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## HOUSE BILL NO. 827

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws  
on January 28, 2020)

(Patron Prior to Substitute—Delegate Carroll Foy)

A BILL to amend and reenact § 2.2-520 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 39 of Title 2.2 a section numbered 2.2-3904, relating to the Virginia Human Rights Act; discrimination on the basis of pregnancy, childbirth, or related medical conditions; reasonable accommodation for the known limitations of persons related to pregnancy, childbirth, or related medical conditions.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-520 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 39 of Title 2.2 a section numbered 2.2-3904 as follows:

§ 2.2-520. Division of Human Rights created; duties.

A. There is created in the Department of Law a Division of Human 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. Develop instructional courses and conduct ongoing educational efforts to inform employers, employees, and applicants of their rights and obligations under § 2.2-3904 related to nondiscrimination in employment on the basis of pregnancy, childbirth, or related medical conditions and the provision of reasonable accommodation to persons with known limitations related to pregnancy, childbirth, or related medical conditions.

§ 2.2-3904. Causes of action for unlawful discharge or failure to provide reasonable accommodation for known limitations related to pregnancy, childbirth, or related medical conditions.

A. As used in this section:

"Employer" means any person, or agent of such person, employing five or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

"Lactation" means the need to express milk from the breast for the feeding of a child.

"Reasonable accommodation" includes more frequent or longer bathroom breaks, breaks to express breast milk, access to a private location other than a bathroom for the expression of breast milk, acquisition or modification of equipment or acquisition or modification of employee seating, a temporary transfer to a less strenuous or hazardous position, assistance with manual labor, job restructuring, a modified work schedule, light duty assignments, and leave to recover from childbirth.

"Related medical conditions" includes lactation.

B. No employer shall:

1. Discharge any employee on the basis of pregnancy, childbirth, or related medical conditions;

2. Refuse to make reasonable accommodation to the known limitations of a person related to

HOUSE SUBSTITUTE

HB827H1

60 pregnancy, childbirth, or related medical conditions, if such accommodation is necessary to assist such  
61 person in performing a particular job, unless the employer can demonstrate that the accommodation  
62 would impose an undue hardship on the employer.

63 a. In determining whether an accommodation would constitute an undue hardship on the employer,  
64 the following shall be considered:

65 (1). Hardship on the conduct of the employer's business, considering the nature of the employer's  
66 operation, including composition and structure of the employer's workforce;

67 (2). The size of the facility where employment occurs; and

68 (3). The nature and cost of the accommodations needed.

69 b. The fact that the employer provides or would be required to provide a similar accommodation to  
70 other classes of employees shall create a rebuttable presumption that the accommodation does not  
71 impose an undue hardship on the employer;

72 3. Take adverse action against an employee who requests or uses a reasonable accommodation  
73 pursuant to this section. As used in this subdivision, "adverse action" includes failure to reinstate any  
74 such employee to her previous position or an equivalent position with equivalent pay, seniority, and  
75 other benefits when her need for a reasonable accommodation ceases;

76 4. Deny employment or promotion opportunities to an otherwise qualified applicant or employee  
77 because such employer will be required to make reasonable accommodation to the known limitations of  
78 such applicant or employee related to pregnancy, childbirth, or related medical conditions; or

79 5. Require an employee with a known limitation related to pregnancy, childbirth, or related medical  
80 conditions to use leave from work if a reasonable accommodation is required under this section.

81 C. Each employer shall engage in a timely, good faith discussion with an employee who has  
82 requested an accommodation pursuant to this section to determine if the requested accommodation is  
83 reasonable and, if such accommodation is determined not to be reasonable, discuss alternative  
84 accommodations that may be provided.

85 D. An employer shall post in a conspicuous location and include in any employee handbook  
86 information concerning (i) the prohibition against unlawful discharge on the basis of pregnancy,  
87 childbirth, or related medical conditions and (ii) an employee's rights to reasonable accommodation for  
88 known limitations related to pregnancy, childbirth, or related medical conditions. Such information shall  
89 also be directly provided to (a) new employees upon commencement of their employment and (b) any  
90 employee within 10 days of such employee's providing notice to the employer that she is pregnant.

91 E. An employee or applicant who has been denied any of the rights afforded under subsection B may  
92 bring an action in a general district or circuit court having jurisdiction over the employer that allegedly  
93 denied such rights. Any such action shall be brought within two years from the date of the unlawful  
94 denial of rights, or, if the employee or applicant has filed a complaint with the Division of Human  
95 Rights of the Department of Law or a local human rights or human relations agency or commission  
96 within two years of the unlawful denial of rights, such action shall be brought within 90 days from the  
97 date that the Division or a local human rights or human relations agency or commission has rendered a  
98 final disposition on the complaint.

99 If the court or jury finds that an unlawful denial of rights afforded under subsection B has occurred,  
100 the court or jury may award to the plaintiff, as the prevailing party, compensatory and punitive  
101 damages. The court may also award reasonable attorney fees and costs and may grant as relief any  
102 permanent or temporary injunction, temporary restraining order, or other order, including an order  
103 enjoining the defendant from engaging in such practice, or order such affirmative action as may be  
104 appropriate.

105 F. The provisions of this section regarding the provision of reasonable accommodation on the basis  
106 of pregnancy, childbirth, or a related medical condition shall not be construed to affect any other  
107 provision of law relating to discrimination on the basis of sex or pregnancy.

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

113 2. That each employer, as defined by § 2.2-3904 of the Code Virginia, as created by this act, shall  
114 provide the notice required by subsection D of § 2.2-3904 of the Code of Virginia, as created by  
115 this act, to all current employees of such employer within 120 days of the effective date of this act.