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SENATE BILL NO. 665

Offered January 19, 2006

A BILL to amend and reenact §§ 2.2-2632 through 2.2-2636, 2.2-2639, and 2.2-3900 through 2.2-3902 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-2632.1 and 2.2-3903, relating to the Virginia Human Rights Act and the Virginia Human Rights Council.

Patrons—Ticer, Edwards, Lambert, Locke, Lucas, Marsh, Miller, Puller and Whipple

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2632 through 2.2-2636, 2.2-2639, and 2.2-3900 through 2.2-3902 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2632.1 and 2.2-3903 as follows:

Article 12.

Human Rights Virginia Council on Human Rights.

§ 2.2-2632. Virginia Council on Human Rights Council; membership; terms; quorum; compensation.

A. The Virginia Council on Human Rights Council (the "Council") is established as a policy council, within the meaning of § 2.2-2100, in the executive branch of state government. The Council shall consist of nine members, who shall be appointed by the Governor, subject to confirmation by the General Assembly. The members appointed by the Governor shall, insofar as possible, be diverse with respect to economic status, race, sex, color, ethnicity, age, disabilities, political affiliation and marital status.

B. Of the members first appointed, four shall be appointed to two-year terms, and five shall be appointed to four-year terms. Thereafter members shall be appointed to four-year terms, except members appointed to fill vacancies shall be appointed for the remainder of the unexpired term.

In the case of vacancies on the Council during a recess of the General Assembly, the Governor shall make an appointment to fill the vacancy, and the appointee shall hold office until thirty days after the commencement of the next session of the General Assembly and, if confirmed by the General Assembly, for the remainder of the unexpired term.

C. The Governor shall designate one of the members of the Council to be chairperson. The chairperson shall preside at all the meetings of the Council. The Council by majority vote shall elect one of its members as vice-chairperson who, in the absence of the chairperson, shall perform all the duties and functions of the chairperson.

D. A simple majority of the members serving on the Council shall constitute a quorum. No power pursuant to § 2.2-2634 may be exercised by the Council unless agreed to by a majority of the nine members of the Council appointed. A majority of the quorum is empowered to exercise any of the duties of the Council. Vacancies in the Council shall not impair the authority of remaining members to exercise all the powers of the Council. The Council shall meet at least four times each year. The meetings of the Council shall be held at the call of the chairman or whenever the majority of the voting members so request.

E. Members of the Council shall receive compensation for the discharge of their duties as provided in § 2.2-2813.

§ 2.2-2632.1. Definitions.

As used in this article, unless the context requires otherwise:

"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 of Virginia and Acts of the General Assembly means 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.

"Complainant" or "complaining party" means a person who files a complaint alleging an unlawful discriminatory practice. The term shall also include the person on whose behalf a complaint is filed.

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the complaining party, the party against whom the complaint has been filed, and their respective representatives.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

"Council" means the Virginia Council on Human Rights.

"Respondent" or "responding party" means any person or other entity alleged to have engaged or is

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59 *engaging in conduct that is an unlawful discriminatory practice and any other person joined pursuant to*  
60 *the provisions of § 2.2-2636.*

61 *"Unlawful discriminatory practice" means conduct that violates any Virginia or federal statute or*  
62 *regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy,*  
63 *childbirth or related medical conditions, age, marital status, or disability in employment, public*  
64 *accommodations, education, or real estate transactions.*

65 § 2.2-2633. Human Rights Director.

66 A. There is established under the Council the *Human Rights Office (the "Office")* and position of  
67 Human Rights Director (the "Director"). The Director shall be appointed by and serve at the pleasure of  
68 the Governor. *The Director shall preferably, by reason of professional experience, be familiar with*  
69 *relevant state and federal anti-discrimination statutes.*

70 B. The Director may, within guidelines established by the Council:

71 1. *Direct the day-to-day operations and activities of the Office.*

72 2. *Exercise such powers and perform such duties as are delegated to him by the Council or*  
73 *conferred or imposed upon him by law and perform such other duties as may be required by the*  
74 *Council.*

75 3. Accept and investigate complaints of alleged unlawful discriminatory practices or alleged  
76 unfounded charges of unlawful discrimination filed in writing within 180 days of the alleged  
77 discriminatory events;

78 ~~2-4.~~ Attempt to conciliate any complaint of unlawful discrimination under this article;

79 ~~3-5.~~ In the event conciliation fails, recommend to the Council that a hearing be held or other  
80 appropriate action be taken;

81 ~~4. Carry out the policies of the Council and any other duty assigned by this article.~~

82 § 2.2-2634. Powers and duties of Council.

