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HOUSE BILL NO. 2802

Offered January 18, 2019

A BILL to amend and reenact §§ 2.2-520, 2.2-522, 2.2-3902, 2.2-3903, and 15.2-1604 of the Code of Virginia, relating to the Division of Human Rights; name change; report.

Patron—Lopez

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-520, 2.2-522, 2.2-3902, 2.2-3903, and 15.2-1604 of the Code of Virginia is amended and reenacted as follows:

Article 4.

Division of ~~Human~~ Civil Rights.

§ 2.2-520. Division of Civil Rights created; duties; report.

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

B. The 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;

2. Adopt, promulgate, amend, and rescind regulations consistent with this article 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;

5. Appoint and compensate qualified hearing officers from the list of hearing officers maintained by the Executive Secretary of the Supreme Court of Virginia;

6. Promote creation of local commissions to aid in effectuating the policies of this article and to enter into cooperative worksharing or other agreements with federal agencies or local commissions, including the deferral of complaints of discrimination to federal agencies or local commissions;

7. Make studies and appoint advisory councils to effectuate the purposes and policies of the article and to make the results thereof available to the public;

8. Accept public grants or private gifts, bequests, or other payments, as appropriate; and

9. Furnish technical assistance upon request of persons subject to this article to further comply with the article or an order issued thereunder; and

10. Submit by November 30 of each year, a report to the Governor and the General Assembly summarizing all written complaints of unlawful discriminatory practices made to the Division, including a tabulation of referrals, investigations, conciliations, and formal hearings. Such report shall also include recommendations for policies and legislation based on its findings.

§ 2.2-522. Filing with Division deemed filing with other state agencies.

Filing of a written complaint with the Division of ~~Human~~ Civil Rights shall be deemed filing with any state agency for the purpose of complying with any time limitation on the filing of a complaint, provided the time limit for filing with the other agency has not expired. The time limit for filing with other agencies shall be tolled while the Division is either investigating the complaint or making a decision to refer it. Complaints under this article shall be filed with the Division within 180 days of the alleged discriminatory event.

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

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

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

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59 rehabilitate, or accommodate that person.

60 In addition, nothing in this chapter shall be construed to affect any governmental program, law or
61 activity differentiating between persons on the basis of age over the age of 18 years (i) where the
62 differentiation is reasonably necessary to normal operation or the activity is based upon reasonable
63 factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of
64 powers of the Commonwealth for the general health, safety and welfare of the population at large.

65 Complaints filed with the Division of ~~Human~~ Civil Rights of the Department of Law (the Division)
66 in accordance with § 2.2-520 alleging unlawful discriminatory practice under a Virginia statute that is
67 enforced by a Virginia agency shall be referred to that agency. The Division may investigate complaints
68 alleging an unlawful discriminatory practice under a federal statute or regulation and attempt to resolve
69 it through conciliation. Unsolved complaints shall thereafter be referred to the federal agency with
70 jurisdiction over the complaint. Upon such referral, the Division shall have no further jurisdiction over
71 the complaint. The Division shall have no jurisdiction over any complaint filed under a local ordinance
72 adopted pursuant to § 15.2-965.

73 **§ 2.2-3903. Causes of action not created.**

74 A. Nothing in this chapter or in Article 4 (§ 2.2-520 et seq.) of Chapter 5 creates, nor shall it be
75 construed to create, an independent or private cause of action to enforce its provisions, except as
76 specifically provided in subsections B and C.

77 B. No employer employing more than five but less than 15 persons shall discharge any such
78 employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related
79 medical conditions, including lactation. No employer employing more than five but less than 20 persons
80 shall discharge any such employee on the basis of age if the employee is 40 years of age or older. For
81 the purposes of this section, "lactation" means a condition that may result in the feeding of a child
82 directly from the breast or the expressing of milk from the breast.

83 C. The employee may bring an action in a general district or circuit court having jurisdiction over
84 the employer who allegedly discharged the employee in violation of this section. Any such action shall
85 be brought within 300 days from the date of the discharge or, if the employee has filed a complaint
86 with the Division of ~~Human~~ Civil Rights of the Department of Law or a local human rights or human
87 relations agency or commission within 300 days of the discharge, such action shall be brought within 90
88 days from the date that the Division or a local human rights or human relations agency or commission
89 has rendered a final disposition on the complaint. The court may award up to 12 months' back pay with
90 interest at the judgment rate as provided in § 6.2-302. However, if the court finds that either party
91 engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back
92 pay to the date of judgment without regard to the 12-month limitation.

93 In any case where the employee prevails, the court shall award attorney fees from the amount
94 recovered, not to exceed 25 percent of the back pay awarded. The court shall not award other damages,
95 compensatory or punitive, nor shall it order reinstatement of the employee.

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

101 **§ 15.2-1604. Appointment of deputies and employment of employees; discriminatory practices**
102 **by certain officers; civil penalty.**

103 A. It shall be an unlawful employment practice for a constitutional officer:

104 1. To fail or refuse to appoint or hire or to discharge any individual, or otherwise to discriminate
105 against any individual with respect to his compensation, terms, conditions or privileges of appointment
106 or employment, because of such individual's race, color, religion, sex or national origin; or

107 2. To limit, segregate, or classify his appointees, employees or applicants for appointment or
108 employment in any way which would deprive or tend to deprive any individual of employment
109 opportunities or otherwise adversely affect his status as an employee, because of the individual's race,
110 color, religion, sex or national origin.

111 B. Nothing in this section shall be construed to make it an unlawful employment practice for a
112 constitutional officer to hire or appoint an individual on the basis of his sex or national origin in those
113 instances where sex or national origin is a bona fide occupational qualification reasonably necessary to
114 the normal operation of that particular office. The provisions of this section shall not apply to
115 policy-making positions, confidential or personal staff positions, or undercover positions.

116 C. With regard to notices and advertisements:

117 1. Every constitutional officer shall, prior to hiring any employee, advertise such employment
118 position in a newspaper having general circulation or a state or local government job placement service
119 in such constitutional officer's locality except where the vacancy is to be used (i) as a placement
120 opportunity for appointees or employees affected by layoff, (ii) as a transfer opportunity or demotion for

an incumbent, (iii) to fill positions that have been advertised within the past 120 days, (iv) to fill positions to be filled by appointees or employees returning from leave with or without pay, (v) to fill temporary positions, temporary employees being those employees hired to work on special projects that have durations of three months or less, or (vi) to fill policy-making positions, confidential or personal staff positions, or special, sensitive law-enforcement positions normally regarded as undercover work.

2. No constitutional officer shall print or publish or cause to be printed or published any notice or advertisement relating to employment by such constitutional officer indicating any preference, limitation, specification, or discrimination, based on sex or national origin, except that such notice or advertisement may indicate a preference, limitation, specification, or discrimination based on sex or national origin when sex or national origin is a bona fide occupational qualification for employment.

D. Complaints regarding violations of subsection A may be made to the Division of ~~Human~~ Civil Rights of the Department of Law. The Division shall have the authority to exercise its powers as outlined in Article 4 (§ 2.2-520 et seq.) of Chapter 5 of Title 2.2.

E. Any constitutional officer who willfully violates the provisions of subsection C shall be subject to a civil penalty not to exceed \$2,000.