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HOUSE BILL NO. 778

House Amendments in [] — February 11, 1994

A BILL to amend the Code of Virginia by adding in Article 5 of Chapter 3 of Title 40.1 a section numbered 40.1-51.4:4, relating to the use of polygraphs in certain employment situations.

Patron—Almand

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 5 of Chapter 3 of Title 40.1 a section numbered 40.1-51.4:4 as follows:

§ 40.1-51.4:4. Prohibition of use of polygraphs in certain employment situations.

A. As used in this section, the term "lie detector test" means any test utilizing a polygraph or any other device, mechanism, instrument or written examination, which is operated, or the results of which are used or interpreted by an examiner for the purpose of purporting to assist in or enable the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding the honesty of an individual.

B. Notwithstanding the provisions of § 40.1-2.1, it shall be unlawful for any law-enforcement agency with respect to any employees, to subject such person to, or request such person to take a lie detector test within or without the Commonwealth, or to discharge, demote or otherwise discriminate against such person for the assertion of rights arising thereunder. [~~The fact that such lie detector test was to be, or was, administered outside the Commonwealth for employment within the Commonwealth shall not be a valid defense to an action brought under the provision.~~

C. ~~Any person aggrieved by a violation of subsection B may institute within three years of such violation and prosecute in his or her own name and on his or her behalf, or for him or her and for others similarly situated, a civil action for injunctive relief and any damages thereby incurred, including treble damages for any loss of wages or other benefits. A person so aggrieved and who prevails in such action shall be entitled court costs and reasonable attorney fees.~~ C. Any person who believes that he has been discharged, demoted or otherwise discriminated against by any person in violation of this section may, within ninety days after such alleged violation occurs, file a complaint with the Commissioner. Upon a finding by the Commissioner of a violation of this section, the Commissioner shall order, in the event of discharge or demotion, reinstatement of such person to his former position with back pay plus interest at a rate not to exceed eight percent per annum.]

ENGROSSED

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