

20108819D

## SENATE BILL NO. 868

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Sickles  
on February 24, 2020)

(Patrons Prior to Substitute—Senators Ebbin, McClellan [SB66], and Boysko [SB159])

A *BILL to amend and reenact §§ 2.2-520, 2.2-3004, 2.2-3900, 2.2-3901, 2.2-3902, 6.2-501, 15.2-853, 15.2-854, 15.2-965, 15.2-1507, 15.2-1604, 22.1-306, 36-96.1 through 36-96.3, 36-96.4, 36-96.6, and 55.1-1310 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 2.2-2901.1, by adding in Chapter 39 of Title 2.2 sections numbered 2.2-3904 through 2.2-3908, and by adding sections numbered 15.2-1500.1 and 22.1-295.2; and to repeal § 2.2-3903 of the Code of Virginia, relating to prohibited discrimination; public accommodations, employment, housing, and credit; causes of action; sexual orientation and gender identity.*

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 2.2-520, 2.2-3004, 2.2-3900, 2.2-3901, 2.2-3902, 6.2-501, 15.2-853, 15.2-854, 15.2-965, 15.2-1507, 15.2-1604, 22.1-306, 36-96.1 through 36-96.3, 36-96.4, 36-96.6, and 55.1-1310 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-2901.1, by adding in Chapter 39 of Title 2.2 sections numbered 2.2-3904 through 2.2-3908, and by adding sections numbered 15.2-1500.1 and 22.1-295.2 as follows:

**§ 2.2-520. Division of Human Rights created; duties.**

A. There is created in the Department of Law a Division of Human Rights (the Division) to assist in the prevention of and relief from alleged unlawful discriminatory practices.

B. The powers and duties of the Division shall be to:

1. Receive, investigate, seek to conciliate, refer to another agency, hold hearings pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.), and make findings and recommendations upon complaints alleging unlawful discriminatory practices pursuant to the Virginia Human Rights Act (§ 2.2-3900 et seq.);

2. Adopt, promulgate, amend, and rescind regulations consistent with this article and the provisions of the Virginia Human Rights Act (§ 2.2-3900 et seq.) pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.). However, the Division shall not have the authority to adopt regulations on a substantive matter when another state agency is authorized to adopt such regulations;

3. Inquire into incidents that may constitute unlawful acts of discrimination or unfounded charges of unlawful discrimination under state or federal law and take such action within the Division's authority designed to prevent such acts;

4. Seek through appropriate enforcement authorities, prevention of or relief from an alleged unlawful discriminatory practice;

5. Appoint and compensate qualified hearing officers from the list of hearing officers maintained by the Executive Secretary of the Supreme Court of Virginia;

6. Promote creation of local commissions to aid in effectuating the policies of this article and to enter into cooperative worksharing or other agreements with federal agencies or local commissions, including the deferral of complaints of discrimination to federal agencies or local commissions;

7. Make studies and appoint advisory councils to effectuate the purposes and policies of the article and to make the results thereof available to the public;

8. Accept public grants or private gifts, bequests, or other payments, as appropriate; and

9. Furnish technical assistance upon request of persons subject to this article to further comply with the article or an order issued thereunder.

**§ 2.2-2901.1. Employment discrimination prohibited.**

A. For the purposes of this section, "age" means being an individual who is at least 40 years of age.

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.

C. The provisions of this section shall not prohibit (i) discrimination in employment on the basis of sex or age in those instances when sex or age is a bona fide occupational qualification for employment or (ii) providing preference in employment to veterans.

**§ 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

60 application of all written personnel policies, procedures, rules and regulations where it can be shown that  
 61 policy was misapplied or unfairly applied; (iii) discrimination on the basis of race, color, religion,  
 62 political affiliation, age, disability, national origin ~~or~~, sex, *pregnancy, childbirth or related medical*  
 63 *conditions, marital status, sexual orientation, gender identity, or status as a veteran*; (iv) arbitrary or  
 64 capricious performance evaluations; (v) acts of retaliation as the result of the use of or participation in  
 65 the grievance procedure or because the employee has complied with any law of the United States or of  
 66 the Commonwealth, has reported any violation of such law to a governmental authority, has sought any  
 67 change in law before the Congress of the United States or the General Assembly, or has reported an  
 68 incidence of fraud, abuse, or gross mismanagement; and (vi) retaliation for exercising any right  
 69 otherwise protected by law.

