

20100725D

SENATE BILL NO. 23

Offered January 8, 2020

Prefiled November 18, 2019

A BILL to amend and reenact §§ 2.2-3004, 2.2-3900 through 2.2-3903, 15.2-853, 15.2-854, 15.2-965, 15.2-1507, 15.2-1604, and 22.1-306 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-2901.1, 15.2-1500.1, and 22.1-295.2, relating to employment and public accommodations; prohibited discrimination based on sexual orientation or gender identity.

Patrons—Ebbin, McClellan and Morrissey; Delegate: Kory

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3004, 2.2-3900 through 2.2-3903, 15.2-853, 15.2-854, 15.2-965, 15.2-1507, 15.2-1604, and 22.1-306 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2901.1, 15.2-1500.1, and 22.1-295.2 as follows:

§ 2.2-2901.1. Employment discrimination prohibited.

A. For the purposes of this section:

"Gender identity" means the gender-related identity, appearance, or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

"Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, or homosexuality.

B. No state agency, institution, board, bureau, commission, council, or instrumentality of the Commonwealth shall discriminate in employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, or status as a veteran. This prohibition does not in any way permit or require the lowering of any job requirements, performance standards, or qualifications necessary to successfully perform the duties of the position.

§ 2.2-3004. Grievances qualifying for a grievance hearing; grievance hearing generally.

A. A grievance qualifying for a hearing shall involve a complaint or dispute by an employee relating to the following adverse employment actions in which the employee is personally involved, including but not limited to (i) formal disciplinary actions, including suspensions, demotions, transfers and assignments, and dismissals resulting from formal discipline or unsatisfactory job performance; (ii) the application of all written personnel policies, procedures, rules and regulations where it can be shown that policy was misapplied or unfairly applied; (iii) discrimination on the basis of race, color, religion, political affiliation, age, disability, national origin, sex, pregnancy, childbirth or related medical conditions, marital status, sexual orientation as defined in § 2.2-2901.1, gender identity as defined in § 2.2-2901.1, or status as a veteran; (iv) arbitrary or capricious performance evaluations; (v) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement; and (vi) retaliation for exercising any right otherwise protected by law.

B. Management reserves the exclusive right to manage the affairs and operations of state government. Management shall exercise its powers with the highest degree of trust. In any employment matter that management precludes from proceeding to a grievance hearing, management's response, including any appropriate remedial actions, shall be prompt, complete, and fair.

C. Complaints relating solely to the following issues shall not proceed to a hearing: (i) establishment and revision of wages, salaries, position classifications, or general benefits; (ii) work activity accepted by the employee as a condition of employment or which may reasonably be expected to be a part of the job content; (iii) contents of ordinances, statutes or established personnel policies, procedures, and rules and regulations; (iv) methods, means, and personnel by which work activities are to be carried on; (v) termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vi) hiring, promotion, transfer, assignment, and retention of employees within the agency; and (vii) relief of employees from duties of the agency in emergencies.

D. Except as provided in subsection A of § 2.2-3003, decisions regarding whether a grievance qualifies for a hearing shall be made in writing by the agency head or his designee within five workdays of the employee's request for a hearing. A copy of the decision shall be sent to the employee. The employee may appeal the denial of a hearing by the agency head to the Director of the Department of

INTRODUCED

SB23

59 Human Resource Management (the Director). Upon receipt of an appeal, the agency shall transmit the
 60 entire grievance record to the Department of Human Resource Management within five workdays. The
 61 Director shall render a decision on whether the employee is entitled to a hearing upon the grievance
 62 record and other probative evidence.

63 E. The hearing pursuant to § 2.2-3005 shall be held in the locality in which the employee is
 64 employed or in any other locality agreed to by the employee, employer, and hearing officer. The
 65 employee and the agency may be represented by legal counsel or a lay advocate, the provisions of §
 66 54.1-3904 notwithstanding. The employee and the agency may call witnesses to present testimony and
 67 be cross-examined.