83 In addition to the other powers and duties prescribed in this article, the Council shall have the  
84 following powers to:

85 1. Meet and function at any place in the Commonwealth;

86 2. Establish and maintain ~~an~~ *its principal office in the City of Richmond and such other offices in the*  
87 *Commonwealth in whatever locations determined by the Council to be necessary;*

88 3. *Request and use, as needed, the services of all agencies and political subdivisions of the*  
89 *Commonwealth in accordance with § 2.2-2103;*

90 4. *Initiate complaints of any violation of this article.*

91 5. *Recommend to the Governor and the General Assembly policies, legislation, and other appropriate*  
92 *actions to promote and protect citizens from acts of unlawful discrimination in the Commonwealth;*

93 6. Select, and fix the compensation of, such technical advisors and employees as it deems necessary,  
94 or to authorize such action by the Director. The Attorney General shall represent the Council in all  
95 litigation to which the Council is a party;

96 7. *Administer oaths and take testimony under oath or affirmation;*

97 ~~4-8.~~ Appoint and compensate qualified hearing officers from the list of hearing officers maintained  
98 by the Executive Secretary of the Supreme Court of Virginia;

99 ~~5-9.~~ Promote creation of local commissions to aid in effectuating the policies of this article and to  
100 enter into cooperative worksharing or other agreements with federal agencies or local commissions,  
101 including the deferral of complaints of discrimination to federal agencies or local commissions;

102 ~~6-10.~~ Adopt, promulgate, amend and rescind regulations consistent with this article pursuant to the  
103 Virginia Administrative Process Act (§ 2.2-4000 et seq.). No such regulation shall be inconsistent with  
104 any state or federal law or regulation. ~~However, the Council shall not have the authority to adopt~~  
105 ~~regulations on a substantive matter when another state agency is authorized to adopt such regulations;~~

106 ~~7-11.~~ Receive, investigate, ~~seek to mediate,~~ conciliate, refer to another agency, hold hearings pursuant  
107 to the Virginia Administrative Process Act (§ 2.2-4000 et seq.), and make findings and recommendations  
108 upon complaints alleging unlawful discriminatory practices;

109 ~~8-12.~~ Make studies and appoint advisory councils to effectuate the purposes and policies of the article  
110 and to make the results thereof available to the public;

111 ~~9-13.~~ ~~Accept public grants or private gifts, bequests, or other payments, as appropriate~~ *Receive and*  
112 *accept, from any source, aid contributions of money, property, labor, or other things of value to be*  
113 *held, used, and applied to carry out purposes of this article including, but not limited to, gifts or grants*  
114 *from any department, agency, or instrumentality of the United States;*

115 ~~10-14.~~ Furnish technical assistance upon request of persons subject to this article to further ~~comply~~  
116 *compliance with the article or an order issued thereunder;*

117 ~~11-15.~~ Inquire into incidents that may constitute unlawful acts of discrimination or unfounded charges  
118 of unlawful discrimination under state or federal law, and to take such action within the Council's  
119 authority designed to prevent such acts; *and*

120 ~~12-16.~~ Create an official seal that shall be judicially noticed; ~~and~~

121 13. Seek, with the approval of the Attorney General, through appropriate enforcement authorities,  
 122 prevention of or relief from an alleged unlawful discriminatory practice; however, the Council itself shall  
 123 have no power to issue subpoenas, award damages, or grant injunctive relief.

124 § 2.2-2635. Investigative Procedures.

125 A. The Council shall have the right to interview any person who, in the opinion of the Council, may  
 126 have any information relevant to an investigation. Such persons may be interviewed under oath. In  
 127 furtherance of the investigation, the Council shall also have the right to request, for inspection and  
 128 copying, production of any information, records, or documents in the possession of any person and that,  
 129 in the opinion of the Council, may be relevant to the investigation.

