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SENATE BILL NO. 1247

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 2.2-2639, 2.2-3900, and 2.2-3901 of the Code of Virginia, relating to the Virginia Human Rights Act; definition of discriminatory practice; sexual orientation.

Patron—Northam

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2639, 2.2-3900, and 2.2-3901 of the Code of Virginia are amended and reenacted as follows:

§ 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 15 persons~~ shall discharge any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation, *sexual orientation*, or of age if the employee is 40 years old or older.

For the purposes of this section,:

"~~lactation~~" "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.

"Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression. "Sexual orientation" shall not include any person whose attraction is toward a person with whom sexual conduct would be illegal due to the age of the party.

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 300 days from the date of the discharge or, if the employee has filed a complaint with the Council or a local human rights or human relations agency or commission within 300 days of the discharge, such action shall be brought within 90 days from the date that the Council or a local human rights or human relations agency or commission has rendered a final disposition on the complaint. The court may award up to 12 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 12-month limitation.

In any case where the employee prevails, the court shall award attorneys' fees from the amount recovered, not to exceed 25 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 § 15.2-853 or 15.2-965 or subject to the provisions of § 2.2-2638.

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

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

B. It is the policy of the Commonwealth to:

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

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

§ 2.2-3901. Unlawful discriminatory practice; gender discrimination and sexual orientation defined.

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, *sexual orientation*, age, marital status, or disability shall be an "unlawful discriminatory practice" for the purposes of this chapter.

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

64 *For purposes of this chapter, "sexual orientation" means a person's actual or perceived*
65 *heterosexuality, bisexuality, homosexuality, or gender identity or expression. "Sexual orientation" shall*
66 *not include any person whose attraction is toward a person with whom sexual conduct would be illegal*
67 *due to the age of the party.*