68 **§ 2.2-3900. Short title; declaration of policy.**

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

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

71 1. Safeguard all individuals within the Commonwealth from unlawful discrimination because of race,
 72 color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital
 73 status, *sexual orientation, gender identity*, or disability; in places of public accommodation, including
 74 educational institutions and in real estate transactions;

75 2. *Safeguard all individuals within the Commonwealth from unlawful discrimination in employment*
 76 *because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical*
 77 *conditions, age, marital status, sexual orientation, gender identity, or disability; preserve*

78 3. *Preserve the public safety, health, and general welfare; and further*

79 4. *Further the interests, rights, and privileges of individuals within the Commonwealth; and*

80 5. *Protect the citizens of the Commonwealth against unfounded charges of unlawful discrimination.*

81 **§ 2.2-3901. Definitions.**

82 ~~Conduct that violates any Virginia or federal statute or regulation governing discrimination on the~~
 83 ~~basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions,~~
 84 ~~age, marital status, or disability shall be an "unlawful discriminatory practice" for the purposes of this~~
 85 ~~chapter.~~

86 A. *As used in this chapter:*

87 "*Gender identity*" means the gender-related identity, appearance, or other gender-related
 88 characteristics of an individual, with or without regard to the individual's designated sex at birth.

89 "*Sexual orientation*" means a person's actual or perceived heterosexuality, bisexuality, or
 90 homosexuality.

91 "*Unlawful discriminatory practice*" includes conduct that violates any Virginia or federal statute or
 92 regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy,
 93 childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, or
 94 disability.

95 B. The terms "because of sex or gender" or "on the basis of sex or gender" or terms of similar
 96 import when used in reference to discrimination in the Code and acts of the General Assembly include
 97 because of or on the basis of pregnancy, childbirth, or related medical conditions. Women affected by
 98 pregnancy, childbirth, or related medical conditions shall be treated the same for all purposes as persons
 99 not so affected but similar in their abilities or disabilities.

100 **§ 2.2-3902. Construction of chapter; other programs to aid persons with disabilities, minors and**
 101 **the elderly.**

102 The provisions of this chapter shall be construed liberally for the accomplishment of its policies.
 103 Nothing contained in this chapter shall be deemed to repeal, supersede, or expand upon any of the
 104 provisions of any other state or federal law relating to discrimination because of race, color, religion,
 105 national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, *sexual*
 106 *orientation, gender identity*, or disability.

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

110 In addition, nothing in this chapter shall be construed to affect any governmental program, law or
 111 activity differentiating between persons on the basis of age over the age of 18 years (i) where the
 112 differentiation is reasonably necessary to normal operation or the activity is based upon reasonable
 113 factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of
 114 powers of the Commonwealth for the general health, safety and welfare of the population at large.

115 Complaints filed with the Division of Human Rights of the Department of Law (the Division) in
 116 accordance with § 2.2-520 alleging unlawful discriminatory practice under a Virginia statute that is
 117 enforced by a Virginia agency shall be referred to that agency. The Division may investigate complaints
 118 alleging an unlawful discriminatory practice under a federal statute or regulation and attempt to resolve
 119 it through conciliation. Unsolved complaints shall thereafter be referred to the federal agency with
 120 jurisdiction over the complaint. Upon such referral, the Division shall have no further jurisdiction over

121 the complaint. The Division shall have no jurisdiction over any complaint filed under a local ordinance
122 adopted pursuant to § 15.2-965.

123 **§ 2.2-3903. Causes of action not created.**

124 A. Nothing in this chapter or in Article 4 (§ 2.2-520 et seq.) of Chapter 5 creates, nor shall it be
125 construed to create, an independent or private cause of action to enforce its provisions, except as
126 specifically provided in subsections B and C.

127 B. No employer employing more than five but less than 15 persons shall discharge any such
128 employee on the basis of race, color, religion, national origin, sex, *sexual orientation, gender identity,*
129 *pregnancy, or childbirth* or related medical conditions, including lactation. No employer employing more
130 than five but less than 20 persons shall discharge any such employee on the basis of age if the
131 employee is 40 years of age or older. For the purposes of this section, "lactation" means a condition that
132 may result in the feeding of a child directly from the breast or the expressing of milk from the breast.