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

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

82 D. Except as provided in subsection A of § 2.2-3003, decisions regarding whether a grievance  
 83 qualifies for a hearing shall be made in writing by the agency head or his designee within five workdays  
 84 of the employee's request for a hearing. A copy of the decision shall be sent to the employee. The  
 85 employee may appeal the denial of a hearing by the agency head to the Director of the Department of  
 86 Human Resource Management (the Director). Upon receipt of an appeal, the agency shall transmit the  
 87 entire grievance record to the Department of Human Resource Management within five workdays. The  
 88 Director shall render a decision on whether the employee is entitled to a hearing upon the grievance  
 89 record and other probative evidence.

90 E. The hearing pursuant to § 2.2-3005 shall be held in the locality in which the employee is  
 91 employed or in any other locality agreed to by the employee, employer, and hearing officer. The  
 92 employee and the agency may be represented by legal counsel or a lay advocate, the provisions of  
 93 § 54.1-3904 notwithstanding. The employee and the agency may call witnesses to present testimony and  
 94 be cross-examined.

95 **§ 2.2-3900. Short title; declaration of policy.**

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

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

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

102 2. *Safeguard all individuals within the Commonwealth from unlawful discrimination in employment*  
 103 *because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical*  
 104 *conditions, age, marital status, sexual orientation, gender identity, disability, or status as a veteran;*  
 105 *preserve*

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

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

108 ~~2.~~ 5. Protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

109 **§ 2.2-3901. Definitions.**

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

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

119 B. *The term "gender identity," when used in reference to discrimination in the Code and acts of the*  
 120 *General Assembly, means the gender-related identity, appearance, or other gender-related*  
 121 *characteristics of an individual, with or without regard to the individual's designated sex at birth.*

*C. The term "sexual orientation," when used in reference to discrimination in the Code and acts of the General Assembly, means a person's actual or perceived heterosexuality, bisexuality, or homosexuality.*

**§ 2.2-3902. 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 its policies. 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.

*Conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions including lactation, age, status as a veteran, or national origin is an unlawful discriminatory practice under this chapter.*

Nothing in this chapter shall prohibit or alter any program, service, facility, school, or privilege that 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 18 years (i) where the differentiation is reasonably necessary to normal operation or the activity is based upon reasonable factors other than age or (ii) where the 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 Division of Human Rights of the Department of Law (the Division) in accordance with § 2.2-520 alleging unlawful discriminatory practice under a Virginia statute that is enforced by a Virginia agency shall be referred to that agency. The Division may investigate complaints alleging an unlawful discriminatory practice under a federal statute or regulation and attempt to resolve it through conciliation. Unsolved complaints shall thereafter be referred to the federal agency with jurisdiction over the complaint. Upon such referral, the Division shall have no further jurisdiction over the complaint. The Division shall have no jurisdiction over any complaint filed under a local ordinance adopted pursuant to § 15.2-965.

**§ 2.2-3904. Nondiscrimination in places of public accommodation; definitions.**

A. As used in this section, unless the context requires a different meaning:

"Age" means being an individual who is at least 18 years of age.

"Place of public accommodation" means all places or businesses offering or holding out to the general public goods, services, privileges, facilities, advantages, or accommodations.

B. It is an unlawful discriminatory practice for any person, including the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation, to refuse, withhold from, or deny any individual, or to attempt to refuse, withhold from, or deny any individual, directly or indirectly, any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation, or to segregate or discriminate against any such person in the use thereof, or to publish, circulate, issue, display, post or mail, either directly or indirectly, any communication, notice, or advertisement to the effect that any of the accommodations, advantages, facilities, privileges, or services of any such place shall be refused, withheld from, or denied to any individual on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, sexual orientation, gender identity, marital status, disability, or status as a veteran.

