

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 51.5-41, 51.5-120, 51.5-163, 51.5-164, and 51.5-172 through 51.5-176 of the Code of Virginia and to repeal § 51.5-165 of the Code of Virginia, relating to federal Rehabilitation Act and Older Americans Act.

[H 740]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.5-41, 51.5-120, 51.5-163, 51.5-164, and 51.5-172 through 51.5-176 of the Code of Virginia are amended and reenacted as follows:

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

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 this section, an "otherwise qualified person with a disability" means a person qualified to perform the duties of a particular job or position and whose disability is unrelated to the person's ability to perform such duties or position or is unrelated to the person's qualifications for employment or promotion.

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

C. An employer shall make reasonable accommodation to the known physical and mental impairments of an otherwise qualified person with a disability, if necessary to assist such person in performing a particular job, unless the employer can demonstrate that the accommodation would impose an undue burden on the employer. For the purposes of this section, "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.

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

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

b. Size of the facility where employment occurs;

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

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

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

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

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

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

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

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

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

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

60 **§ 51.5-120. Cooperation of Department with other state departments.**

61 A. The Department shall collaborate with the Department of Behavioral Health and Developmental  
62 Services in activities related to licensing providers of (i) services under the Individual and Families  
63 Developmental Disabilities Support Waiver, (ii) services under the Brain Injury Waiver, and (iii)  
64 residential services for individuals with brain injuries as defined in § 37.2-403. These activities include  
65 involving advocacy and consumer groups who represent persons with developmental disabilities or brain  
66 injuries in the regulatory process; training the Department of Behavioral Health and Developmental  
67 Services, local human rights committees, and the State Human Rights Committee on the unique needs  
68 and preferences of individuals with developmental disabilities or brain injuries; assisting in the  
69 development of regulatory requirements for such providers; and providing technical assistance in the  
70 regulatory process and in performing annual inspections and complaint investigations.

71 B. The Department shall collaborate with the Department of Social Services in activities related to  
72 the planning and provision of adult services pursuant to Article 4 (§ 51.5-144 et seq.), adult protective  
73 services pursuant to Article 5 (§ 51.5-148 ), and auxiliary grants pursuant to Article 9 (§ 51.5-159 et  
74 seq.).

75 C. *The Department shall enter into cooperative agreements with the Department of Behavioral*  
76 *Health and Developmental Services, the Department of Medical Assistance Services, the Virginia*  
77 *Community College System, public institutions of higher education, and the Department of Education to*  
78 *identify the responsibilities of each public entity relating to the provision of vocational rehabilitation*  
79 *services as required by the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), as amended.*

80 **§ 51.5-163. Centers for independent living.**

81 A. Services provided through grants or contracts with centers for independent living pursuant to this  
82 article shall include:

- 83 1. Advocacy;
- 84 2. Peer counseling;
- 85 3. Independent living skills training; and
- 86 4. Information and referral; and

87 5. *Services that (i) facilitate the transition of individuals with significant disabilities from nursing*  
88 *homes and other institutions to home and community-based residences with the requisite supports and*  
89 *services, (ii) provide assistance to individuals with significant disabilities who are at risk of entering*  
90 *institutions so that the individuals may remain in the community, and (iii) facilitate the transition of*  
91 *youth with significant disabilities, who were eligible for individualized education programs under*  
92 *§ 614(d) of the Individuals with Disabilities Education Act or who have completed their secondary*  
93 *education, to post-secondary life.*

94 Services may include other services deemed necessary by the local consumer base.

95 B. Centers for independent living funded in whole or in part by the Department shall be staffed by  
96 persons with disabilities who are trained in the philosophy of independent living. The majority of  
97 management staff shall include persons with disabilities.

98 **§ 51.5-164. Statewide Independent Living Council created.**

99 The Statewide Independent Living Council is hereby created to ~~plan, together with the Department,~~  
100 ~~activities carried out under~~ *develop and sign the Statewide Plan for Independent Living in accordance*  
101 *with Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. § 796 et seq.) and to provide advice*  
102 ~~to the Department regarding such~~ *perform other activities as provided in such Act.* Membership and  
103 duties shall be constructed according to federal provisions. The Department shall provide staff support  
104 for the Council.

105 **§ 51.5-172. Individualized plan for employment.**

106 A written individualized plan for employment for each recipient of vocational rehabilitation services  
107 provided or funded by the Department, in whole or in part, shall be developed ~~within a reasonable time~~  
108 ~~and as soon as possible, but not later than 90 days after the due date of the determination of eligibility,~~  
109 *unless an extension is agreed to by the client, his parents or guardian, if appropriate, and the*  
110 *Department. The plan shall be agreed to and signed by the client, his parents or guardian, if appropriate,*  
111 *and a qualified vocational rehabilitation counselor employed by the Department. When the Department is*  
112 *operating under an order of selection, the plan shall be developed and implemented for individuals*  
113 *meeting the Department's order of selection criteria.* The plan shall be reviewed at least annually by the  
114 client, his parents or guardian, if appropriate, and the qualified vocational rehabilitation counselor.

