

065311748

SENATE BILL NO. 665

Offered January 19, 2006

A BILL to amend and reenact §§ 2.2-2632 through 2.2-2636, 2.2-2639, and 2.2-3900 through 2.2-3902 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-2632.1 and 2.2-3903, relating to the Virginia Human Rights Act and the Virginia Human Rights Council.

Patrons—Ticer, Edwards, Lambert, Locke, Lucas, Marsh, Miller, Puller and Whipple

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2632 through 2.2-2636, 2.2-2639, and 2.2-3900 through 2.2-3902 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2632.1 and 2.2-3903 as follows:

Article 12.

Human Rights Virginia Council on Human Rights.

§ 2.2-2632. Virginia Council on Human Rights Council; membership; terms; quorum; compensation.

A. The Virginia Council on Human Rights Council (the "Council") is established as a policy council, within the meaning of § 2.2-2100, in the executive branch of state government. The Council shall consist of nine members, who shall be appointed by the Governor, subject to confirmation by the General Assembly. The members appointed by the Governor shall, insofar as possible, be diverse with respect to economic status, race, sex, color, ethnicity, age, disabilities, political affiliation and marital status.

B. Of the members first appointed, four shall be appointed to two-year terms, and five shall be appointed to four-year terms. Thereafter members shall be appointed to four-year terms, except members appointed to fill vacancies shall be appointed for the remainder of the unexpired term.

In the case of vacancies on the Council during a recess of the General Assembly, the Governor shall make an appointment to fill the vacancy, and the appointee shall hold office until thirty days after the commencement of the next session of the General Assembly and, if confirmed by the General Assembly, for the remainder of the unexpired term.

C. The Governor shall designate one of the members of the Council to be chairperson. The chairperson shall preside at all the meetings of the Council. The Council by majority vote shall elect one of its members as vice-chairperson who, in the absence of the chairperson, shall perform all the duties and functions of the chairperson.

D. A simple majority of the members serving on the Council shall constitute a quorum. No power pursuant to § 2.2-2634 may be exercised by the Council unless agreed to by a majority of the nine members of the Council appointed. A majority of the quorum is empowered to exercise any of the duties of the Council. Vacancies in the Council shall not impair the authority of remaining members to exercise all the powers of the Council. The Council shall meet at least four times each year. The meetings of the Council shall be held at the call of the chairman or whenever the majority of the voting members so request.

E. Members of the Council shall receive compensation for the discharge of their duties as provided in § 2.2-2813.

§ 2.2-2632.1. Definitions.

As used in this article, unless the context requires otherwise:

"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 of Virginia and Acts of the General Assembly means 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.

"Complainant" or "complaining party" means a person who files a complaint alleging an unlawful discriminatory practice. The term shall also include the person on whose behalf a complaint is filed.

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the complaining party, the party against whom the complaint has been filed, and their respective representatives.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

"Council" means the Virginia Council on Human Rights.

"Respondent" or "responding party" means any person or other entity alleged to have engaged or is

INTRODUCED

SB665

59 *engaging in conduct that is an unlawful discriminatory practice and any other person joined pursuant to*  
 60 *the provisions of § 2.2-2636.*

61 *"Unlawful discriminatory practice" means conduct that violates any Virginia or federal statute or*  
 62 *regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy,*  
 63 *childbirth or related medical conditions, age, marital status, or disability in employment, public*  
 64 *accommodations, education, or real estate transactions.*

65 § 2.2-2633. Human Rights Director.

66 A. There is established under the Council the *Human Rights Office (the "Office")* and position of  
 67 Human Rights Director (the "Director"). The Director shall be appointed by and serve at the pleasure of  
 68 the Governor. *The Director shall preferably, by reason of professional experience, be familiar with*  
 69 *relevant state and federal anti-discrimination statutes.*

70 B. The Director may, within guidelines established by the Council:

71 1. *Direct the day-to-day operations and activities of the Office.*

72 2. *Exercise such powers and perform such duties as are delegated to him by the Council or*  
 73 *conferred or imposed upon him by law and perform such other duties as may be required by the*  
 74 *Council.*

75 3. Accept and investigate complaints of alleged unlawful discriminatory practices or alleged  
 76 unfounded charges of unlawful discrimination filed in writing within 180 days of the alleged  
 77 discriminatory events;

78 ~~2.4.~~ Attempt to conciliate any complaint of unlawful discrimination under this article;

79 ~~3-5.~~ In the event conciliation fails, recommend to the Council that a hearing be held or other  
 80 appropriate action be taken;

81 ~~4. Carry out the policies of the Council and any other duty assigned by this article.~~

82 § 2.2-2634. Powers and duties of Council.