133 C. The employee may bring an action in a general district or circuit court having jurisdiction over
134 the employer who allegedly discharged the employee in violation of this section. Any such action shall
135 be brought within 300 days from the date of the discharge or, if the employee has filed a complaint
136 with the Division of Human Rights of the Department of Law or a local human rights or human
137 relations agency or commission within 300 days of the discharge, such action shall be brought within 90
138 days from the date that the Division or a local human rights or human relations agency or commission
139 has rendered a final disposition on the complaint. The court may award up to 12 months' back pay with
140 interest at the judgment rate as provided in § 6.2-302. However, if the court finds that either party
141 engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back
142 pay to the date of judgment without regard to the 12-month limitation.

143 In any case where the employee prevails, the court shall award attorney fees from the amount
144 recovered, not to exceed 25 percent of the back pay awarded. The court shall not award other damages,
145 compensatory or punitive, nor shall it order reinstatement of the employee.

146 D. Causes of action based upon the public policies reflected in this chapter shall be exclusively
147 limited to those actions, procedures, and remedies, if any, afforded by applicable federal or state civil
148 rights statutes or local ordinances. Nothing in this section or § 2.2-3900 shall be deemed to alter,
149 supersede, or otherwise modify the authority of the Division or of any local human rights or human
150 relations commissions established pursuant to § 15.2-853 or 15.2-965.

151 **§ 15.2-853. Commission on human rights; human rights ordinance.**

152 A. *As used in this article:*

153 "*Gender identity*" means the gender-related identity, appearance, or other gender-related
154 characteristics of an individual, with or without regard to the individual's designated sex at birth.

155 "*Sexual orientation*" means a person's actual or perceived heterosexuality, bisexuality, or
156 homosexuality.

157 B. A county may enact an ordinance prohibiting discrimination in housing, real estate transactions,
158 employment, public accommodations, credit, and education on the basis of race, color, religion, sex,
159 pregnancy, childbirth or related medical conditions, national origin, age, marital status, *sexual*
160 *orientation, gender identity,* or disability. The board may enact an ordinance establishing a local
161 commission on human rights ~~which that~~ shall have the following powers and duties:

- 162 1. To promote policies to ensure that all persons be afforded equal opportunity;
- 163 2. To serve as an agency for receiving, investigating, holding hearings, processing, and assisting in
164 the voluntary resolution of complaints regarding discriminatory practices occurring within the county;
165 and

166 3. With the approval of the county attorney, to seek, through appropriate enforcement authorities,
167 prevention of or relief from a violation of any ordinance prohibiting discrimination and to exercise such
168 other powers and duties as provided in this article. However, the commission shall have no power itself
169 to issue subpoenas, award damages, or grant injunctive relief.

170 For the purposes of this article, "person" means one or more individuals, labor unions, partnerships,
171 corporations, associations, legal representatives, mutual companies, joint-stock companies, trusts, or
172 unincorporated organizations.

173 **§ 15.2-854. Investigations.**

174 Whenever the commission on human rights has a reasonable cause to believe that any person has
175 engaged in, or is engaging in, any violation of a county ordinance ~~which that~~ prohibits discrimination
176 due to race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, age,
177 marital status, *sexual orientation, gender identity,* or disability, and, after making a good faith effort to
178 obtain the data, information, and attendance of witnesses necessary to determine whether such violation
179 has occurred, is unable to obtain such data, information, or attendance, it may request the county
180 attorney to petition the judge of the general district court for its jurisdiction for a subpoena against any
181 such person refusing to produce such data and information or refusing to appear as a witness, and the

182 judge of such court may, upon good cause shown, cause the subpoena to be issued. Any witness
 183 subpoena issued under this section shall include a statement that any statements made will be under oath
 184 and that the respondent or other witness is entitled to be represented by an attorney. Any person failing
 185 to comply with a subpoena issued under this section shall be subject to punishment for contempt by the
 186 court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued a subpoena to
 187 quash it.

188 **§ 15.2-965. Human rights ordinances and commissions.**

189 A. *For the purposes of this section:*

190 "*Gender identity*" means the gender-related identity, appearance, or other gender-related
 191 characteristics of an individual, with or without regard to the individual's designated sex at birth.

