

12103576D

## HOUSE BILL NO. 1099

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact § 2.2-2639 of the Code of Virginia, relating to the Virginia Human Rights Council; causes of action in employment discrimination.

Patron—Herring (By Request)

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.2-2639 of the Code of Virginia is 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 (i) fail or refuse to hire an individual, (ii) discharge any such employee, or (iii) otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment on the basis of race, color, religion, national origin, sex, sexual orientation, pregnancy, or childbirth or related medical conditions, including lactation, or of age if the employee is 40 years old or older.

No employer employing more than five but less than 20 persons shall (a) fail or refuse to hire an individual, (b) discharge any such employee, or (c) otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment on the basis of age if the person is 40 years old or older.

Demonstrated compliance by an employer with any federal law or regulation shall be an affirmative defense to any such claim.

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 parties.

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 violated subsection B. Any such action shall be brought within 300 days from the date of the discharge alleged violation 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 alleged violation, 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 total monetary damages of an amount not to exceed the equivalent of 12 months' back pay with interest at the judgment rate as provided in § 6.2-302. 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 monetary damages to the date of judgment without regard to the 12-month limitation.

In any case where the employee prevails, the court shall award attorneys' attorney fees from the amount recovered, not to exceed 25 percent of the back pay awarded award. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee. In cases involving violations other than improperly discharged employees, if the court finds that the respondent has intentionally engaged in, or is intentionally engaging in, an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice and order such affirmative action as may be appropriate, which may include, but is not limited to, hiring back of employees, with or without back pay, or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than one year prior to the filing of a charge with the Council or a local human rights or human relations agency or commission. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against shall operate to reduce the back pay otherwise allowable.

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

INTRODUCED

HB1099

**59** relations commissions established pursuant to § 15.2-853 or 15.2-965 or subject to the provisions of  
**60** § 2.2-2638.