

2022 SESSION

INTRODUCED

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SENATE BILL NO. 494

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 2.2-3905, 2.2-3907, and 2.2-3908 of the Code of Virginia, relating to the Virginia Human Rights Act; nondiscrimination in employment; definition of employer, statute of limitations, and provision of attorney fees.

Patrons—McClellan, Deeds and Ebbin; Delegate: Watts

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3905, 2.2-3907, and 2.2-3908 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3905. Nondiscrimination in employment; definitions; exceptions.

A. As used in this section:

"Age" means being an individual who is at least 40 years of age.

"Domestic worker" means an individual who is compensated directly or indirectly for the performance of services of a household nature performed in or about a private home, including services performed by individuals such as companions, babysitters, cooks, waiters, butlers, valets, maids, housekeepers, nannies, nurses, janitors, laundresses, caretakers, handymen, gardeners, home health aides, personal care aides, and chauffeurs of automobiles for family use. "Domestic worker" does not include (i) a family member, friend, or neighbor of a child, or a parent of a child, who provides child care in the child's home; (ii) any child day program as defined in § 22.1-289.02 or an individual who is an employee of a child day program; or (iii) any employee employed on a casual basis in domestic service employment to provide companionship services for individuals who, because of age or infirmity, are unable to care for themselves.

"Employee" means an individual employed by an employer.

"Employer" means a person employing (i) ~~45~~ five or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person or (ii) one or more domestic workers. However, (a) for purposes of unlawful discharge under subdivision B 4 on the basis of race, color, religion, national origin, military status, sex, sexual orientation, gender identity, marital status, disability, pregnancy, or childbirth or related medical conditions including lactation, "employer" means any person employing more than five persons or one or more domestic workers and (b) for purposes of unlawful discharge under subdivision B 4 on the basis of age, "employer" means any employer employing more than five but fewer than 20 persons.

"Employment agency" means any person, or an agent of such person, regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer.

"Joint apprenticeship committee" means the same as that term is defined in § 40.1-120.

"Labor organization" means an organization engaged in an industry, or an agent of such organization, that exists for the purpose, in whole or in part, of dealing with employers on behalf of employees concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment. "Labor organization" includes employee representation committees, groups, or associations in which employees participate.

"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.

B. It is an unlawful discriminatory practice for:

1. An employer to:

a. Fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to such individual's compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions including lactation, age, military status, disability, or national origin; or

b. Limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions including lactation, age, military status, disability, or national origin.

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59 2. An employment agency to:

60 a. Fail or refuse to refer for employment, or otherwise discriminate against, any individual because of
61 such individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy,
62 childbirth or related medical conditions, age, military status, disability, or national origin; or

63 b. Classify or refer for employment any individual on the basis of such individual's race, color,
64 religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical
65 conditions, age, military status, disability, or national origin.

66 3. A labor organization to:

67 a. Exclude or expel from its membership, or otherwise discriminate against, any individual because
68 of such individual's race, color, religion, sex, sexual orientation, gender identity, marital status,
69 pregnancy, childbirth or related medical conditions, age, military status, disability, or national origin;

70 b. Limit, segregate, or classify its membership or applicants for membership, or classify or fail to or
71 refuse to refer for employment any individual, in any way that would deprive or tend to deprive such
72 individual of employment opportunities, or would limit such employment opportunities or otherwise
73 adversely affect an individual's status as an employee or as an applicant for employment, because of
74 such individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy,
75 childbirth or related medical conditions, age, military status, disability, or national origin; or

76 c. Cause or attempt to cause an employer to discriminate against an individual in violation of
77 subdivisions a or b.

78 4. An employer, labor organization, or joint apprenticeship committee to discriminate against any
79 individual in any program to provide apprenticeship or other training program on the basis of such
80 individual's race, color, religion, sex, sexual orientation, gender identity, pregnancy, childbirth or related
81 medical conditions, age, military status, disability, or national origin.

82 5. An employer, in connection with the selection or referral of applicants or candidates for
83 employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the
84 results of employment-related tests on the basis of race, color, religion, sex, sexual orientation, gender
85 identity, marital status, pregnancy, childbirth or related medical conditions, age, military status,
86 disability, or national origin.

87 6. Except as otherwise provided in this chapter, an employer to use race, color, religion, sex, sexual
88 orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, age,
89 military status, disability, or national origin as a motivating factor for any employment practice, even
90 though other factors also motivate the practice.

91 7. (i) An employer to discriminate against any employees or applicants for employment, (ii) an
92 employment agency or a joint apprenticeship committee controlling an apprenticeship or other training
93 program to discriminate against any individual, or (iii) a labor organization to discriminate against any
94 member thereof or applicant for membership because such individual has opposed any practice made an
95 unlawful discriminatory practice by this chapter or because such individual has made a charge, testified,
96 assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

97 8. An employer, labor organization, employment agency, or joint apprenticeship committee
98 controlling an apprenticeship or other training program to print or publish, or cause to be printed or
99 published, any notice or advertisement relating to (i) employment by such an employer, (ii) membership
100 in or any classification or referral for employment by such a labor organization, (iii) any classification or
101 referral for employment by such an employment agency, or (iv) admission to, or employment in, any
102 program established to provide apprenticeship or other training by such a joint apprenticeship committee
103 that indicates any preference, limitation, specification, or discrimination based on race, color, religion,
104 sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical
105 conditions, age, military status, disability, or national origin, except that such a notice or advertisement
106 may indicate a preference, limitation, specification, or discrimination based on religion, sex, age, or
107 national origin when religion, sex, age, or national origin is a bona fide occupational qualification for
108 employment.