83 In addition to the other powers and duties prescribed in this article, the Council shall have the  
 84 following powers to:

85 1. Meet and function at any place in the Commonwealth;

86 2. Establish and maintain ~~an~~ *its principal office in the City of Richmond and such other offices in the*  
 87 *Commonwealth in whatever locations determined by the Council to be necessary;*

88 3. *Request and use, as needed, the services of all agencies and political subdivisions of the*  
 89 *Commonwealth in accordance with § 2.2-2103;*

90 4. *Initiate complaints of any violation of this article.*

91 5. *Recommend to the Governor and the General Assembly policies, legislation, and other appropriate*  
 92 *actions to promote and protect citizens from acts of unlawful discrimination in the Commonwealth;*

93 6. Select, and fix the compensation of, such technical advisors and employees as it deems necessary,  
 94 or to authorize such action by the Director. The Attorney General shall represent the Council in all  
 95 litigation to which the Council is a party;

96 7. *Administer oaths and take testimony under oath or affirmation;*

97 ~~4-8.~~ Appoint and compensate qualified hearing officers from the list of hearing officers maintained  
 98 by the Executive Secretary of the Supreme Court of Virginia;

99 ~~5-9.~~ Promote creation of local commissions to aid in effectuating the policies of this article and to  
 100 enter into cooperative worksharing or other agreements with federal agencies or local commissions,  
 101 including the deferral of complaints of discrimination to federal agencies or local commissions;

102 ~~6-10.~~ Adopt, promulgate, amend and rescind regulations consistent with this article pursuant to the  
 103 Virginia Administrative Process Act (§ 2.2-4000 et seq.). No such regulation shall be inconsistent with  
 104 any state or federal law or regulation. ~~However, the Council shall not have the authority to adopt~~  
 105 ~~regulations on a substantive matter when another state agency is authorized to adopt such regulations;~~

106 ~~7-11.~~ Receive, investigate, ~~seek to mediate,~~ conciliate, refer to another agency, hold hearings pursuant  
 107 to the Virginia Administrative Process Act (§ 2.2-4000 et seq.), and make findings and recommendations  
 108 upon complaints alleging unlawful discriminatory practices;

109 ~~8-12.~~ Make studies and appoint advisory councils to effectuate the purposes and policies of the article  
 110 and to make the results thereof available to the public;

111 ~~9-13.~~ ~~Accept public grants or private gifts, bequests, or other payments, as appropriate~~ *Receive and*  
 112 *accept, from any source, aid contributions of money, property, labor, or other things of value to be*  
 113 *held, used, and applied to carry out purposes of this article including, but not limited to, gifts or grants*  
 114 *from any department, agency, or instrumentality of the United States;*

115 ~~10-14.~~ Furnish technical assistance upon request of persons subject to this article to further ~~comply~~  
 116 *compliance* with the article or an order issued thereunder;

117 ~~11-15.~~ Inquire into incidents that may constitute unlawful acts of discrimination or unfounded charges  
 118 of unlawful discrimination under state or federal law, and to take such action within the Council's  
 119 authority designed to prevent such acts; *and*

120 ~~12-16.~~ Create an official seal that shall be judicially noticed; ~~and~~

121 13. Seek, with the approval of the Attorney General, through appropriate enforcement authorities,  
122 prevention of or relief from an alleged unlawful discriminatory practice; however, the Council itself shall  
123 have no power to issue subpoenas, award damages, or grant injunctive relief.

124 § 2.2-2635. Investigative Procedures.