192 "*Sexual orientation*" means a person's actual or perceived heterosexuality, bisexuality, or
 193 homosexuality.

194 B. Any locality may enact an ordinance, not inconsistent with nor more stringent than any applicable
 195 state law, prohibiting discrimination in housing, employment, public accommodations, credit, and
 196 education on the basis of race, color, religion, sex, pregnancy, childbirth or related medical conditions,
 197 national origin, age, marital status, *sexual orientation*, *gender identity*, or disability.

198 B- C. The locality may enact an ordinance establishing a local commission on human rights ~~which~~
 199 that shall have the powers and duties granted by the Virginia Human Rights Act (§ 2.2-3900 et seq.).

200 **§ 15.2-1500.1. Employment discrimination prohibited.**

201 A. *As used in this chapter:*

202 "*Gender identity*" means the gender-related identity, appearance, or other gender-related
 203 characteristics of an individual, with or without regard to the individual's designated sex at birth.

204 "*Sexual orientation*" means a person's actual or perceived heterosexuality, bisexuality, or
 205 homosexuality.

206 B. No department, office, board, commission, agency, or instrumentality of local government shall
 207 discriminate in employment on the basis of race, color, religion, national origin, sex, pregnancy,
 208 childbirth or related medical conditions, age, marital status, disability, *sexual orientation*, *gender*
 209 *identity*, or status as a veteran. This prohibition does not in any way permit or require the lowering of
 210 any job requirements, performance standards, or qualifications necessary to successfully perform the
 211 duties of the position.

212 **§ 15.2-1507. Provision of grievance procedure; training programs.**

213 A. If a local governing body fails to adopt a grievance procedure required by § 15.2-1506 or fails to
 214 certify it as provided in this section, the local governing body shall be deemed to have adopted a
 215 grievance procedure which is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title
 216 2.2 and any regulations adopted pursuant thereto for so long as the locality remains in noncompliance.
 217 The locality shall provide its employees with copies of the applicable grievance procedure upon request.
 218 The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or
 219 fringe benefits.

220 Each grievance procedure, and each amendment thereto, in order to comply with this section, shall
 221 be certified in writing to be in compliance by the city, town or county attorney, and the chief
 222 administrative officer of the locality, and such certification filed with the clerk of the circuit court
 223 having jurisdiction in the locality in which the procedure is to apply. Local government grievance
 224 procedures in effect as of July 1, 1991, shall remain in full force and effect for 90 days thereafter,
 225 unless certified and filed as provided above within a shorter time period.

226 Each grievance procedure shall include the following components and features:

227 1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to
 228 his employment, including but not necessarily limited to (i) disciplinary actions, including dismissals,
 229 disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting
 230 from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies,
 231 procedures, rules, and regulations, including the application of policies involving matters referred to in
 232 *clause (iii) of subdivision 2 (iii) below*; (iii) discrimination on the basis of race, color, creed, religion,
 233 political affiliation, age, disability, national origin ~~or~~, sex, *pregnancy, childbirth or related medical*
 234 *conditions, sexual orientation, gender identity, or status as a veteran*; and (iv) acts of retaliation as the
 235 result of the use of or participation in the grievance procedure or because the employee has complied
 236 with any law of the United States or of the Commonwealth, has reported any violation of such law to a
 237 governmental authority, has sought any change in law before the Congress of the United States or the
 238 General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. For the
 239 purposes of clause (iv), there shall be a rebuttable presumption that increasing the penalty that is the
 240 subject of the grievance at any level of the grievance shall be an act of retaliation.

