

20100463D

HOUSE BILL NO. 21

Offered January 8, 2020

Prefiled November 19, 2019

A BILL to amend and reenact §§ 2.2-3900 through 2.2-3903 of the Code of Virginia, relating to the Virginia Human Rights Act; prohibited discrimination; sexual orientation and gender identity.

Patrons—Lindsey; Senator: McClellan

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3900 through 2.2-3903 of the Code of Virginia are amended and reenacted as follows:

§ 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, age, marital status, *sexual orientation, gender identity*, or disability, in places of public accommodation, including educational institutions and in real estate transactions;

2. *Safeguard all individuals within the Commonwealth from unlawful discrimination in employment because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, or disability; preserve*

3. *Preserve* the public safety, health, and general welfare; ~~and further~~

4. *Further* the interests, rights, and privileges of individuals within the Commonwealth; and

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

§ 2.2-3901. Definitions.

~~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, age, marital status, or disability shall be an "unlawful discriminatory practice" for the purposes of this chapter.~~ A. As used in this chapter:

"Gender identity" means the gender-related identity, appearance, or other gender-related characteristics of an individual, without regard to the individual's designated sex at birth.

"Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, or homosexuality.

"Unlawful discriminatory practice" includes 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, age, marital status, sexual orientation, gender identity, or disability.

B. The terms "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 and acts of the General Assembly include 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.

§ 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, *sexual orientation, gender identity*, 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, rehabilitate, or accommodate that person.

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

INTRODUCED

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

67 **§ 2.2-3903. Causes of action not created.**

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

71 B. No employer employing more than five but less than 15 persons shall discharge any such
72 employee on the basis of race, color, religion, national origin, sex, *sexual orientation, gender identity,*
73 pregnancy, childbirth or related medical conditions, including lactation. No employer employing more
74 than five but less than 20 persons shall discharge any such employee on the basis of age if the
75 employee is 40 years of age or older. For the purposes of this section, "lactation" means a condition that
76 may result in the feeding of a child directly from the breast or the expressing of milk from the breast.

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

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

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