C. The provisions of this section shall not apply to a private club, a place of accommodation owned by or operated on behalf of a religious corporation, association, or society that is not in fact open to the public, or any other establishment that is not in fact open to the public.

D. The provisions of this section shall not prohibit (i) discrimination against individuals who are less than 18 years of age or (ii) the provision of special benefits, incentives, discounts, or promotions by public or private programs to assist persons who are 50 years of age or older.

E. The provisions of this section shall not supersede or interfere with any state law or local ordinance that prohibits a person under the age of 21 from entering a place of public accommodation.

**§ 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.

"Employee" means an individual employed by an employer.

"Employer" means a person employing 15 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. However, (i) for purposes of unlawful discharge under subdivision B 1 on the basis of race, color,

183 religion, national origin, status as a veteran, sex, sexual orientation, gender identity, marital status,  
184 pregnancy, childbirth or related medical conditions including lactation, "employer" means any employer  
185 employing more than five persons and (ii) for purposes of unlawful discharge under subdivision B 1 on  
186 the basis of age, "employer" means any employer employing more than five but fewer than 20 persons.

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

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

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

196 "Lactation" means a condition that may result in the feeding of a child directly from the breast or  
197 the expressing of milk from the breast.

198 B. It is an unlawful employment practice for:

199 1. An employer to:

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

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

210 2. An employment agency to:

211 a. Fail or refuse to refer for employment, or otherwise discriminate against, any individual because  
212 of such individual's race, color, religion, sex, sexual orientation, gender identity, marital status,  
213 pregnancy, childbirth or related medical conditions, age, status as a veteran, or national origin; or

214 b. Classify or refer for employment any individual on the basis of such individual's race, color,  
215 religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical  
216 conditions, age, status as a veteran, or national origin.

217 3. A labor organization to:

218 a. Exclude or expel from its membership, or otherwise discriminate against, any individual because  
219 of such individual's race, color, religion, sex, sexual orientation, gender identity, marital status,  
220 pregnancy, childbirth or related medical conditions, age, status as a veteran, or national origin;

221 b. Limit, segregate, or classify its membership or applicants for membership, or classify or fail to or  
222 refuse to refer for employment any individual, in any way that would deprive or tend to deprive such  
223 individual of employment opportunities, or would limit such employment opportunities or otherwise  
224 adversely affect an individual's status as an employee or as an applicant for employment, because of  
225 such individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy,  
226 childbirth or related medical conditions, age, status as a veteran, or national origin; or

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

229 4. An employer, labor organization, or joint apprenticeship committee to discriminate against any  
230 individual in any program to provide apprenticeship or other training program on the basis of such  
231 individual's race, color, religion, sex, sexual orientation, gender identity, pregnancy, childbirth or  
232 related medical conditions, age, status as a veteran, or national origin.

233 5. An employer, in connection with the selection or referral of applicants or candidates for  
234 employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the  
235 results of employment-related tests on the basis of race, color, religion, sex, sexual orientation, gender  
236 identity, marital status, pregnancy, childbirth or related medical conditions, age, status as a veteran, or  
237 national origin.

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

242 7. (i) An employer to discriminate against any employees or applicants for employment, (ii) an  
243 employment agency or a joint apprenticeship committee controlling an apprenticeship or other training  
244 program to discriminate against any individual, or (iii) a labor organization to discriminate against any

member thereof or applicant for membership because such individual has opposed any practice made an unlawful employment practice by this chapter or because such individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

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

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

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

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

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

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

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

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

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

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

**§ 2.2-3906. Civil action by Attorney General.**

A. Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this chapter, or that any person or group of persons has been denied any of the rights granted by this chapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in the appropriate circuit court for appropriate relief.

B. In such civil action, the court may:

1. Award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter, as is necessary to assure the full enjoyment of the rights granted by this chapter.

2. Assess a civil penalty against the respondent (i) in an amount not exceeding \$50,000 for a first violation and (ii) in an amount not exceeding \$100,000 for any subsequent violation. Such civil penalties are payable to the Literary Fund.