241 2. Local government responsibilities. Local governments shall retain the exclusive right to manage
 242 the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i)
 243 establishment and revision of wages or salaries, position classification, or general benefits; (ii) work

244 activity accepted by the employee as a condition of employment or work activity ~~which~~ *that* may
 245 reasonably be expected to be a part of the job content; (iii) the contents of ordinances, statutes, or
 246 established personnel policies, procedures, rules, and regulations; (iv) failure to promote except where
 247 the employee can show that established promotional policies or procedures were not followed or applied
 248 fairly; (v) the methods, means, and personnel by which work activities are to be carried on; (vi) except
 249 where such action affects an employee who has been reinstated within the previous six months as the
 250 result of the final determination of a grievance, termination, layoff, demotion, or suspension from duties
 251 because of lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer,
 252 assignment, and retention of employees within the local government; and (viii) the relief of employees
 253 from duties of the local government in emergencies. In any grievance brought under the exception to
 254 clause (vi) of this subdivision, the action shall be upheld upon a showing by the local government that:
 255 (±) (a) there was a valid business reason for the action and (±) (b) the employee was notified of the
 256 reason in writing prior to the effective date of the action.

257 3. Coverage of personnel.

258 a. Unless otherwise provided by law, all nonprobationary local government permanent full-time and
 259 part-time employees are eligible to file grievances with the following exceptions:

260 (1) Appointees of elected groups or individuals;

261 (2) Officials and employees who by charter or other law serve at the will or pleasure of an
 262 appointing authority;

263 (3) Deputies and executive assistants to the chief administrative officer of a locality;

264 (4) Agency heads or chief executive officers of government operations;

265 (5) Employees whose terms of employment are limited by law;

266 (6) Temporary, limited term and seasonal employees;

267 (7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose
 268 grievance is subject to the provisions of Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 and who have elected
 269 to proceed pursuant to those provisions in the resolution of their grievance, or any other employee
 270 electing to proceed pursuant to any other existing procedure in the resolution of his grievance.

271 b. Notwithstanding the exceptions set forth in subdivision 3 a ~~above~~, local governments, at their sole
 272 discretion, may voluntarily include employees in any of the excepted categories within the coverage of
 273 their grievance procedures.

274 c. The chief administrative officer of each local government, or his designee, shall determine the
 275 officers and employees excluded from the grievance procedure, and shall be responsible for maintaining
 276 an up-to-date list of the affected positions.

277 4. Grievance procedure availability and coverage for employees of community services boards,
 278 redevelopment and housing authorities, and regional housing authorities. Employees of community
 279 services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing
 280 authorities created pursuant to § 36-40 shall be included in (i) a local governing body's grievance
 281 procedure or personnel system, if agreed to by the department, board, or authority and the locality or (ii)
 282 a grievance procedure established and administered by the department, board or authority which is
 283 consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations
 284 promulgated pursuant thereto. If a department, board or authority fails to establish a grievance procedure
 285 pursuant to clause (i) or (ii), it shall be deemed to have adopted a grievance procedure which is
 286 consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations
 287 adopted pursuant thereto for so long as it remains in noncompliance.

288 5. General requirements for procedures.

289 a. Each grievance procedure shall include not more than four steps for airing complaints at
 290 successively higher levels of local government management, and a final step providing for a panel
 291 hearing or a hearing before an administrative hearing officer upon the agreement of both parties.

292 b. Grievance procedures shall prescribe reasonable and specific time limitations for the grievant to
 293 submit an initial complaint and to appeal each decision through the steps of the grievance procedure.

294 c. Nothing contained in this section shall prohibit a local government from granting its employees
 295 rights greater than those contained herein, provided such grant does not exceed or violate the general
 296 law or public policy of the Commonwealth.

297 6. Time periods.

298 a. It is intended that speedy attention to employee grievances be promoted, consistent with the ability
 299 of the parties to prepare for a fair consideration of the issues of concern.

300 b. The time for submitting an initial complaint shall not be less than 20 calendar days after the event
 301 giving rise to the grievance, but local governments may, at their option, allow a longer time period.

302 c. Limits for steps after initial presentation of grievance shall be the same or greater for the grievant
 303 than the time which is allowed for local government response in each comparable situation.

304 d. Time frames may be extended by mutual agreement of the local government and the grievant.

305 7. Compliance.

306 a. After the initial filing of a written grievance, failure of either party to comply with all substantial
307 procedural requirements of the grievance procedure, including the panel or administrative hearing,
308 without just cause shall result in a decision in favor of the other party on any grievable issue, provided
309 the party not in compliance fails to correct the noncompliance within five workdays of receipt of written
310 notification by the other party of the compliance violation. Such written notification by the grievant shall
311 be made to the chief administrative officer, or his designee.

