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HOUSE BILL NO. 2147

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend and reenact §§ 2.2-520, as it is currently effective and as it shall become effective, 2.2-522, 2.2-523, 2.2-3902, 2.2-3907, 2.2-3909, and 15.2-1604 of the Code of Virginia, relating to the Division of Human Rights; renamed as Office of Civil Rights.

Patrons—Herring, Lopez, Keam and Levine

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-520, as it is currently effective and as it shall become effective, 2.2-522, 2.2-523, 2.2-3902, 2.2-3907, 2.2-3909, and 15.2-1604 of the Code of Virginia are amended and reenacted as follows:

Article 4.

~~Division Office of Human~~ Civil Rights.**§ 2.2-520. (Effective until March 1, 2021) Office of Civil Rights created; duties.**

A. It is the policy of the Commonwealth of Virginia to provide for equal opportunities throughout the Commonwealth to all its citizens, regardless of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, sexual orientation, gender identity, disability, familial status, marital status, or status as a veteran and, to that end, to prohibit discriminatory practices with respect to employment, places of public accommodation, including educational institutions, and real estate transactions by any person or group of persons, including state and local law-enforcement agencies, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth be protected and ensured.

~~There~~B. To carry out this policy, there is created in the Department of Law a ~~Division~~ an Office of ~~Human~~ Civil Rights (the ~~Division Office~~) to assist in the prevention of and relief from alleged unlawful discriminatory practices. The Office exists to investigate and bring actions to combat discrimination based on the protected classes listed in subsection A.

~~B.~~ C. The powers and duties of the ~~Division Office~~ 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 pursuant to the Virginia Human Rights Act (§ 2.2-3900 et seq.);

2. Adopt, promulgate, amend, and rescind regulations consistent with this article and the provisions of the Virginia Human Rights Act (§ 2.2-3900 et seq.) pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.). However, the ~~Division Office~~ 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~~ Office'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.

§ 2.2-520. (Effective March 1, 2021) Office of Civil Rights created; duties.

A. It is the policy of the Commonwealth of Virginia to provide for equal opportunities throughout the Commonwealth to all its citizens, regardless of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, sexual orientation, gender identity, disability, familial status, marital status, or status as a veteran and, to that end, to prohibit discriminatory practices with

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59 *respect to employment, places of public accommodation, including educational institutions, and real*
60 *estate transactions by any person or group of persons, including state and local law-enforcement*
61 *agencies, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of*
62 *the Commonwealth be protected and ensured.*

63 ~~There~~*B. To carry out this policy, there is created in the Department of Law a Division an Office of*
64 ~~Human~~ *Civil Rights (the Division Office) to assist in the prevention of and relief from alleged unlawful*
65 *discriminatory practices. The Office exists to investigate and bring actions to combat discrimination*
66 *based on the protected classes listed in subsection A.*

67 ~~B.~~ *C. The powers and duties of the Division Office shall be to:*

68 1. Receive, investigate, seek to conciliate, refer to another agency, hold hearings pursuant to the
69 Virginia Administrative Process Act (§ 2.2-4000 et seq.), and make findings and recommendations upon
70 complaints alleging unlawful discriminatory practices, including complaints alleging a pattern and
71 practice of unlawful discriminatory practices, pursuant to the Virginia Human Rights Act (§ 2.2-3900 et
72 seq.);

73 2. Adopt, promulgate, amend, and rescind regulations consistent with this article and the provisions
74 of the Virginia Human Rights Act (§ 2.2-3900 et seq.) pursuant to the Virginia Administrative Process
75 Act (§ 2.2-4000 et seq.). However, the ~~Division~~ *Office* shall not have the authority to adopt regulations
76 on a substantive matter when another state agency is authorized to adopt such regulations;

77 3. Inquire into incidents that may constitute unlawful acts of discrimination or unfounded charges of
78 unlawful discrimination under state or federal law and take such action within the ~~Division's~~ *Office's*
79 authority designed to prevent such acts;

80 4. Seek through appropriate enforcement authorities, prevention of or relief from an alleged unlawful
81 discriminatory practice;

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

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

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

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

90 9. Receive complaints, seek to conciliate, and inquire into incidents that may constitute an unlawful
91 pattern or practice of conduct by law-enforcement officers that deprives persons of rights, privileges, or
92 immunities secured or protected by the laws of the United States and the Commonwealth and take such
93 action within the ~~Division's~~ *Office's* authority, including requesting the Attorney General to issue a civil
94 investigative demand pursuant to subsection D of § 2.2-511.1, designed to prevent such conduct; and

95 10. Furnish technical assistance upon request of persons subject to this article to further comply with
96 the article or an order issued thereunder.

97 **§ 2.2-522. Filing with the Office deemed filing with other state agencies.**

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

104 **§ 2.2-523. Confidentiality of information; penalty.**

105 A. The ~~Division Office~~ shall not make public, prior to a public hearing pursuant to § 2.2-520,
106 investigative notes and other correspondence and information furnished to the ~~Division Office~~ in
107 confidence with respect to an investigation or conciliation process involving an alleged unlawful
108 discriminatory practice.

109 B. Nothing in this section, however, shall prohibit the distribution of information taken from inactive
110 reports in a form that does not reveal the identity of the parties involved or other persons supplying
111 information.

112 **§ 2.2-3902. Construction of chapter; other programs to aid persons with disabilities, minors,**
113 **and the elderly.**

114 The provisions of this chapter shall be construed liberally for the accomplishment of its policies.

115 Conduct that violates any Virginia or federal statute or regulation governing discrimination on the
116 basis of race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth
117 or related medical conditions including lactation, age, status as a veteran, or national origin is an
118 unlawful discriminatory practice under this chapter.

