

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 404

An Act to amend and reenact §§ 2.1-715, 2.1-716, 2.1-717, 2.1-725, 15.1-37.3:8, 15.1-783.1, and 15.1-783.2 of the Code of Virginia, relating to the Virginia Human Rights Act.

[H 2544]

Approved March 15, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-715, 2.1-716, 2.1-717, 2.1-725, 15.1-37.3:8, 15.1-783.1, and 15.1-783.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-715. Declaration of policy.

It is the policy of the Commonwealth of Virginia:

1. To 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, or disability, in places of public accommodation, including educational institutions and in real estate transactions; in employment; to preserve the public safety, health and general welfare; and to further the interests, rights and privileges of individuals within the Commonwealth; and

2. To protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

§ 2.1-716. Unlawful discriminatory practice defined.

Conduct which 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.

§ 2.1-717. 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 the policies herein. 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 which 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 eighteen years (i) where such differentiation is reasonably necessary to normal operation or such activity is based upon reasonable factors other than age or (ii) where such 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 Council alleging unlawful discriminatory practice under a Virginia statute which is enforced by a Virginia agency shall be referred to such agency. The Council may investigate complaints alleging an unlawful discriminatory practice under a federal statute or regulation and attempt to resolve same through conciliation. Unsolved complaints shall thereafter be referred to the federal agency with jurisdiction over the complaint. Upon such referral, the Council shall have no further jurisdiction over the complaint. The Council shall have no jurisdiction over any complaint filed under a local ordinance adopted pursuant to § 15.1-37.3:8.

§ 2.1-725. Causes of action not created.

A. Nothing in this chapter creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions, except as specifically provided in subsections B and C of this section.

B. No employer employing more than five but less than fifteen persons shall discharge any such employee on the basis of race, color, religion, national origin ~~or~~, sex, *pregnancy, childbirth or related medical conditions*, or of age if the employee is forty years or older.

C. The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly discharged the employee in violation of this section. Any such action shall be brought within 180 days from the date of the discharge. The court may award up to twelve months' back pay with interest at the judgment rate as provided in § 6.1-330.54. However, if the court finds that either party engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the twelve-month limitation.

In any case where the employee prevails, the court shall award attorney's fees from the amount recovered, not to exceed twenty-five percent of the back pay awarded. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

D. Causes of action based upon the public policies reflected in this chapter shall be exclusively

limited to those actions, procedures and remedies, if any, afforded by applicable federal or state civil rights statutes or local ordinances. Nothing in this section or § 2.1-715 shall be deemed to alter, supersede, or otherwise modify the authority of the Council on Human Rights or of any local human rights or human relations commissions established pursuant to §§ 15.1-37.3:8 and 15.1-783.1 or subject to the provisions of § 2.1-724.

§ 15.1-37.3:8. Human rights ordinances and commissions.

A. The governing body of any city, town, or county may enact an ordinance, not inconsistent with nor more stringent than any applicable state law, prohibiting discrimination in housing, employment, public accommodations, credit, and education on the basis of race, color, religion, sex, *pregnancy, childbirth or related medical conditions*, national origin, age, marital status, or disability.

B. The governing body may enact an ordinance establishing a local commission on human rights which shall have the powers and duties granted by the Virginia Human Rights Act (§ 2.1-714 et seq.).

§ 15.1-783.1. Commission on human rights; human rights ordinance.

The board of supervisors of an urban county executive form of government may enact an ordinance prohibiting discrimination in housing, real estate transactions, employment, public accommodations, credit and education on the basis of race, color, religion, sex, *pregnancy, childbirth or related medical conditions*, national origin, age, marital status or disability. The board of supervisors may enact an ordinance establishing a local commission on human rights which shall have the following powers and duties:

1. To promote policies to ensure that all persons be afforded equal opportunity;
2. To serve as an agency for receiving, investigating, holding hearings, processing and assisting in the voluntary resolution of complaints regarding discriminatory practices occurring within the county; and
3. With the approval of the county attorney, to seek, through appropriate enforcement authorities, prevention of or relief from a violation of any ordinance prohibiting discrimination and to exercise such other powers and duties as provided for in this article; however, the commission shall have no power itself to issue subpoenas, award damages or grant injunctive relief.

§ 15.1-783.2. Investigations.

Whenever the commission on human rights has a reasonable cause to believe that any person ("person" for the purposes of this article includes one or more individuals, labor unions, partnerships, corporations, associations, legal representatives, mutual companies, joint-stock companies, trusts, or unincorporated organizations) has engaged in, or is engaging in, any violation of a county ordinance which prohibits discrimination due to race, color, religion, sex, *pregnancy, childbirth or related medical conditions*, national origin, age, marital status, or disability, and, after making a good faith effort to obtain the data, information, and attendance of witnesses necessary to determine whether such violation has occurred, is unable to obtain such data, information, or attendance, it may request the county attorney to petition the judge of the general district court for its jurisdiction for a subpoena against any such person refusing to produce such data and information or refusing to appear as a witness, and the judge of such court may, upon good cause shown, cause the subpoena to be issued. Any witness subpoena issued under this section shall include a statement that any statements made will be under oath and that the respondent or other witness is entitled to be represented by an attorney at law. Any person failing to comply with a subpoena issued under this section shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued a subpoena to quash it.

2. That the provisions of this act are declarative of existing law.