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HOUSE BILL NO. 455

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 40.1-2.1 and 40.1-28.7:1 of the Code of Virginia, relating to genetic testing or genetic characteristics as a condition of employment.

Patron—Herring

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 40.1-2.1 and 40.1-28.7:1 of the Code of Virginia are amended and reenacted as follows:**

§ 40.1-2.1. Application of title to Commonwealth and its agencies, etc.; safety and health program for public employees.

The provisions of this title and any rules and regulations promulgated pursuant thereto shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body, *except as provided in § 40.1-28.7:1*, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the Safety and Health Codes Board. The Commissioner is authorized to establish and maintain an effective and comprehensive occupational safety and health program applicable to employees of the Commonwealth, its agencies, institutions, political subdivisions, or any public body. Such program shall be subject to any State plan submitted to the federal government for State enforcement of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), or any other regulation promulgated under Title 40.1. The Commissioner shall establish procedures for enforcing the program which shall include provisions for fair hearings including judicial review and sanctions to be applied for violations.

§ 40.1-28.7:1. Genetic testing or genetic characteristics as a condition of employment.

A. No employer shall:

1. Request, require, solicit or administer a genetic test, as defined in § 38.2-508.4, to any person as a condition of employment; or

2. Refuse to hire, fail to promote, discharge or otherwise adversely affect any terms or conditions of employment of any employee or prospective employee solely on the basis of a genetic characteristic, as defined in § 38.2-508.4, or the results of a genetic test, regardless of how the employer obtained such information or results. Nothing in this section shall preclude the use of information related to a criminal investigation.

B. The employee may bring an action in a court of competent jurisdiction over the employer who took adverse action against the employee in violation of this section. Any such action shall be brought within 180 days from the date of the adverse action. The court may, in its discretion, award actual or punitive damages, including back pay with interest at the judgment rate as provided in § 6.1-330.54, or injunctive relief.

C. Nothing in this section shall be construed to require the Department of Labor and Industry to conduct any investigations or enforcement actions.

D. *For the purposes of this section, "employer" shall include the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body.*

E. As used in subdivision A 2 of this section, "terms and conditions of employment" shall not include any long term care, life or disability insurance policy.

INTRODUCED

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