119 Nothing in this chapter shall prohibit or alter any program, service, facility, school, or privilege that
120 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.

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

§ 2.2-3907. Procedures for a charge of unlawful discrimination; notice; investigation; report; conciliation; notice of the right to file a civil action; temporary relief.

A. Any person claiming to be aggrieved by an unlawful discriminatory practice may file a complaint in writing under oath or affirmation with the ~~Division Office~~ of ~~Human~~ Civil Rights of the Department of Law (the ~~Division Office~~). The ~~Division Office~~ itself or the Attorney General may in a like manner file such a complaint. The complaint shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged unlawful discrimination.

B. Upon perfection of a complaint filed pursuant to subsection A, the ~~Division Office~~ shall timely serve a charge on the respondent and provide all parties with a notice informing the parties of the complainant's rights, including the right to commence a civil action, and the dates within which the complainant may exercise such rights. In the notice, the ~~Division Office~~ shall notify the complainant that the charge of unlawful discrimination will be dismissed with prejudice and with no right to further proceed if a written complaint is not timely filed with the appropriate general district or circuit court.

C. The complainant and respondent may agree to voluntarily submit the charge to mediation without waiving any rights that are otherwise available to either party pursuant to this chapter and without incurring any obligation to accept the result of the mediation process. Nothing occurring in mediation shall be disclosed by the ~~Division Office~~ or admissible in evidence in any subsequent proceeding unless the complainant and the respondent agree in writing that such disclosure be made.

D. Once a charge has been issued, the ~~Division Office~~ shall conduct an investigation sufficient to determine whether there is reasonable cause to believe the alleged discrimination occurred. Such charge shall be the subject of a report made by the ~~Division Office~~. The report shall be a confidential document subject to review by the Attorney General, authorized ~~Division Office~~ employees, and the parties. The review shall state whether there is reasonable cause to believe the alleged unlawful discrimination has been committed.

E. If the report on a charge of discrimination concludes that there is no reasonable cause to believe the alleged unlawful discrimination has been committed, the charge shall be dismissed and the complainant shall be given notice of his right to commence a civil action.

F. If the report on a charge of discrimination concludes that there is reasonable cause to believe the alleged unlawful discrimination has been committed, the complainant and respondent shall be notified of such determination and the ~~Division Office~~ shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods such as conference, conciliation, and persuasion. When the ~~Division Office~~ determines that further endeavor to settle a complaint by conference, conciliation, and persuasion is unworkable and should be bypassed, the ~~Division Office~~ shall issue a notice that the case has been closed and the complainant shall be given notice of his right to commence a civil action.

G. At any time after a notice of charge of discrimination is issued, the ~~Division Office~~ or complainant may petition the appropriate court for temporary relief, pending final determination of the proceedings under this section, including an order or judgment restraining the respondent from doing or causing any act that would render ineffectual an order that a court may enter with respect to the complainant. Whether it is brought by the ~~Division Office~~ or by the complainant, the petition shall contain a certification by the ~~Division Office~~ that the particular matter presents exceptional circumstances in which irreparable injury will result from unlawful discrimination in the absence of temporary relief.

H. Upon receipt of a written request from the complainant, the ~~Division Office~~ shall promptly issue a notice of the right to file a civil action to the complainant after (i) 180 days have passed from the date the complaint was filed or (ii) the ~~Division Office~~ determines that it will be unable to complete its investigation within 180 days from the date the complaint was filed.

§ 2.2-3909. Causes of action for 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 lactation as defined in § 2.2-3905.

"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 access to 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. Refuse to make reasonable accommodation to the known limitations of a person related to pregnancy, childbirth, or related medical conditions, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer.

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

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

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

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

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

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

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

4. Require an employee to take leave if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of such employee.

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

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

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

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

F. The provisions of this section regarding the provision of reasonable accommodation for known limitations related to pregnancy, childbirth, and related medical conditions shall not be construed to affect any other provision of law relating to discrimination on the basis of sex or pregnancy.

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

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

1. To fail or refuse to appoint or hire or to discharge any individual, or otherwise to discriminate

244 against any individual with respect to his compensation, terms, conditions, or privileges of appointment
245 or employment, because of such individual's race, color, religion, sex, age, marital status, pregnancy,
246 childbirth or related medical conditions, sexual orientation, gender identity, national origin, or status as a
247 veteran; or

248 2. To limit, segregate, or classify his appointees, employees, or applicants for appointment or
249 employment in any way that would deprive or tend to deprive any individual of employment
250 opportunities or otherwise adversely affect his status as an employee, because of the individual's race,
251 color, religion, sex, age, marital status, pregnancy, childbirth or related medical conditions, sexual
252 orientation, gender identity, national origin, or status as a veteran.

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

258 C. With regard to notices and advertisements:

259 1. Every constitutional officer shall, prior to hiring any employee, advertise such employment
260 position in a newspaper having general circulation or a state or local government job placement service
261 in such constitutional officer's locality except where the vacancy is to be used (i) as a placement
262 opportunity for appointees or employees affected by layoff, (ii) as a transfer opportunity or demotion for
263 an incumbent, (iii) to fill positions that have been advertised within the past 120 days, (iv) to fill
264 positions to be filled by appointees or employees returning from leave with or without pay, (v) to fill
265 temporary positions, temporary employees being those employees hired to work on special projects that
266 have durations of three months or less, or (vi) to fill policy-making positions, confidential or personal
267 staff positions, or special, sensitive law-enforcement positions normally regarded as undercover work.

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

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

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