130 B. Whenever the Council, based on information already available, has cause to believe that a prima  
 131 facie case of discrimination exists, and has reasonable cause to believe that any person has engaged in  
 132 or is engaging in any unlawful discriminatory practice, and the Council, after having made a good faith  
 133 effort to obtain the data, and information, or testimony necessary to determine whether a violation  
 134 has occurred, has been unable to obtain such data, information or testimony, the Council may request  
 135 the Attorney General to apply to the judge of the circuit court of the jurisdiction in which the  
 136 respondent responding party resides or is doing business for a subpoena duces tecum against any person  
 137 refusing to produce such data, and information, or testimony. The judge of the court, upon good cause  
 138 shown, may cause the subpoena to be issued.

139 C. Any person failing to comply with such subpoena shall be subject to punishment for contempt by  
 140 the court issuing the subpoena.

141 D. For purposes of this section "person" includes any individual, partnership, corporation, association,  
 142 legal representative, mutual company, joint stock company, trust, unincorporated organization, employee,  
 143 employer, employment agency, labor organization, joint labor-management committee, or an agent  
 144 thereof.

145 E. Witnesses summoned by a subpoena under this article shall be entitled to the same witness and  
 146 mileage fees as witnesses in proceedings in the courts of the Commonwealth. Fees payable to a witness  
 147 summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party  
 148 is unable to pay the fees, by the Council.

149 § 2.2-2636. Procedures for receipt or initiation of complaint; notice to parties; filing of answer.

150 A. Filing of a written complaint with the Council shall be deemed filing with any state agency for  
 151 the purpose of complying with any time limitation on the filing of a complaint, provided the time limit  
 152 for filing with the other agency has not expired. The time limit for filing with other agencies shall be  
 153 tolled while the Council is either investigating the complaint or making a decision to refer it.

154 B. Complaints under this article shall be filed with the Council within 180 days of the alleged  
 155 discriminatory event.

156 C. Any person not named in the complaint and who is identified as a respondent in the course of the  
 157 investigation may be joined as an additional or substitute respondent upon written notice to such person  
 158 by the Council explaining the basis for the Council's belief that such person is properly joined as a  
 159 respondent.

160 D. Any respondent may file an answer to a complaint. Complaints and answers must be made in  
 161 writing, under oath or affirmation, and in such form as the Council requires. Complaints and answers  
 162 may be reasonably and fairly amended at any time.

163 E. Upon the filing of a complaint or initiation of a complaint by the Council or its designee, the  
 164 Council shall provide written notice to the parties as follows:

165 1. To the aggrieved person acknowledging the filing and advising such person of the time limits and  
 166 choice of forums under this article; and

167 2. To the respondent, not later than 10 days after such filing or the identification of an additional  
 168 respondent under subsection C, identifying the alleged discriminatory practice and advising such  
 169 respondent of the procedural rights and obligations of respondents under this article with a copy of the  
 170 original complaint.

171 § 2.2-2639. Causes of action not created.

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

174 B. No employer employing more than five but less fewer than 15 persons shall discharge any such  
 175 employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related  
 176 medical conditions, including lactation, or of age if the employee is 40 years old or older. For the  
 177 purposes of this section, "lactation" means a condition that may result in the feeding of a child directly  
 178 from the breast or the expressing of milk from the breast.

179 C. The employee may bring an action in a general district or circuit court having jurisdiction over  
 180 the employer who allegedly discharged the employee in violation of this section. Any such action shall  
 181 be brought within 300 days from the date of the discharge or, if the employee has filed a complaint

182 with the Council or a local human rights or human relations agency or commission within 300 days of  
183 the discharge, such action shall be brought within 90 days from the date that the Council or a local  
184 human rights or human relations agency or commission has rendered a final disposition on the  
185 complaint. The court may award up to 12 months' back pay with interest at the judgment rate as  
186 provided in § 6.1-330.54. However, if the court finds that either party engaged in tactics to delay  
187 resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment  
188 without regard to the 12-month limitation.