125 A. *The Council shall have the right to interview any person who, in the opinion of the Council, may*  
126 *have any information relevant to an investigation. Such persons may be interviewed under oath. In*  
127 *furtherance of the investigation, the Council shall also have the right to request, for inspection and*  
128 *copying, production of any information, records, or documents in the possession of any person and that,*  
129 *in the opinion of the Council, may be relevant to the investigation.*

130 B. *Whenever the Council, based on information already available, has cause to believe that a prima*  
131 *facie case of discrimination exists, and has reasonable cause to believe that any person has engaged in*  
132 *or is engaging in any unlawful discriminatory practice, and the Council, after having made a good faith*  
133 *effort to obtain the data, and information, or testimony necessary to determine whether a violation*  
134 *has occurred, has been unable to obtain such data, information or testimony, the Council may request*  
135 *the Attorney General to apply to the judge of the circuit court of the jurisdiction in which the*  
136 *respondent responding party resides or is doing business for a subpoena duces tecum against any person*  
137 *refusing to produce such data, and information, or testimony. The judge of the court, upon good cause*  
138 *shown, may cause the subpoena to be issued.*

139 C. *Any person failing to comply with such subpoena shall be subject to punishment for contempt by*  
140 *the court issuing the subpoena.*

141 D. *For purposes of this section "person" includes any individual, partnership, corporation, association,*  
142 *legal representative, mutual company, joint stock company, trust, unincorporated organization, employee,*  
143 *employer, employment agency, labor organization, joint labor-management committee, or an agent*  
144 *thereof.*

145 E. *Witnesses summoned by a subpoena under this article shall be entitled to the same witness and*  
146 *mileage fees as witnesses in proceedings in the courts of the Commonwealth. Fees payable to a witness*  
147 *summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party*  
148 *is unable to pay the fees, by the Council.*

149 § 2.2-2636. Procedures for receipt or initiation of complaint; notice to parties; filing of answer.

150 A. *Filing of a written complaint with the Council shall be deemed filing with any state agency for*  
151 *the purpose of complying with any time limitation on the filing of a complaint, provided the time limit*  
152 *for filing with the other agency has not expired. The time limit for filing with other agencies shall be*  
153 *tolled while the Council is either investigating the complaint or making a decision to refer it.*

154 B. *Complaints under this article shall be filed with the Council within 180 days of the alleged*  
155 *discriminatory event.*

156 C. *Any person not named in the complaint and who is identified as a respondent in the course of the*  
157 *investigation may be joined as an additional or substitute respondent upon written notice to such person*  
158 *by the Council explaining the basis for the Council's belief that such person is properly joined as a*  
159 *respondent.*

160 D. *Any respondent may file an answer to a complaint. Complaints and answers must be made in*  
161 *writing, under oath or affirmation, and in such form as the Council requires. Complaints and answers*  
162 *may be reasonably and fairly amended at any time.*

163 E. *Upon the filing of a complaint or initiation of a complaint by the Council or its designee, the*  
164 *Council shall provide written notice to the parties as follows:*

165 1. *To the aggrieved person acknowledging the filing and advising such person of the time limits and*  
166 *choice of forums under this article; and*

167 2. *To the respondent, not later than 10 days after such filing or the identification of an additional*  
168 *respondent under subsection C, identifying the alleged discriminatory practice and advising such*  
169 *respondent of the procedural rights and obligations of respondents under this article with a copy of the*  
170 *original complaint.*

171 § 2.2-2639. Causes of action not created.

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

174 B. *No employer employing more than five but less fewer than 15 persons shall discharge any such*  
175 *employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related*  
176 *medical conditions, including lactation, or of age if the employee is 40 years old or older. For the*  
177 *purposes of this section, "lactation" means a condition that may result in the feeding of a child directly*  
178 *from the breast or the expressing of milk from the breast.*

179 C. *The employee may bring an action in a general district or circuit court having jurisdiction over*  
180 *the employer who allegedly discharged the employee in violation of this section. Any such action shall*  
181 *be brought within 300 days from the date of the discharge or, if the employee has filed a complaint*

182 with the Council or a local human rights or human relations agency or commission within 300 days of  
 183 the discharge, such action shall be brought within 90 days from the date that the Council or a local  
 184 human rights or human relations agency or commission has rendered a final disposition on the  
 185 complaint. The court may award up to 12 months' back pay with interest at the judgment rate as  
 186 provided in § 6.1-330.54. However, if the court finds that either party engaged in tactics to delay  
 187 resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment  
 188 without regard to the 12-month limitation.

189 In any case where the employee prevails, the court shall award attorneys' fees from the amount  
 190 recovered, not to exceed 25 percent of the back pay awarded. The court shall not award other damages,  
 191 compensatory or punitive, nor shall it order reinstatement of the employee.

