equally effective accommodations.

113 4. Nothing in this section shall require accommodations when the authority to make such  
114 accommodations is precluded under the terms of a lease or otherwise prohibited by statute, ordinance, or  
115 other regulation.

116 5. Building modifications made for the purposes of such reasonable accommodation may be made  
117 without requiring the remainder of the existing building to comply with the requirements of the Uniform  
118 Statewide Building Code.

119 D. Nothing in this section shall prohibit an employer from refusing to hire or promote, from  
120 disciplining, transferring, or discharging or taking any other personnel action pertaining to an applicant

or an employee who, because of his disability, is unable to adequately perform his duties, or cannot perform such duties in a manner which would not endanger his health or safety or the health or safety of others. Nothing in this section shall subject an employer to any legal liability resulting from the refusal to employ or promote or from the discharge, transfer, discipline of, or the taking of any other personnel action pertaining to a person with a disability who, because of his disability, is unable to adequately perform his duties, or cannot perform such duties in a manner ~~which~~ *that* would not endanger his health or safety or the health or safety of others.

E. Nothing in this section shall be construed as altering the provisions of the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.).

F. This section shall not apply to employers covered by the federal Rehabilitation Act of 1973.

G. No employer who has hired any person because of the requirements of this section shall be liable for any alleged negligence in such hiring.

**§ 51.5-42. Discrimination against otherwise qualified persons with disabilities by educational institutions prohibited.**

A. No public educational institution or private educational institution ~~which, or agent of either, that~~ *is a recipient of state funds, or agent of either, shall deny admission to the institution, or full and equal access to and enjoyment of any of its educational or extracurricular programs, to an otherwise qualified person with a disability who meets the requirements for admission to the institution or the programs, because of such disability. For purposes of this section, an "otherwise qualified person with a disability" means a person with a disability who meets the requirements for admission to the institution and for participation in its programs and whose disability is unrelated to the person's ability to utilize and benefit from educational opportunities, programs, and facilities at the educational institution.*

B. This section shall not apply to any public or private educational institution ~~which that~~ *is subject to the requirements of § 22.1-215 nor to any private elementary or secondary school, or college or university which that* is not a recipient of state funds.

**§ 51.5-44. Rights of persons with disabilities in public places and places of public accommodation.**

A. A person with a disability has the same rights as other persons to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places. *For purposes of this section, a "person with a disability" means a person whose disability is unrelated to his ability to utilize and benefit from a place of public accommodation or public service.*

B. A person with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, subways, boats or any other public conveyances or modes of transportation, restaurants, hotels, lodging places, places of public accommodation, amusement or resort, public entities including schools, and other places to which the general public is invited subject only to the conditions and limitations established by law and applicable alike to all persons.

C. Each town, city or county, individually or through transportation district commissions, shall ensure that persons with disabilities have access to the public transportation within its jurisdiction by either (i) use of the same transportation facilities or carriers available to the general public or, (ii) provision of paratransit or special transportation services for persons with disabilities, or (iii) both. All persons with disabilities in the jurisdiction's service area who, by reason of their disabilities, are unable to use the service for the general public shall be eligible to use such paratransit or special transportation service. No fee that exceeds the fee charged to the general public shall be charged a person with a disability for the use of the same transportation facilities or carriers available to the general public. Paratransit or special transportation service for persons with disabilities may charge fees to such persons comparable to the fees charged to the general public for similar service in the jurisdiction service area, taking into account especially the type, length and time of trip. Any variance between special service and regular service fares shall be justifiable in terms of actual differences between the two kinds of service provided.

D. Nothing in this title shall be construed to require retrofitting of any public transit equipment or to require the retrofitting, renovation, or alteration of buildings or places to a degree more stringent than that required by the applicable building code in effect at the time the building permit for such building or place is issued.

E. Every totally or partially blind person shall have the right to be accompanied by a dog, in harness, trained as a guide dog, every deaf or hearing-impaired person shall have the right to be accompanied by a dog trained as a hearing dog on a blaze orange leash, and every mobility-impaired or otherwise disabled person shall have the right to be accompanied by a dog, trained as a service dog, in a harness, backpack, or vest identifying the dog as a trained service dog, in any of the places listed in subsection B without being required to pay an extra charge for the dog, provided that he shall be liable for any damage done to the premises or facilities by such dog. The provisions of this section shall apply to

182 persons accompanied by a dog that is in training, at least six months of age, and is (i) in harness,  
183 provided such person is an experienced trainer of guide dogs or is conducting continuing training of a  
184 guide dog; (ii) on a blaze orange leash, provided such person is an experienced trainer of hearing dogs  
185 or is conducting continuing training of a hearing dog; (iii) in a harness, backpack, or vest identifying the  
186 dog as a trained service dog, provided such person is an experienced trainer of service dogs or is  
187 conducting continuing training of a service dog; (iv) wearing a jacket identifying the recognized guide,  
188 hearing or service dog organization, provided such person is an experienced trainer of the organization  
189 identified on the jacket; or (v) the person is part of a three-unit service dog team and is conducting  
190 continuing training of a service dog.

191 **§ 51.5-45. Right of persons with disabilities to housing accommodations.**

192 A. All persons with disabilities *unrelated to their ability to acquire, rent, or maintain property* shall  
193 be entitled to full and equal opportunity to acquire, as other members of the general public, any housing  
194 accommodations offered for sale, rent, lease, or compensation, subject to the conditions and limitations  
195 established by law and applying alike to all persons. "Housing accommodations" for the purpose of this  
196 section means any real property, or portion thereof, which is used or occupied or is intended, arranged,  
197 or designed to be used or occupied, as the home, residence, or sleeping place of one or more human  
198 beings, but ~~shall~~ *does* not include any single family residence the occupant or owner of which rents,  
199 leases, or furnishes for compensation not more than one room therein.

200 B. Every ~~visually-impaired~~ *visually impaired* person who has a guide dog, ~~any~~ *every*  
201 hearing-impaired person who has a hearing dog, and every mobility-impaired *or otherwise disabled*  
202 person with a service dog, ~~as those terms are defined in § 51.5-44,~~ shall be entitled to full and equal  
203 access with such dog to all housing accommodations provided for in this section. He shall not be  
204 required to pay extra compensation for such dog but shall be liable for any damage done to the premises  
205 by such dog.

206 C. Nothing in this section shall require any person offering for sale, renting, leasing, or providing for  
207 compensation real property to modify that real property or provide a higher degree of care for a person  
208 with a disability than for a person who is not disabled, except as provided in § 36-99.5, nor shall  
209 anything in this section require any person who is selling, renting, leasing, or providing for  
210 compensation real property to sell, rent, lease or provide such property to any person who would  
211 constitute a direct threat to the property or safety of others.