189 In any case where the employee prevails, the court shall award attorneys' fees from the amount  
190 recovered, not to exceed 25 percent of the back pay awarded. The court shall not award other damages,  
191 compensatory or punitive, nor shall it order reinstatement of the employee.

192 D. Causes of action based upon the public policies reflected in this article shall be exclusively  
193 limited to those actions, procedures and remedies, if any, afforded by applicable federal or state civil  
194 rights statutes or local ordinances. Nothing in this section or § 2.2-3900 shall be deemed to alter,  
195 supersede, or otherwise modify the authority of the Council or of any local human rights or human  
196 relations commissions established pursuant to § 15.2-853 or 15.2-965 or subject to the provisions of  
197 § 2.2-2638.

198 § 2.2-3900. Short title; declaration of policy.

199 A. This chapter shall be known and cited as the Virginia Human Rights Act.

200 B. It is the policy of the Commonwealth to:

201 1. safeguard all individuals within the Commonwealth from unlawful discrimination because of race,  
202 color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital  
203 status, or disability, in *employment*, places of public accommodation, ~~including~~ educational institutions  
204 and in real estate transactions; ~~in employment~~; preserve the public safety, health and general welfare;  
205 and further the interests, rights and privileges of individuals within the Commonwealth; and

206 2. Protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

207 § 2.2-3901. Definitions.

208 "*Council*" means the Virginia Council on Human Rights.

209 "*Unlawful discriminatory practice*" means conduct that violates any Virginia or federal statute or  
210 regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy,  
211 childbirth or related medical conditions, age, marital status, or disability *in employment, public*  
212 *accommodations, education, or real estate transactions shall be an "unlawful discriminatory practice" for*  
213 *the purposes of this chapter.*

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

219 § 2.2-3902. Construction of chapter; other programs to aid persons with disabilities, minors and the  
220 elderly.

221 A. The provisions of this chapter shall be construed liberally for the accomplishment of its policies.  
222 Nothing contained in this chapter shall be deemed to repeal, supersede or expand upon any of the  
223 provisions of any other state or federal law relating to discrimination because of race, color, religion,  
224 national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.

225 B. *Nothing in this chapter shall abridge any federal statute or regulation prohibiting unlawful*  
226 *discrimination.*

227 C. Nothing in this chapter shall prohibit or alter any program, service, facility, school, or privilege  
228 that is afforded, oriented or restricted to a person because of disability or age from continuing to  
229 habilitate, rehabilitate, or accommodate that person.

230 D. In addition, nothing in this chapter shall be construed to affect any governmental program, law or  
231 activity differentiating between persons on the basis of age over the age of eighteen years (i) where the  
232 differentiation is reasonably necessary to normal operation or the activity is based upon reasonable  
233 factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of  
234 powers of the Commonwealth for the general health, safety and welfare of the population at large.

235 E. Complaints filed with the Human Rights Virginia Council on Human Rights (the "Council") in  
236 accordance with ~~§ 2.2-2634~~ alleging unlawful discriminatory practice under a Virginia statute that is  
237 enforced by a Virginia agency shall be referred to that agency. The Council may investigate complaints  
238 alleging an unlawful discriminatory practice under a federal statute or regulation ~~this chapter and~~  
239 attempt to resolve it ~~through conciliation~~ *them using all powers, authority and resources provided*  
240 *pursuant to this chapter. Unsolved complaints shall thereafter be referred* After all reasonable efforts to  
241 resolve any complaint, the Council may refer any unresolved complaints to the federal agency with  
242 jurisdiction over the complaint. Upon such referral, the Council shall have no further jurisdiction over  
243 the complaint. The Council shall have no jurisdiction over any complaint filed under a local ordinance

244 adopted pursuant to § 15.2-965.

245 § 2.2-3903. *Immunity; retaliation prohibited.*

246 Any person who, in good faith, files a complaint with the Council on behalf of himself or another  
247 person, or provides information or participates in the investigation of any such complaint, shall have  
248 immunity from any civil liability and shall not be subject to any penalties, sanctions, restrictions, or  
249 retaliation as a consequence of making such complaint, providing such information, or participating in  
250 such investigation.

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