192 D. Causes of action based upon the public policies reflected in this article shall be exclusively  
 193 limited to those actions, procedures and remedies, if any, afforded by applicable federal or state civil  
 194 rights statutes or local ordinances. Nothing in this section or § 2.2-3900 shall be deemed to alter,  
 195 supersede, or otherwise modify the authority of the Council or of any local human rights or human  
 196 relations commissions established pursuant to § 15.2-853 or 15.2-965 or subject to the provisions of  
 197 § 2.2-2638.

198 § 2.2-3900. Short title; declaration of policy.

199 A. This chapter shall be known and cited as the Virginia Human Rights Act.

200 B. It is the policy of the Commonwealth to:

201 ~~1. safeguard all individuals within the Commonwealth from unlawful discrimination because of race,~~  
 202 ~~color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital~~  
 203 ~~status, or disability, in employment, places of public accommodation, including educational institutions~~  
 204 ~~and in real estate transactions; in employment; preserve the public safety, health and general welfare;~~  
 205 ~~and further the interests, rights and privileges of individuals within the Commonwealth; and~~

206 ~~2. Protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.~~

207 § 2.2-3901. Definitions.

208 "*Council*" means the Virginia Council on Human Rights.

209 "*Unlawful discriminatory practice*" means conduct that violates any Virginia or federal statute or  
 210 regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy,  
 211 childbirth or related medical conditions, age, marital status, or disability *in employment, public*  
 212 *accommodations, education, or real estate transactions shall be an "unlawful discriminatory practice" for*  
 213 *the purposes of this chapter.*

214 ~~The terms "Because of sex or gender" or "on the basis of sex or gender" or terms of similar import~~  
 215 ~~when used in reference to discrimination in the Code and acts of the General Assembly include means~~  
 216 ~~because of or on the basis of pregnancy, childbirth or related medical conditions. Women affected by~~  
 217 ~~pregnancy, childbirth or related medical conditions shall be treated the same for all purposes as persons~~  
 218 ~~not so affected but similar in their abilities or disabilities.~~

219 § 2.2-3902. Construction of chapter; other programs to aid persons with disabilities, minors and the  
 220 elderly.

221 A. The provisions of this chapter shall be construed liberally for the accomplishment of its policies.  
 222 Nothing contained in this chapter shall be deemed to repeal, supersede or expand upon any of the  
 223 provisions of any other state or federal law relating to discrimination because of race, color, religion,  
 224 national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.

225 B. *Nothing in this chapter shall abridge any federal statute or regulation prohibiting unlawful*  
 226 *discrimination.*

227 C. Nothing in this chapter shall prohibit or alter any program, service, facility, school, or privilege  
 228 that is afforded, oriented or restricted to a person because of disability or age from continuing to  
 229 habilitate, rehabilitate, or accommodate that person.

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

235 E. Complaints filed with the ~~Human Rights~~ *Virginia Council on Human Rights* (the "Council") ~~in~~  
 236 ~~accordance with § 2.2-2634~~ alleging unlawful discriminatory practice under a Virginia statute that is  
 237 enforced by a Virginia agency shall be referred to that agency. The Council may investigate complaints  
 238 alleging ~~an~~ unlawful discriminatory practice under a ~~federal statute or regulation~~ *this chapter* and  
 239 attempt to resolve it ~~through conciliation~~ *them using all powers, authority and resources provided*  
 240 *pursuant to this chapter. Unsolved complaints shall thereafter be referred* ~~After all reasonable efforts to~~  
 241 ~~resolve any complaint, the Council may refer any unresolved complaints~~ *to the federal agency with*  
 242 *jurisdiction over the complaint. Upon such referral, the Council shall have no further jurisdiction over*  
 243 *the complaint. The Council shall have no jurisdiction over any complaint filed under a local ordinance*

244 adopted pursuant to § 15.2-965.

245 § 2.2-3903. *Immunity; retaliation prohibited.*

246 *Any person who, in good faith, files a complaint with the Council on behalf of himself or another*  
247 *person, or provides information or participates in the investigation of any such complaint, shall have*  
248 *immunity from any civil liability and shall not be subject to any penalties, sanctions, restrictions, or*  
249 *retaliation as a consequence of making such complaint, providing such information, or participating in*  
250 *such investigation.*

**INTRODUCED**

SB665