

20201131D

HOUSE BILL NO. 5072

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate LaRock
on September 3, 2020)

(Patron Prior to Substitute—Delegate Lopez)

A BILL to amend and reenact § 2.2-520 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-511.1, relating to law-enforcement misconduct.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-520 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-511.1 as follows:

§ 2.2-511.1. *Public integrity; law-enforcement misconduct.*

A. As used in this section:

"Law-enforcement officer" means the same as that term is defined in § 9.1-101.

"Locality" shall be construed to mean a county, city, or town as the context may require.

B. It is unlawful for the Commonwealth or any locality, or any agent thereof, or any person acting on behalf of the Commonwealth or any locality, to engage in a pattern or practice of conduct by law-enforcement officers of any agency of the Commonwealth or any locality that deprives persons of rights, privileges, or immunities secured or protected by the laws of the United States and the Commonwealth.

C. Whenever the Attorney General has reasonable cause to believe that a violation of subsection B has occurred, the Attorney General, for or in the name of the Commonwealth, may (i) file a civil action to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice or (ii) inquire into or seek to conciliate any unlawful pattern and practice pursuant to § 2.2-520. The Attorney General may file a civil action to obtain appropriate relief to enforce a conciliation agreement arising out of such inquiry or conciliation.

D. Whenever the Attorney General has reasonable cause to believe that a violation of subsection B has occurred, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this section.

E. Notwithstanding the provisions of § 40.1-57.2, no locality shall enter into a collective bargaining contract with a labor union or other employee association representing law-enforcement officers or employees of a law-enforcement agency that (i) prevents the Attorney General from seeking equitable relief against a law-enforcement agency engaging in a pattern or practice of unconstitutional misconduct; (ii) includes any stipulation that delays officer interviews or interrogations after alleged wrongdoing for a set length of time; (iii) provides officers with access to evidence before interviews or interrogations about alleged wrongdoing; (iv) mandates the destruction or purging of disciplinary records from personnel files after a set length of time or limits the consideration of disciplinary records in future employment actions; (v) prohibits the interrogation, investigation, or punishment of officers on the basis of alleged wrongdoing if a set length of time has elapsed since its alleged occurrence or since the initiation of the investigation; (vi) prohibits supervisors from interrogating, investigating, or disciplining officers on the basis of anonymous civilian complaints; or (vii) requires arbitration of disputes related to disciplinary penalties or termination.

§ 2.2-520. *Division of Human Rights created; duties.*

A. There is created in the Department of Law a Division of Human Rights (the Division) to assist in the prevention of and relief from alleged unlawful discriminatory practices.

B. The powers and duties of the Division shall be to:

1. Receive, investigate, seek to conciliate, refer to another agency, hold hearings pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.), and make findings and recommendations upon complaints alleging unlawful discriminatory practices, including complaints alleging a pattern and practice of unlawful discriminatory practices, pursuant to the Virginia Human Rights Act (§ 2.2-3900 et seq.);

2. Adopt, promulgate, amend, and rescind regulations consistent with this article and the provisions of the Virginia Human Rights Act (§ 2.2-3900 et seq.) pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.). However, the Division shall not have the authority to adopt regulations on a substantive matter when another state agency is authorized to adopt such regulations;

3. Inquire into incidents that may constitute unlawful acts of discrimination or unfounded charges of unlawful discrimination under state or federal law and take such action within the Division's authority designed to prevent such acts;

4. Seek through appropriate enforcement authorities, prevention of or relief from an alleged unlawful discriminatory practice;

- 60 5. Appoint and compensate qualified hearing officers from the list of hearing officers maintained by
61 the Executive Secretary of the Supreme Court of Virginia;
- 62 6. Promote creation of local commissions to aid in effectuating the policies of this article and to
63 enter into cooperative worksharing or other agreements with federal agencies or local commissions,
64 including the deferral of complaints of discrimination to federal agencies or local commissions;
- 65 7. Make studies and appoint advisory councils to effectuate the purposes and policies of ~~the~~ *this*
66 article and to make the results thereof available to the public;
- 67 8. Accept public grants or private gifts, bequests, or other payments, as appropriate; ~~and~~
- 68 9. *Receive complaints, seek to conciliate, and inquire into incidents that may constitute an unlawful*
69 *pattern or practice of conduct by law-enforcement officers that deprives persons of rights, privileges, or*
70 *immunities secured or protected by the laws of the United States and the Commonwealth and take such*
71 *action within the Division's authority, including requesting the Attorney General to issue a civil*
72 *investigative demand pursuant to subsection D of § 2.2-511.1, designed to prevent such conduct; and*
- 73 10. Furnish technical assistance upon request of persons subject to this article to further comply with
74 ~~the~~ *this* article or an order issued thereunder.