3. Award a prevailing plaintiff reasonable attorney fees and costs.

C. The court or jury may award such other relief to the aggrieved person as the court deems appropriate, including compensatory damages and punitive damages.

D. Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection A that involves an alleged discriminatory practice pursuant to this chapter with respect to which such person is an aggrieved person. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under § 2.2-3908.

**§ 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.**

A. Any person claiming to be aggrieved by an unlawful discriminatory practice may file a complaint in writing under oath or affirmation with the Division of Human Rights of the Department of Law (the Division). The Division itself or the Attorney General may in a like manner file such a complaint. The complaint shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged unlawful discrimination.

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

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

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

E. If the report on a charge of discrimination concludes that there is no reasonable cause to believe the alleged unlawful discrimination has been committed, the charge shall be dismissed and the complainant shall be given notice of his right to commence a civil action.

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

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

H. Upon receipt of a written request from the complainant, the Division shall promptly issue a notice

of the right to file a civil action to the complainant after (i) 180 days have passed from the date the complaint was filed or (ii) the Division determines that it will be unable to complete its investigation within 180 days from the date the complaint was filed.

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

A. An aggrieved person who has been provided a notice of his right to file a civil action pursuant to § 2.2-3907 may commence a timely civil action in an appropriate general district or circuit court having jurisdiction over the person who allegedly unlawfully discriminated against such person in violation of this chapter.

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

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

**§ 6.2-501. Prohibited discrimination.**

A. As used in this section, "age" means being an individual who is at least 18 years of age.

B. It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction:

1. On the basis of race, color, religion, national origin, sex ~~or~~, marital status, *sexual orientation*, gender identity, pregnancy, childbirth or related medical conditions, ~~or~~ age, disability, or status as a veteran provided that the applicant has the capacity to contract; or

2. Because all or part of the applicant's income derives from any public assistance or social services program.

~~B.~~ C. It shall not constitute discrimination for purposes of this chapter for a creditor:

1. To make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness;

2. To make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance or social services program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of creditworthiness as provided in regulations of the Commission;

3. To use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Commission, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

4. To make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

~~C.~~ D. It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to:

1. Any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

2. Any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

3. Any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Commission, if such refusal is required by or made pursuant to such program.

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

A county 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, *status as a veteran*, age, marital status, *sexual orientation*, gender identity, or disability. The board may enact an ordinance establishing a local commission on human rights ~~which~~ that 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~~

4. To exercise such other powers and duties as provided in this article. However, the commission shall have no power itself to issue subpoenas, award damages, or grant injunctive relief.

For the purposes of this article, "person" means one or more individuals, labor unions, partnerships,

corporations, associations, legal representatives, mutual companies, joint-stock companies, trusts, or unincorporated organizations.

**§ 15.2-854. Investigations.**

Whenever the commission on human rights has a reasonable cause to believe that any person has engaged in, or is engaging in, any violation of a county ordinance ~~which~~ *that* prohibits discrimination due to race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, *status as a veteran*, age, marital status, *sexual orientation*, *gender identity*, 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. 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.

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

A. Any locality 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, *status as a veteran*, age, marital status, *sexual orientation*, *gender identity*, or disability.

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

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

A. As used in this section, "age" means being an individual who is at least 40 years of age.

B. No department, office, board, commission, agency, or instrumentality of local government 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*.

C. The provisions of this section shall not prohibit (i) discrimination in employment on the basis of sex or age in those instances when sex or age is a bona fide occupational qualification for employment or (ii) providing preference in employment to veterans.

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

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

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

Each grievance procedure shall include the following components and features:

1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to his employment, including ~~but not necessarily limited to~~ (i) disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules, and regulations, including the application of policies involving matters referred to in *clause (iii) of subdivision 2 (iii) below*; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin ~~or~~, sex, *marital status*, *pregnancy*, *childbirth or related medical conditions*, *sexual orientation*, *gender identity*, or *status as a veteran*; and (iv) 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. For the purposes of clause (iv), there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.