109 C. Notwithstanding any other provision of this chapter, it is not an unlawful discriminatory practice:

110 1. For (i) an employer to hire and employ employees; (ii) an employment agency to classify, or refer
111 for employment, any individual; (iii) a labor organization to classify its membership or to classify or
112 refer for employment any individual; or (iv) an employer, labor organization, or joint apprenticeship
113 committee to admit or employ any individual in any apprenticeship or other training program on the
114 basis of such individual's religion, sex, or age in those certain instances where religion, sex, or age is a
115 bona fide occupational qualification reasonably necessary to the normal operation of that particular
116 employer, employment agency, labor organization, or joint apprenticeship committee;

117 2. For an elementary or secondary school or institution of higher education to hire and employ
118 employees of a particular religion if such elementary or secondary school or institution of higher
119 education is, in whole or in substantial part, owned, supported, controlled, or managed by a particular
120 religion or by a particular religious corporation, association, or society or if the curriculum of such

121 elementary or secondary school or institution of higher education is directed toward the propagation of a
122 particular religion;

123 3. For an employer to apply different standards of compensation, or different terms, conditions, or
124 privileges of employment, pursuant to a bona fide seniority or merit system, or a system that measures
125 earnings by quantity or quality of production, or to employees who work in different locations, provided
126 that such differences are not the result of an intention to discriminate because of race, color, religion,
127 sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical
128 conditions, age, military status, disability, or national origin;

129 4. For an employer to give and to act upon the results of any professionally developed ability test,
130 provided that such test, its administration, or an action upon the results is not designed, intended, or
131 used to discriminate because of race, color, religion, sex, sexual orientation, gender identity, marital
132 status, pregnancy, childbirth or related medical conditions, age, military status, disability, or national
133 origin;

134 5. For an employer to provide reasonable accommodations related to disability, pregnancy, childbirth
135 or related medical conditions, and lactation, when such accommodations are requested by the employee;
136 or

137 6. For an employer to condition employment or premises access based upon citizenship where the
138 employer is subject to any requirement imposed in the interest of the national security of the United
139 States under any security program in effect pursuant to or administered under any statute or regulation
140 of the federal government or any executive order of the President of the United States.

141 D. Nothing in this chapter shall be construed to require any employer, employment agency, labor
142 organization, or joint apprenticeship committee to grant preferential treatment to any individual or to any
143 group because of such individual's or group's race, color, religion, sex, sexual orientation, gender
144 identity, marital status, pregnancy, childbirth or related medical conditions, age, military status,
145 disability, or national origin on account of an imbalance that may exist with respect to the total number
146 or percentage of persons of any race, color, religion, sex, sexual orientation, gender identity, marital
147 status, pregnancy, childbirth or related medical conditions, age, military status, disability, or national
148 origin employed by any employer, referred or classified for employment by any employment agency or
149 labor organization, admitted to membership or classified by any labor organization, or admitted to or
150 employed in any apprenticeship or other training program, in comparison with the total number or
151 percentage of persons of such race, color, religion, sex, sexual orientation, gender identity, marital status,
152 pregnancy, childbirth or related medical conditions, age, military status, disability, or national origin in
153 any community.

154 E. The provisions of this section shall not apply to the employment of individuals of a particular
155 religion by a religious corporation, association, educational institution, or society to perform work
156 associated with its activities.

**§ 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.**

159 A. Any person claiming to be aggrieved by an unlawful discriminatory practice may file a complaint
160 in writing under oath or affirmation with the Office of Civil Rights of the Department of Law (the
161 Office) *within two years after the alleged unlawful discriminatory practice occurred*. The Office itself
162 or the Attorney General may in a like manner file such a complaint. The complaint shall be in such
163 detail as to substantially apprise any party properly concerned as to the time, place, and facts
164 surrounding the alleged unlawful discrimination.

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

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

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

181 E. If the report on a charge of discrimination concludes that there is no reasonable cause to believe

182 the alleged unlawful discrimination has been committed, the charge shall be dismissed and the
183 complainant shall be given notice of his right to commence a civil action.

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

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

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

202 **§ 2.2-3908. Civil actions by private parties.**

203 A. An aggrieved person who has been provided a notice of his right to file a civil action pursuant to
204 § 2.2-3907 may, *within one year of receiving such notice or within two years after the alleged*
205 *discriminatory practice occurred, whichever is later*, commence a ~~timely~~ civil action in an appropriate
206 general district or circuit court having jurisdiction over the person who allegedly unlawfully
207 discriminated against such person in violation of this chapter.

208 B. If the court or jury finds that unlawful discrimination has occurred, the court or jury may award
209 to the plaintiff, as the prevailing party, compensatory and punitive damages and the court ~~may~~ shall
210 award reasonable attorney fees and costs and may grant as relief any permanent or temporary injunction,
211 temporary restraining order, or other order, including an order enjoining the defendant from engaging in
212 such practice, or order such affirmative action as may be appropriate.

213 C. Upon timely application, the Attorney General may intervene in such civil action if the Attorney
214 General certifies that the case is of general public importance. Upon intervention, the Attorney General
215 may obtain such relief as would be available to a private party under subsection B.