115 **§ 51.5-173. Services for individuals.**

116 A. Vocational rehabilitation services provided by the Department shall address comprehensively the  
117 individual needs of each client to the maximum extent possible with resources available to the

118 Department, through the following:

119 1. An assessment for determining eligibility and vocational needs by qualified personnel, including, if  
120 appropriate, an assessment by personnel skilled in rehabilitation technology;

121 2. Counseling and guidance, including information and support services to assist an individual in  
122 exercising informed choice, and referral necessary to help applicants or clients to secure needed services  
123 from other agencies;

124 3. Diagnosis and treatment of physical or mental impairments, including:

125 a. Corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical  
126 or mental condition that constitutes a substantial impediment to employment, but that is of such a nature  
127 that correction or modification may reasonably be expected to eliminate or reduce such impediment to  
128 employment within a reasonable length of time;

129 b. Necessary hospitalization in connection with surgery or treatment;

130 c. Prosthetic and orthotic devices;

131 d. Eyeglasses and visual services as prescribed by qualified personnel who meet state licensure laws  
132 and who are selected by the client;

133 e. Special services including transplantation and dialysis, artificial kidneys, and supplies necessary for  
134 the treatment of clients with end-stage renal disease; and

135 f. Diagnosis and treatment for mental and emotional disorders by qualified personnel who meet state  
136 licensure laws;

137 4. Vocational and other training services, including the provision of personal and  
138 vocational-adjustment services, books, tools, and other training materials, except that no training services  
139 provided at institutions of higher education shall be paid for with funds under this article unless  
140 maximum efforts have been made to secure grant assistance in whole or part from other funding  
141 sources;

142 5. Maintenance for additional costs incurred while participating in an assessment for determining  
143 eligibility and vocational rehabilitation needs or while receiving services under an individualized plan for  
144 employment;

145 6. Transportation, including adequate training in the use of public transportation vehicles and systems  
146 that is provided in connection with the provision of any other services described in this section and  
147 needed by the client to achieve an employment outcome;

148 7. Services to members of a client's family when such services are necessary to assist the client to  
149 achieve an employment outcome;

150 8. Interpreter services provided by qualified personnel for clients who are deaf or hard of hearing and  
151 reader services for clients determined to be blind, after an examination by qualified personnel who meet  
152 state licensure laws;

153 9. Rehabilitation technology, including telecommunications and sensory and other technological aids  
154 and devices;

155 10. Job-related services, including job search and assistance, job retention services, follow-up  
156 services, and follow-along services;

157 11. Specific post-employment services necessary to assist the client to retain, regain, or advance in  
158 employment;

159 12. Occupational licenses, tools, equipment, and initial stocks and supplies;

160 13. On-the-job or other related personal assistance services provided while a client is receiving other  
161 services described in this section;

162 14. Supported employment services which include providing a rehabilitation or other human services  
163 agency staff person to assist in job placement, job site training, and job follow-through for the disabled  
164 employee;

165 15. Technical assistance and other consultation services to conduct market analyses, develop business  
166 plans, and otherwise provide resources, to the extent such resources are authorized to be provided  
167 through the statewide workforce investment system, to eligible clients pursuing self-employment or  
168 telecommuting or establishing a small business operation as an employment outcome; ~~and~~

169 16. Transition services for students with disabilities that facilitate the *transition from school to*  
170 *post-secondary life, such as the achievement of the an employment outcome identified in the*  
171 ~~individualized plan for employment~~ *in competitive integrated employment or pre-employment transition*  
172 *services;*

173 17. *Customized employment for an individual with a significant disability in a competitive integrated*  
174 *setting that is based on the strengths, needs, interests, and abilities of the individual and the business*  
175 *needs of the employer; and*

176 18. *Encouragement of qualified individuals who are eligible to receive services to pursue advanced*  
177 *training in the fields of science, technology, engineering, mathematics (including computer science*  
178 *fields), medicine, law, or business.*

179 B. Written standards shall be established by the Commissioner detailing the scope and nature of each  
 180 vocational rehabilitation service authorized herein, the conditions, criteria and procedures under which  
 181 each service may be provided, and the use of entitlements and other benefits to access these services,  
 182 when appropriate.