2. Local government responsibilities. Local governments shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i) establishment and revision of wages or salaries, position classification, or general benefits; (ii) work activity accepted by the employee as a condition of employment or work activity which that may reasonably be expected to be a part of the job content; (iii) the contents of ordinances, statutes, or established personnel policies, procedures, rules, and regulations; (iv) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly; (v) the methods, means, and personnel by which work activities are to be carried on; (vi) except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment, and retention of employees within the local government; and (viii) the relief of employees from duties of the local government in emergencies. In any grievance brought under the exception to clause (vi) of this subdivision, the action shall be upheld upon a showing by the local government that: (i) (a) there was a valid business reason for the action and (ii) (b) the employee was notified of the reason in writing prior to the effective date of the action.

### 3. Coverage of personnel.

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

- (1) Appointees of elected groups or individuals;
- (2) Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;
- (3) Deputies and executive assistants to the chief administrative officer of a locality;
- (4) Agency heads or chief executive officers of government operations;
- (5) Employees whose terms of employment are limited by law;
- (6) Temporary, limited term and seasonal employees;
- (7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose grievance is subject to the provisions of Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance.

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

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

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

### 5. General requirements for procedures.

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

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

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

### 6. Time periods.

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

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

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

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

7. Compliance.

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

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

8. Management steps.

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

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

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

9. Qualification for panel or administrative hearing.

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

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

10. Final hearings.

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

(1) If the grievance procedure adopted by the local governing body provides that the final step shall be an impartial panel hearing, the panel may, with the exception of those local governments covered by subdivision a (2) of this subsection, consist of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or

dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel member.

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

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

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

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

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

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

b. Rules for panel and administrative hearings.

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

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

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

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

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

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

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

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

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

(9) Such other provisions as may facilitate fair and expeditious hearings, with the understanding that

the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do not necessarily apply.

11. Implementation of final hearing decisions.

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

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

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

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

1. To fail or refuse to appoint or hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of appointment or employment, because of such individual's race, color, religion, sex ~~or~~, *age, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, national origin, or status as a veteran*; or

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

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

C. With regard to notices and advertisements:

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

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

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

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

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

A. For the purposes of this section, "age" means being an individual who is at least 40 years of age.

B. No school board or any agent or employee thereof 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.

C. The provisions of this section shall not prohibit (i) discrimination in employment on the basis of sex or age in those instances when sex or age is a bona fide occupational qualification for employment or (ii) providing preference in employment to veterans.

**§ 22.1-306. Definitions.**

As used in this article:

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

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

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

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

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

#### **§ 36-96.1. Declaration of policy.**

A. This chapter shall be known and referred to as the Virginia Fair Housing Law.

B. It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, *sexual orientation, gender identity, status as a veteran*, or ~~handicap~~ *disability*, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and insured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.

#### **§ 36-96.1:1. Definitions.**

For the purposes of this chapter, unless the context clearly indicates otherwise:

"Aggrieved person" means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Assistance animal" means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. An assistance animal is not required to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals. An assistance animal is not a pet.

"Complainant" means a person, including the Fair Housing Board, who files a complaint under § 36-96.9.

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, their respective authorized representatives and the Fair Housing Board.

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

"Disability" means, with respect to a person, (i) a physical or mental impairment that substantially limits one or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance as defined in Virginia or federal law. For the purposes of this chapter, the terms "disability" and "handicap" shall be interchangeable.

"Discriminatory housing practices" means an act that is unlawful under § 36-96.3, 36-96.4, 36-96.5, or 36-96.6.

"Dwelling" means any building, structure, or portion thereof, that is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

798 "Elderliness" means an individual who has attained his fifty-fifth birthday.

799 "Familial status" means one or more individuals who have not attained the age of 18 years being  
800 domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii)  
801 the designee of such parent or other person having custody with the written permission of such parent or  
802 other person. The term "familial status" also includes any person who is pregnant or is in the process of  
803 securing legal custody of any individual who has not attained the age of 18 years. For purposes of this  
804 section, "in the process of securing legal custody" means having filed an appropriate petition to obtain  
805 legal custody of such minor in a court of competent jurisdiction.

