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HOUSE BILL NO. 2261

Offered January 11, 2017

Prefiled January 11, 2017

A BILL to amend and reenact §§ 2.2-3901 and 23.1-1303 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-3901.1, relating to the Virginia Human Rights Act; unlawful discriminatory practice; anti-Semitism.

Patrons—LaRock and Cole

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3901 and 23.1-1303 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-3901.1 as follows:

§ 2.2-3901. Unlawful discriminatory practice, gender discrimination and discrimination on the basis of religion defined.

A. Conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability shall be an "unlawful discriminatory practice" for the purposes of this chapter.

B. The terms "because of sex or gender" or "on the basis of sex or gender" or terms of similar import when used in reference to discrimination in the Code and acts of the General Assembly include because of or on the basis of pregnancy, childbirth or related medical conditions. Women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all purposes as persons not so affected but similar in their abilities or disabilities.

C. The term "because of religion" or "on the basis of religion" or terms of similar import when used in reference to discrimination in this Code and acts of the General Assembly include anti-Semitism as defined in § 2.2-3901.1.

§ 2.2-3901.1. Definition of anti-Semitism; investigating unlawful discriminatory practices on the basis of a person's real or perceived Jewish identity.

A. As used in this section, "anti-Semitism" means a perception of Jews that may be expressed as hatred toward Jews and includes rhetorical and physical manifestations of hostility or hatred that may be directed toward Jewish or non-Jewish individuals or their property, the Jewish community, or Jewish institutions and religious facilities. "Anti-Semitism" includes the definition of anti-Semitism established by the Special Envoy to Monitor and Combat Anti-Semitism of the U.S. Department of State in a June 8, 2010, Fact Sheet and the examples of anti-Semitism listed under headings "Contemporary Examples of Anti-Semitism" and "What Is Anti-Semitism Relative to Israel?" contained in the Fact Sheet.

B. When investigating whether there has been a violation of an unlawful discriminatory practice on the basis of a person's real or perceived Jewish identity under this chapter or a policy or institutional regulation established by a board of visitors of a public institution of higher education pursuant to subdivision B 14 of § 23.1-1303, the investigating authority shall consider the definition of anti-Semitism for purposes of determining whether the alleged practice was motivated by anti-Semitic intent.

§ 23.1-1303. Governing boards; duties.

A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine, article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

B. The governing board of each public institution of higher education shall:

1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions that (i) establish the requirement of transparency, to the extent required by law, in all board actions; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record minutes of each open meeting and post the minutes on the board's website, in accordance with subsection I of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved in an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711; and (iii) require that the board invite the Attorney General's appointee or representative to all meetings of the board, executive committee, and board committees;

2. Establish regulations or institution policies for the acceptance and assistance of students that

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59 include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the
60 federal requirement to register for the selective service are not eligible to receive any state direct student
61 assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth
62 shall not be considered in making admissions determinations for students who have earned a diploma
63 pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of
64 certain graduates of comprehensive community colleges as set forth in § 23.1-907;

65 3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

66 4. Notwithstanding any other provision of state law, establish policies and procedures requiring the
67 notification of the parent of a dependent student when such student receives mental health treatment at
68 the institution's student health or counseling center and such treatment becomes part of the student's
69 educational record in accordance with the federal Health Insurance Portability and Accountability Act
70 (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal
71 Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part
72 99). Such notification shall only be required if it is determined that there exists a substantial likelihood
73 that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to
74 himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious
75 harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.
76 However, notification may be withheld if any person licensed to diagnose and treat mental, emotional,
77 or behavioral disorders by a health regulatory board within the Department of Health Professions who is
78 treating the student has made a part of the student's record a written statement that, in the exercise of
79 his professional judgment, the notification would be reasonably likely to cause substantial harm to the
80 student or another person. No public institution of higher education or employee of a public institution
81 of higher education making a disclosure pursuant to this subsection is civilly liable for any harm
82 resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct
83 by the institution or its employees;

84 5. Establish policies and procedures requiring the release of the educational record of a dependent
85 student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a
86 parent at his request;

87 6. Establish programs to seek to ensure that all graduates have the technology skills necessary to
88 compete in the twenty-first century and that all students matriculating in teacher-training programs
89 receive instruction in the effective use of educational technology;

90 7. Establish policies for the discipline of students who participate in varsity intercollegiate athletics,
91 including a provision requiring an annual report by the administration of the institution to the governing
92 board regarding enforcement actions taken pursuant to such policies;

93 8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29
94 (§ 23.1-2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a
95 closed meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief
96 executive officer's performance. Any change to the chief executive officer's employment contract during
97 any such meeting or any other meeting of the board shall be made only by a vote of the majority of the
98 board's members;

99 9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations
100 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter
101 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human
102 research committee to submit to the Governor, the General Assembly, and the chief executive officer of
103 the institution or his designee at least annually a report on the human research projects reviewed and
104 approved by the committee and require the committee to report any significant deviations from approved
105 proposals;

106 10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and the
107 accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of
108 such statements pursuant to § 30-133;

109 11. Submit to the General Assembly and the Governor an annual executive summary of its interim
110 activity and work no later than the first day of each regular session of the General Assembly. The
111 executive summary shall be submitted as provided in the procedures of the Division of Legislative
112 Automated Systems for the processing of legislative documents and reports and shall be posted on the
113 General Assembly's website;

114 12. Make available to any interested party upon request a copy of the portion of the most recent
115 report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in
116 Virginia" pertaining to institutions of higher education;

117 13. Adopt policies or institution regulations regarding the ownership, protection, assignment, and use
118 of intellectual property and provide a copy of such policies to the Governor and the Joint Commission
119 on Technology and Science. All employees, including student employees, of public institutions of higher
120 education are bound by the intellectual property policies of the institution employing them; and

- 121 14. *Adopt policies or institutional regulations prohibiting discrimination on the basis of race, color,*
122 *religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or*
123 *disability in compliance with state and federal law; and*
124 15. Adopt policies that are supportive of the intellectual property rights of matriculated students who
125 are not employed by such institution.