312 b. The chief administrative officer, or his designee, at his option, may require a clear written
313 explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his
314 designee, shall determine compliance issues. Compliance determinations made by the chief
315 administrative officer shall be subject to judicial review by filing petition with the circuit court within
316 30 days of the compliance determination.

317 8. Management steps.

318 a. The first step shall provide for an informal, initial processing of employee complaints by the
319 immediate supervisor through a nonwritten, discussion format.

320 b. Management steps shall provide for a review with higher levels of local government authority
321 following the employee's reduction to writing of the grievance and the relief requested on forms
322 supplied by the local government. Personal face-to-face meetings are required at all of these steps.

323 c. With the exception of the final management step, the only persons who may normally be present
324 in the management step meetings are the grievant, the appropriate local government official at the level
325 at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be
326 present only while actually providing testimony. At the final management step, the grievant, at his
327 option, may have present a representative of his choice. If the grievant is represented by legal counsel,
328 local government likewise has the option of being represented by counsel.

329 9. Qualification for panel or administrative hearing.

330 a. Decisions regarding grievability and access to the procedure shall be made by the chief
331 administrative officer of the local government, or his designee, at any time prior to the panel hearing, at
332 the request of the local government or grievant, within 10 calendar days of the request. No city, town,
333 or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of
334 grievability. A copy of the ruling shall be sent to the grievant. Decisions of the chief administrative
335 officer of the local government, or his designee, may be appealed to the circuit court having jurisdiction
336 in the locality in which the grievant is employed for a hearing on the issue of whether the grievance
337 qualifies for a panel hearing. Proceedings for review of the decision of the chief administrative officer or
338 his designee shall be instituted by the grievant by filing a notice of appeal with the chief administrative
339 officer within 10 calendar days from the date of receipt of the decision and giving a copy thereof to all
340 other parties. Within 10 calendar days thereafter, the chief administrative officer or his designee shall
341 transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the chief
342 administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished
343 to the court shall also be furnished to the grievant. The failure of the chief administrative officer or his
344 designee to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the
345 grievant, may issue a writ of certiorari requiring the chief administrative officer to transmit the record on
346 or before a certain date.

347 b. Within 30 days of receipt of such records by the clerk, the court, sitting without a jury, shall hear
348 the appeal on the record transmitted by the chief administrative officer or his designee and such
349 additional evidence as may be necessary to resolve any controversy as to the correctness of the record.
350 The court, in its discretion, may receive such other evidence as the ends of justice require. The court
351 may affirm the decision of the chief administrative officer or his designee, or may reverse or modify the
352 decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the
353 conclusion of the hearing. The decision of the court is final and is not appealable.

354 10. Final hearings.

355 a. Qualifying grievances shall advance to either a panel hearing or a hearing before an administrative
356 hearing officer, as set forth in the locality's grievance procedure, as described below:

357 (1) If the grievance procedure adopted by the local governing body provides that the final step shall
358 be an impartial panel hearing, the panel may, with the exception of those local governments covered by
359 subdivision a (2) of this subsection, consist of one member appointed by the grievant, one member
360 appointed by the agency head and a third member selected by the first two. In the event that agreement
361 cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction
362 wherein the dispute arose shall select the third panel member. The panel shall not be composed of any
363 persons having direct involvement with the grievance being heard by the panel, or with the complaint or
364 dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant,
365 persons residing in the same household as the grievant and the following relatives of a participant in the
366 grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent,

367 child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct
368 involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee
369 of the attorney shall serve as a panel member.

370 (2) If the grievance procedure adopted by the local governing body provides for the final step to be
371 an impartial panel hearing, local governments may retain the panel composition method previously
372 approved by the Department of Human Resource Management and in effect as of the enactment of this
373 statute. Modifications to the panel composition method shall be permitted with regard to the size of the
374 panel and the terms of office for panel members, so long as the basic integrity and independence of
375 panels are maintained. As used in this section, the term "panel" shall include all bodies designated and
376 authorized to make final and binding decisions.