806 "Family" includes a single individual, whether male or female.

807 "Handicap" means, with respect to a person; (i) a physical or mental impairment that substantially  
808 limits one or more of such person's major life activities; (ii) a record of having such an impairment; or  
809 (iii) being regarded as having such an impairment. The term does not include current, illegal use of or  
810 addiction to a controlled substance as defined in Virginia or federal law. For the purposes of this  
811 chapter, the terms "handicap" and "disability" shall be interchangeable.

812 "Lending institution" includes any bank, savings institution, credit union, insurance company or  
813 mortgage lender.

814 "Major life activities" means, but shall not be limited to, includes any the following functions: caring  
815 for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and  
816 working.

817 "Person" means one or more individuals, whether male or female, corporations, partnerships,  
818 associations, labor organizations, fair housing organizations, civil rights organizations, organizations,  
819 governmental entities, legal representatives, mutual companies, joint stock companies, trusts,  
820 unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

821 "Physical or mental impairment" means, but shall not be limited to, includes any of the following: (i)  
822 any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or  
823 more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory,  
824 including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic;  
825 skin; or endocrine or (ii) any mental or psychological disorder, such as an intellectual or developmental  
826 disability, organic brain syndrome, emotional or mental illness, or specific learning disability. "Physical  
827 or mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing  
828 impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart  
829 disease; diabetes; human immunodeficiency virus infection; intellectual and developmental disabilities;  
830 emotional illness; drug addiction other than addiction caused by current, illegal use of a controlled  
831 substance; and alcoholism.

832 "Respondent" means any person or other entity alleged to have violated the provisions of this  
833 chapter, as stated in a complaint filed under the provisions of this chapter and any other person joined  
834 pursuant to the provisions of § 36-96.9.

835 "Restrictive covenant" means any specification in any instrument affecting title to real property that  
836 purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color,  
837 religion, national origin, sex, elderliness, familial status, *sexual orientation, gender identity, status as a*  
838 *veteran, or handicap disability.*

839 "To rent" means to lease, to sublease, to let, or otherwise to grant for consideration the right to  
840 occupy premises not owned by the occupant.

#### 841 § 36-96.2. Exemptions.

842 A. Except as provided in subdivision A 3 of § 36-96.3 and subsections A, B, and C of § 36-96.6,  
843 this chapter shall not apply to any single-family house sold or rented by an owner, provided that such  
844 private individual does not own more than three single-family houses at any one time. In the case of the  
845 sale of any single-family house by a private individual-owner not residing in the house at the time of  
846 the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall  
847 apply only with respect to one such sale within any 24-month period; provided that such bona fide  
848 private individual owner does not own any interest in, nor is there owned or reserved on his behalf,  
849 under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from  
850 the sale or rental of, more than three such single-family houses at any one time. The sale or rental of  
851 any such single-family house shall be exempt from the application of this chapter only if the house is  
852 sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rental  
853 services of any real estate broker, agent, salesperson, or of the facilities or the services of any person in  
854 the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any  
855 broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of  
856 any advertisement or written notice in violation of this chapter. However, nothing herein shall prohibit  
857 the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as  
858 necessary to perfect or transfer the title. This exemption shall not apply to or inure to the benefit of any  
859 licensee of the Real Estate Board or regulant of the Fair Housing Board, regardless of whether the

licensee is acting in his personal or professional capacity.

B. Except for subdivision A 3 of § 36-96.3, this chapter shall not apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

C. Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, national origin, sex, elderliness, familial status, *sexual orientation, gender identity, status as a veteran*, or ~~handicap~~ *disability*. Nor shall anything in this chapter apply to a private membership club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. Nor, where matters of personal privacy are involved, shall anything in this chapter be construed to prohibit any private, state-owned or state-supported educational institution, hospital, nursing home, religious or correctional institution, from requiring that persons of both sexes not occupy any single-family residence or room or unit of dwellings or other buildings, or restrooms in such room or unit in dwellings or other buildings, which it owns or operates.