183 C. In providing the foregoing services, the Department shall determine whether comparable services  
 184 and benefits are available under any other program unless such a determination would interrupt or delay  
 185 the progress of the client toward achieving the employment outcome identified in the individualized plan  
 186 for employment, an immediate job placement, or the provision of such service to any client at extreme  
 187 medical risk.

188 **§ 51.5-174. Services for groups.**

189 Vocational rehabilitation services provided by the Department for the benefit of groups shall include,  
 190 to the maximum extent possible with the resources available to the Department:

191 1. The establishment, development, or improvement of community rehabilitation programs, *which*  
 192 *shall be used to provide services under this section that promote integration into the community and*  
 193 *prepare individuals with disabilities for competitive integrated employment, including supported*  
 194 *employment and customized employment;*

195 2. ~~The provision of other services that promise to contribute significantly to rehabilitation of a group~~  
 196 ~~of clients but that are not directly related to the individualized plan for employment of any one client~~  
 197 *Transition services to youth with disabilities and students with disabilities, for which a vocational*  
 198 *rehabilitation counselor works in concert with educational agencies, providers of job training programs,*  
 199 *providers of services under the Medicaid program pursuant to Title XIX of the federal Social Security*  
 200 *Act (42 U.S.C. § 1396 et seq.), entities designated by the Department to provide services for individuals*  
 201 *with developmental disabilities, centers for independent living, housing and transportation authorities,*  
 202 *workforce development systems, businesses, and employers;*

203 3. The use of telecommunications systems, including telephone, television, satellite, radio, and other  
 204 similar systems that have the potential for substantially improving delivery methods of activities  
 205 described in this section and developing appropriate programming to meet the particular needs of  
 206 individuals with disabilities;

207 4. Technical assistance and support services to businesses that are not subject to Title I of the  
 208 ~~Americans With Disabilities Act of 1990 (42 U.S.C. § 12111 et seq.)~~ *seeking to employ individuals with*  
 209 *disabilities; and*

210 5. ~~Consultative~~ *Consultation* and technical assistance services to assist *state and local* educational  
 211 agencies in planning for the transition of students with disabilities from school to ~~post-school~~ *activities*  
 212 *post-secondary life, including employment;*

213 6. *The establishment, development, or improvement of assistive technology demonstration, loan,*  
 214 *reutilization, or financing programs in coordination with activities authorized by the Assistive*  
 215 *Technology Act of 1968 (29 U.S.C. § 3001 et seq.) to promote access to assistive technology for*  
 216 *individuals with disabilities and employers; and*

217 7. *Support, including tuition where appropriate, for advanced training in the fields of science,*  
 218 *technology, engineering, mathematics (including computer science fields), medicine, law, or business,*  
 219 *consistent with the requirements in § 103 of the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et*  
 220 *seq.).*

221 **§ 51.5-175. Case closure in extended employment.**

222 When any part of the written individualized plan for employment of a client of the Department  
 223 includes services in a community rehabilitation program (CRP), that portion of the plan shall be  
 224 developed jointly with the rehabilitation counselor, a qualified staff member of the CRP, and the client,  
 225 and, when appropriate, his parents or guardian. Factors to be considered shall include, but not be limited  
 226 to, proposed activities, activity schedule, and the impact of the activity on the welfare of the client, the  
 227 client's family, and his community.

228 When a case is closed upon a client's placement in extended employment in a CRP *community*  
 229 *rehabilitation program or any other employment under § 14(c) of the Fair Labor Standards Act (29*  
 230 *U.S.C. § 214(c)), the case shall be reviewed by the Department, with the cooperation of the CRP, within*  
 231 ~~12 months of case closure~~ *semiannually for two years after the start of employment, and annually*  
 232 *thereafter, to determine the interests, priorities, and needs of the individual with respect to competitive*  
 233 *integrated employment or training for competitive employment.*

234 **§ 51.5-176. Participation by clients in cost of services.**

235 The Commissioner shall adopt written standards for determining the extent to which clients shall be  
 236 responsible for the cost of vocational rehabilitation services provided or funded by the Department.  
 237 However, the provision of the following services by the Department shall not be conditioned on the  
 238 client's or applicant's ability to pay for the cost of those services: (i) evaluation of rehabilitation  
 239 potential, except for vocational services other than those of a diagnostic nature which are provided under

240 an ~~extended~~ evaluation of rehabilitation potential; (ii) counseling, guidance, and referral services; and  
241 (iii) placement and follow-up. The Department shall maximize financial participation of persons  
242 receiving services and shall maximize reimbursement from responsible ~~third party~~ *third-party* payors.  
243 **2. That § 51.5-165 of the Code of Virginia is repealed.**

ENROLLED

HB740ER