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## HOUSE BILL NO. 2375

Offered January 23, 2015

A BILL to amend and reenact §§ 51.5-40.1 and 51.5-41 of the Code of Virginia, relating to rights of persons with a disability caused or contributed to by pregnancy; reasonable accommodation by employers.

\_\_\_\_\_  
Patron—Surovell

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Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:****1. That §§ 51.5-40.1 and 51.5-41 of the Code of Virginia are amended and reenacted as follows:****§ 51.5-40.1. Definitions.**

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

"Disability caused or contributed to by pregnancy" (i) is a temporary disability for all employment-related purposes and (ii) shall be treated as a temporary disability under any health or temporary disability insurance or sick leave plan available in connection with employment.

"Employee" means an individual employed by an employer.

"Employer" means a person that is engaged in an industry or business and has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. "Employer" includes an agent of such a person. Except for a labor organization, "employer" does not include a bona fide private membership club that is exempt from taxation under § 501(c) of the Internal Revenue Code.

"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.

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

"Person with a disability" means any person who has a physical or mental impairment that substantially limits one or more of his major life activities or who has a record of such impairment. However, a person with a disability caused or contributed to by pregnancy shall be a "person with a disability" for the duration of the employee's pregnancy regardless of whether the pregnancy causes an impairment that substantially limits one or more of the person's major life activities.

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

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

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

**§ 51.5-41. Discrimination against otherwise qualified persons with disabilities by employers prohibited; reasonable accommodation for an employee's disability caused or contributed to by pregnancy.**

A. No employer shall discriminate in employment or promotion practices against an otherwise qualified person with a disability solely because of such disability. For the purposes of As used in this section, an "otherwise:

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59 *"Mental impairment" does not include active alcoholism or current drug addiction and does not*  
60 *include any mental impairment, disease, or defect that has been successfully asserted by an individual as*  
61 *a defense to any criminal charge.*

62 *"Otherwise qualified person with a disability" means a person qualified to perform the duties of a*  
63 *particular job or position and whose disability is unrelated to the person's ability to perform such duties*  
64 *or position or is unrelated to the person's qualifications for employment or promotion.*

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

70 C. *No employer shall discriminate in employment or promotion practices against an otherwise*  
71 *qualified person with a disability solely because of such disability.*

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

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

80 ~~a.~~ 1. Hardship on the conduct of the employer's business, considering the nature of the employer's  
81 operation, including composition and structure of the employer's work force;

82 ~~b.~~ 2. Size of the facility where employment occurs;

83 ~~c.~~ 3. The nature and cost of the accommodations needed, taking into account alternate sources of  
84 funding or technical assistance included under §§ 51.5-165 and 51.5-173;

85 ~~d.~~ 4. The possibility that the same accommodations may be used by other prospective employees;

86 ~~e.~~ 5. Safety and health considerations of the person with a disability, other employees, and the  
87 public.

88 ~~2.~~ E. Notwithstanding the foregoing, ~~any and except as provided in subsection G:~~

89 1. Any accommodation that would exceed \$500 in cost shall be rebuttably presumed to impose an  
90 undue burden upon any employer with fewer than 50 employees;

91 ~~3.~~ 2. The employer has the right to choose among equally effective accommodations;

92 4. 3. Nothing in this section shall require accommodations when the authority to make such  
93 accommodations is precluded under the terms of a lease or otherwise prohibited by statute, ordinance, or  
94 other regulation; and

95 ~~5.~~ 4. Building modifications made for the purposes of such reasonable accommodation may be made  
96 without requiring the remainder of the existing building to comply with the requirements of the Uniform  
97 Statewide Building Code.

98 ~~D.~~ F. If an employee requests a reasonable accommodation for a disability caused or contributed to  
99 by pregnancy, the employer shall explore with the employee all possible means of providing the  
100 reasonable accommodation, including:

101 1. Changing the employee's job duties;

102 2. Changing the employee's work hours;

103 3. Relocating the employee's work area;

104 4. Providing mechanical or electrical aids;

105 5. Transferring the employee to a less strenuous or less hazardous position; or

106 6. Providing leave.

107 G. If an employee requests a transfer to a less strenuous or less hazardous position as a reasonable  
108 accommodation for a disability caused or contributed to by pregnancy, the employer shall transfer the  
109 employee for a period of time up to the duration of the employee's pregnancy if:

110 1. The employer has a policy, practice, or collective bargaining agreement requiring or authorizing  
111 the transfer of a temporarily disabled employee to a less strenuous or less hazardous position for the  
112 duration of the disability; or

113 2. The employee's health care provider advises the transfer and the employer can provide the  
114 reasonable accommodation by transferring the employee without:

115 a. Creating additional employment that the employer would not otherwise have created;

116 b. Discharging any employee;

117 c. Transferring any employee with more seniority than the employee requesting the reasonable  
118 accommodation; or

119 d. Promoting any employee who is not qualified to perform the job.

120 H. An employer may require an employee to provide a certification from the employee's health care

provider concerning the medical advisability of a reasonable accommodation for a disability caused or contributed to by pregnancy to the same extent a certification is required for other temporary disabilities. Such a certification shall include:

1. The date the reasonable accommodation became medically advisable;
2. The probable duration of the reasonable accommodation; and
3. An explanatory statement as to the medical advisability of the reasonable accommodation.

I. Nothing in this section shall prohibit an employer from refusing to hire or promote, from 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 that would not endanger his health or safety or the health or safety of others.

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

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

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

M. An employer shall post in a conspicuous location and include in any employee handbook information concerning an employee's rights to reasonable accommodations for a disability caused or contributed to by pregnancy and leave for a disability caused or contributed to by pregnancy.

N. An employer shall not interfere with, restrain, deny the exercise of, or the attempt to exercise any right provided under this section regarding the provision of reasonable accommodation for a disability caused or contributed to by pregnancy.

O. The provisions of this section regarding the provision of reasonable accommodation for a disability caused or contributed to by pregnancy shall not be construed to:

1. Affect any other provision of law relating to discrimination on the basis of sex or pregnancy; or
2. Diminish in any way the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under this section.