

13102599D

HOUSE BILL NO. 2133

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend and reenact § 2.2-3903 of the Code of Virginia, relating to employment discrimination; current employment status.*

Patron—Keam

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-3903 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-3903. Causes of action not created.**

A. Nothing in this chapter or in Article 4 (§ 2.2-520 et seq.) of Chapter 5 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.

B. No employer employing more than five but less fewer than 15 persons shall discharge any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation, or of age if the employee is 40 years of age or older. For the purposes of this section, "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.

C. *No employer employing more than five but fewer than 15 persons shall fail or refuse to hire an individual on the basis of the individual's current employment status. It is an unfair discriminatory practice for any person to include an employment status requirement in a job advertisement or to otherwise require, directly or indirectly, an individual to have a specific employment status to apply for a job.*

D. 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 300 days from the date of the discharge or, if the employee has filed a complaint with the Division of Human Rights of the Department of Law or a local human rights or human relations agency or commission within 300 days of the discharge, such action shall be brought within 90 days from the date that the Division or a local human rights or human relations agency or commission has rendered a final disposition on the complaint. The court may award up to 12 months' back pay with interest at the judgment rate as provided in § 6.2-302. 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 12-month limitation.

In any case where the employee prevails, the court shall award attorney fees from the amount recovered, not to exceed 25 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.~~ E. *An individual may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly failed or refused to hire the individual in violation of subsection C. Any such action shall be brought within 300 days from the date of the refusal to hire or, if the individual has filed a complaint with the Division of Human Rights of the Department of Law or a local human rights or human relations agency or commission within 300 days of the refusal, such action shall be brought within 90 days from the date that the Division or a local human rights or human relations agency or commission has rendered a final disposition on the complaint. In any case where the individual prevails, the court shall award reasonable attorney fees and costs. The court shall not award other damages, compensatory or punitive.*

F. 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 § 2.2-3900 shall be deemed to alter, supersede, or otherwise modify the authority of the Division or of any local human rights or human relations commissions established pursuant to § 15.2-853 or 15.2-965.

INTRODUCED

HB2133