377 (3) When a local government elects to use an administrative hearing officer rather than a
378 three-person panel for the final step in the grievance procedure, the administrative hearing officer shall
379 be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be
380 made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to
381 § 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. In the
382 alternative, the local government may request the appointment of an administrative hearing officer from
383 the Department of Human Resource Management. If a local government elects to use an administrative
384 hearing officer, it shall bear the expense of such officer's services.

385 (4) When the local government uses a panel in the final step of the procedure, there shall be a
386 chairperson of the panel and, when panels are composed of three persons (one each selected by the
387 respective parties and the third from an impartial source), the third member shall be the chairperson.

388 (5) Both the grievant and the respondent may call upon appropriate witnesses and be represented by
389 legal counsel or other representatives at the hearing. Such representatives may examine, cross-examine,
390 question and present evidence on behalf of the grievant or respondent before the panel or hearing officer
391 without being in violation of the provisions of § 54.1-3904.

392 (6) The decision of the panel or hearing officer shall be final and binding and shall be consistent
393 with provisions of law and written policy.

394 (7) The question of whether the relief granted by a panel or hearing officer is consistent with written
395 policy shall be determined by the chief administrative officer of the local government, or his designee,
396 unless such person has a direct personal involvement with the event or events giving rise to the
397 grievance, in which case the decision shall be made by the attorney for the Commonwealth of the
398 jurisdiction in which the grievance is pending.

399 b. Rules for panel and administrative hearings.

400 Unless otherwise provided by law, local governments shall adopt rules for the conduct of panel or
401 administrative hearings as a part of their grievance procedures, or shall adopt separate rules for such
402 hearings. Rules which are promulgated shall include, but need not be limited to the following
403 provisions:

404 (1) That neither the panels nor the hearing officer have authority to formulate policies or procedures
405 or to alter existing policies or procedures;

406 (2) That panels and the hearing officer have the discretion to determine the propriety of attendance at
407 the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the
408 hearing shall be private;

409 (3) That the local government provide the panel or hearing officer with copies of the grievance
410 record prior to the hearing, and provide the grievant with a list of the documents furnished to the panel
411 or hearing officer, and the grievant and his attorney, at least 10 days prior to the scheduled hearing,
412 shall be allowed access to and copies of all relevant files intended to be used in the grievance
413 proceeding;

414 (4) That panels and hearing officers have the authority to determine the admissibility of evidence
415 without regard to the burden of proof, or the order of presentation of evidence, so long as a full and
416 equal opportunity is afforded to all parties for the presentation of their evidence;

417 (5) That all evidence be presented in the presence of the panel or hearing officer and the parties,
418 except by mutual consent of the parties;

419 (6) That documents, exhibits and lists of witnesses be exchanged between the parties or hearing
420 officer in advance of the hearing;

421 (7) That the majority decision of the panel or the decision of the hearing officer, acting within the
422 scope of its or his authority, be final, subject to existing policies, procedures and law;

423 (8) That the panel or hearing officer's decision be provided within a specified time to all parties; and

424 (9) Such other provisions as may facilitate fair and expeditious hearings, with the understanding that
425 the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do
426 not necessarily apply.

427 11. Implementation of final hearing decisions.

428 Either party may petition the circuit court having jurisdiction in the locality in which the grievant is
 429 employed for an order requiring implementation of the hearing decision.

430 B. Notwithstanding the contrary provisions of this section, a final hearing decision rendered under
 431 the provisions of this section which would result in the reinstatement of any employee of a sheriff's
 432 office, who has been terminated for cause may be reviewed by the circuit court for the locality upon the
 433 petition of the locality. The review of the circuit court shall be limited to the question of whether the
 434 decision of the panel or hearing officer was consistent with provisions of law and written policy.