D. Nothing in this chapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law.

E. It shall not be unlawful under this chapter for any owner to deny or limit the rental of housing to persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.

F. A rental application may require disclosure by the applicant of any criminal convictions and the owner or managing agent may require as a condition of acceptance of the rental application that applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the rental application. The owner or managing agent may collect from the applicant moneys to reimburse the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record checks. Nothing in this chapter shall require an owner or managing agent to rent a dwelling to an individual who, based on a prior record of criminal convictions involving harm to persons or property, would constitute a clear and present threat to the health or safety of other individuals.

G. Nothing in this chapter limits the applicability of any reasonable local, state or federal restriction regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing agents of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so long as the standards do not violate local, state or federal restrictions. Nothing in this chapter prohibits the rental application or similar document from requiring information concerning the number, ages, sex and familial relationship of the applicants and the dwelling's intended occupants.

### **§ 36-96.3. Unlawful discriminatory housing practices.**

A. It shall be an unlawful discriminatory housing practice for any person:

1. To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, elderliness, ~~or~~ familial status, *sexual orientation, gender identity, or status as a veteran*;

2. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of race, color, religion, national origin, sex, elderliness, ~~or~~ familial status, *sexual orientation, gender identity, or status as a veteran*;

3. To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation, or discrimination based on race, color, religion, national origin, sex, elderliness, familial status, *sexual orientation, gender identity, status as a veteran*, or ~~handicap~~ *disability*. The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this chapter which shall not be overcome by a general disclaimer. However, reference alone to places of worship including, ~~but not limited to~~, churches, synagogues, temples, or mosques in any such notice, statement, or advertisement shall not be prima facie evidence of an illegal preference;

4. To represent to any person because of race, color, religion, national origin, sex, elderliness, familial status, *sexual orientation, gender identity, status as a veteran*, or ~~handicap~~ *disability* that any

dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

5. To deny any person access to membership in or participation in any multiple listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, elderliness, familial status, *sexual orientation, gender identity, status as a veteran*, or ~~handicap~~ *disability*;

6. To include in any transfer, sale, rental, or lease of housing, any restrictive covenant that discriminates because of race, color, religion, national origin, sex, elderliness, familial status, *sexual orientation, gender identity, status as a veteran*, or ~~handicap~~ *disability* or for any person to honor or exercise, or attempt to honor or exercise any such discriminatory covenant pertaining to housing;

7. To induce or attempt to induce to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sex, elderliness, familial status, *sexual orientation, gender identity, status as a veteran*, or ~~handicap~~ *disability*;

8. To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate or make unavailable or deny a dwelling because of a ~~handicap~~ *disability* of (i) the buyer or renter;; (ii) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available;; or (iii) any person associated with the buyer or renter; *or*

9. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of a ~~handicap~~ *disability* of (i) that person;; (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented, or made available;; or (iii) any person associated with that buyer or renter.

B. For the purposes of this section, discrimination includes: (i) a refusal to permit, at the expense of the ~~handicapped disabled~~ person, reasonable modifications of existing premises occupied or to be occupied by any person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that:

1. The public use and common use areas of the dwellings are readily accessible to and usable by ~~handicapped disabled~~ persons;

2. All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by ~~handicapped disabled~~ persons in wheelchairs; and

3. All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. As used in this subdivision, the term "covered multi-family dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

C. Compliance with the appropriate requirements of the American National Standards for Building and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically ~~handicapped disabled~~ people shall be deemed to satisfy the requirements of subdivision B 3.

D. Nothing in this chapter shall be construed to invalidate or limit any Virginia law or regulation which requires dwellings to be designed and constructed in a manner that affords ~~handicapped disabled~~ persons greater access than is required by this chapter.

