

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 561

An Act to amend and reenact §§ 2.2-1147 and 2.2-2639 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 11 of Title 2.2 a section numbered 2.2-1147.1, relating to breast-feeding promotion.

[H 1264]

Approved April 5, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1147 and 2.2-2639 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 4 of Chapter 11 of Title 2.2 a section numbered 2.2-1147.1 as follows:

§ 2.2-1147. Definitions.

As used in §§ ~~2.2-1148~~ 2.2-1147.1 through 2.2-1156, unless the context requires a different meaning:

"Institutions" shall include, but not be limited to, any corporation owned by the Commonwealth and subject to the control of the General Assembly.

"Property" shall mean an interest in land and any improvements thereon held by the Commonwealth and under the control of or occupied by any of its departments, agencies or institutions, but shall not include (i) real estate or rights-of-way acquired by the Department of Transportation for the construction of highways and (ii) ungranted shores of the sea, marsh and meadowlands as defined in § 28.2-1500.

"Recommend," "recommended," or "recommendation," when used with reference to a recommendation by the Department of General Services to the Governor, means to advise either for or against a proposed action.

§ 2.2-1147.1. *Right to breast-feed.*

Notwithstanding any other provision of law, a woman may breast-feed her child at any location where that woman would otherwise be allowed on property that is owned, leased or controlled by the Commonwealth as defined in § 2.2-1147.

§ 2.2-2639. Causes of action not created.

A. Nothing in this article creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions, except as specifically provided in subsections B and C.

B. No employer employing more than five but less than fifteen persons shall discharge any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, *including lactation*, or of age if the employee is forty years *old* or older. *For the purposes of this section, "lactation" means a condition that may result in the feeding of a child directly from the breast or the expressing of milk from the breast.*

C. The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly discharged the employee in violation of this section. Any such action shall be brought within 180 days from the date of the discharge. The court may award up to twelve months' back pay with interest at the judgment rate as provided in § 6.1-330.54. However, if the court finds that either party engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the twelve-month limitation.

In any case where the employee prevails, the court shall award attorney's fees from the amount recovered, not to exceed twenty-five percent of the back pay awarded. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

D. Causes of action based upon the public policies reflected in this article shall be exclusively limited to those actions, procedures and remedies, if any, afforded by applicable federal or state civil rights statutes or local ordinances. Nothing in this section or § 2.2-3900 shall be deemed to alter, supersede, or otherwise modify the authority of the Council or of any local human rights or human relations commissions established pursuant to § 15.2-965 or § 15.2-853 or subject to the provisions of § 2.2-2638.