435 **§ 15.2-1604. Appointment of deputies and employment of employees; discriminatory practices**
 436 **by certain officers; civil penalty.**

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

438 1. To fail or refuse to appoint or hire or to discharge any individual, or otherwise to discriminate
 439 against any individual with respect to his compensation, terms, conditions or privileges of appointment
 440 or employment, because of such individual's race, color, religion, sex ~~or~~, *pregnancy, childbirth or*
 441 *related medical conditions, sexual orientation as defined in § 15.2-1500.1, gender identity as defined in*
 442 *§ 15.2-1500.1, national origin, or status as a veteran; or*

443 2. To limit, segregate, or classify his appointees, employees or applicants for appointment or
 444 employment in any way which would deprive or tend to deprive any individual of employment
 445 opportunities or otherwise adversely affect his status as an employee, because of the individual's race,
 446 color, religion, sex ~~or~~, *pregnancy, childbirth or related medical conditions, sexual orientation as defined*
 447 *in § 15.2-1500.1, gender identity as defined in § 15.2-1500.1, national origin, or status as a veteran.*

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

453 C. With regard to notices and advertisements:

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

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

468 D. Complaints regarding violations of subsection A may be made to the Division of Human Rights
 469 of the Department of Law. The Division shall have the authority to exercise its powers as outlined in
 470 Article 4 (§ 2.2-520 et seq.) of Chapter 5 of Title 2.2.

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

473 **§ 22.1-295.2. Employment discrimination prohibited.**

474 A. For the purposes of this section:

475 "*Gender identity*" means the gender-related identity, appearance, or other gender-related
 476 characteristics of an individual, with or without regard to the individual's designated sex at birth.

477 "*Sexual orientation*" means a person's actual or perceived heterosexuality, bisexuality, or
 478 homosexuality.

479 B. No school board or any agent or employee thereof shall discriminate in employment on the basis
 480 of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age,
 481 marital status, disability, sexual orientation, gender identity, or status as a veteran. This prohibition
 482 does not in any way permit or require the lowering of any job requirements, performance standards, or
 483 qualifications necessary to successfully perform the duties of the position.

484 **§ 22.1-306. Definitions.**

485 As used in this article:

486 "Business day" means any day that the relevant school board office is open.

487 "Day" means calendar days unless a different meaning is clearly expressed in this article. Whenever
 488 the last day for performing an act required by this article falls on a Saturday, Sunday, or legal holiday,
 489 the act may be performed on the next day that is not a Saturday, Sunday, or legal holiday.

490 "Dismissal" means the dismissal of any teacher during the term of such teacher's contract.

491 "Grievance" means a complaint or dispute by a teacher relating to his employment, including but not
492 necessarily limited to: (i) disciplinary action including dismissal; (ii) the application or interpretation of:
493 (a) personnel policies, (b) procedures, (c) rules and regulations, (d) ordinances, and (e) statutes; (iii) acts
494 of reprisal against a teacher for filing or processing a grievance, participating as a witness in any step,
495 meeting or hearing relating to a grievance, or serving as a member of a fact-finding panel; and (iv)
496 complaints of discrimination on the basis of race, color, creed, *religion*, political affiliation, ~~handicap~~
497 *disability*, age, national origin, ~~or~~ sex, *pregnancy, childbirth or related medical conditions, marital*
498 *status, sexual orientation as defined in § 22.1-295.2, gender identity as defined in § 22.1-295.2, or status*
499 *as a veteran*. Each school board shall have the exclusive right to manage the affairs and operations of
500 the school division. Accordingly, the term "grievance" shall not include a complaint or dispute by a
501 teacher relating to (1) establishment and revision of wages or salaries, position classifications, or general
502 benefits; (2) suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved
503 continuing contract status; (3) the establishment or contents of ordinances, statutes, or personnel
504 policies, procedures, rules, and regulations; (4) failure to promote; (5) discharge, layoff, or suspension
505 from duties because of decrease in enrollment, decrease in enrollment or abolition of a particular subject,
506 or insufficient funding; (6) hiring, transfer, assignment, and retention of teachers within the school
507 division; (7) suspension from duties in emergencies; (8) the methods, means, and personnel by which
508 the school division's operations are to be carried on; or (9) coaching or extracurricular activity
509 sponsorship.

510 While these management rights are reserved to the school board, failure to apply, where applicable,
511 the rules, regulations, policies, or procedures as written or established by the school board is grievable.