**§ 36-96.4. Discrimination in residential real estate-related transactions; unlawful practices by lenders, insurers, appraisers, etc.; deposit of state funds in such institutions.**

A. It shall be unlawful for any person or other entity, including any lending institution, whose business includes engaging in residential real estate-related transactions, to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, or in the manner of providing such a transaction, because of race, color, religion, national origin, sex, elderliness, familial status, *sexual orientation, gender identity, status as a veteran*, or ~~handicap~~ *disability*. It shall not be unlawful, however, for any person or other entity whose business includes engaging in residential real estate transactions to require any applicant to qualify financially for the loan or loans for which such person is making application.

B. As used in this section, the term "residential real estate-related transaction" means any of the following:



1. The making or purchasing of loans or providing other financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling or (ii) secured by residential real estate; or

2. The selling, brokering, insuring or appraising of residential real property. However, nothing in this chapter shall prohibit a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, elderliness, familial status, *sexual orientation, gender identity, status as a veteran, or handicap disability*.

C. It shall be unlawful for any state, county, city, or municipal treasurer or governmental official whose responsibility it is to account for, to invest, or manage public funds to deposit or cause to be deposited any public funds in any lending institution provided for herein which is found to be committing discriminatory practices, where such findings were upheld by any court of competent jurisdiction. Upon such a court's judicial enforcement of any order to restrain a practice of such lending institution or for said institution to cease or desist in a discriminatory practice, the appropriate fiscal officer or treasurer of the Commonwealth or any political subdivision thereof which has funds deposited in any lending institution which is practicing discrimination, as set forth herein, shall take immediate steps to have the said funds withdrawn and redeposited in another lending institution. If for reasons of sound economic management, this action will result in a financial loss to the Commonwealth or any of its political subdivisions, the action may be deferred for a period not longer than one year. If the lending institution in question has corrected its discriminatory practices, any prohibition set forth in this section shall not apply.

**§ 36-96.6. Certain restrictive covenants void; instruments containing such covenants.**

A. Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial status, *sexual orientation, gender identity, status as a veteran, or handicap disability*, whether heretofore or hereafter included in an instrument affecting the title to real or leasehold property, are declared to be void and contrary to the public policy of the Commonwealth.

B. Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant or reversionary interest until the covenant or reversionary interest has been removed from the document. Refusal to accept delivery of an instrument for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise deal with such property.

C. No person shall solicit or accept compensation of any kind for the release or removal of any covenant or reversionary interest described in subsection A. Any person violating this subsection shall be liable to any person injured thereby in an amount equal to the greater of three times the compensation solicited or received, or \$500, plus reasonable ~~attorneys'~~ attorney fees and costs incurred.

D. A family care home, foster home, or group home in which individuals with physical ~~handicaps~~ disabilities, mental illness, intellectual disability, or developmental disability reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single family when construing any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single family or to residential use or structure.

**§ 55.1-1310. Sale or lease of manufactured home by manufactured home owner.**

No landlord shall unreasonably refuse or restrict the sale or rental of a manufactured home located in his manufactured home park by a tenant. No landlord shall prohibit the manufactured home owner from placing a "for sale" sign on or in the owner's home except that the size, placement, and character of all signs are subject to the rules and regulations of the manufactured home park. Prior to selling or leasing the manufactured home, the tenant shall give notice to the landlord, including the name of the prospective vendee or lessee if the prospective vendee or lessee intends to occupy the manufactured home in that manufactured home park. The landlord shall have the burden of proving that his refusal or restriction regarding the sale or rental of a manufactured home was reasonable. The refusal or restriction of the sale or rental of a manufactured home exclusively or predominantly based on the age of the home shall be considered unreasonable. Any refusal or restriction based on race, color, religion, national origin, *status as a veteran, familial status, marital status, elderliness, handicap disability, or sexual orientation, gender identity, sex, or pregnancy, childbirth or related medical conditions* shall be conclusively presumed to be unreasonable.

2. That § 2.2-3903 of the Code of Virginia is repealed.

3. That any regulations implementing the provisions of § 2.2-3907 of the Code of Virginia, as created by this act, shall, so far as practicable, conform to the practices and timelines of the Equal Employment Opportunity Commission with respect to analogous federal laws and regulations, for the purpose of maintaining a workshare agreement with that agency.