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HOUSE BILL NO. 1864

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator McClellan
on February 23, 2021)

(Patron Prior to Substitute—Delegate Price)

A BILL to amend and reenact § 2.2-3905 of the Code of Virginia, relating to the employees providing domestic service; the Virginia Human Rights Act; application of laws applicable to employee safety and payment of wages.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3905 of the Code of Virginia is amended and reenacted as follows:

§ 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.

"Domestic worker" means an individual who is compensated directly or indirectly for the performance of services of a household nature performed in or about a private home, including services performed by individuals such as companions, babysitters, cooks, waiters, butlers, valets, maids, housekeepers, nannies, nurses, janitors, laundresses, caretakers, handymen, gardeners, home health aides, personal care aides, and chauffeurs of automobiles for family use. "Domestic worker" does not include (i) a family member, friend, or neighbor of a child, or a parent of a child, who provides child care in the child's home; (ii) any child day program as defined in § 22.1-289.02 or an individual who is an employee of a child day program; or (iii) any employee employed on a casual basis in domestic service employment to provide companionship services for individuals who, because of age or infirmity, are unable to care for themselves.

"Employee" means an individual employed by an employer.

"Employer" means a person employing (i) 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 or (ii) one or more domestic workers. However, ~~(i)~~ (a) for purposes of unlawful discharge under subdivision B 1 on the basis of race, color, religion, national origin, status as a veteran, sex, sexual orientation, gender identity, marital status, pregnancy, or childbirth or related medical conditions including lactation, "employer" means any ~~employer~~ person employing more than five persons or one or more domestic workers and ~~(ii)~~ (b) for purposes of unlawful discharge under subdivision B 1 on the basis of age, "employer" means any employer employing more than five but fewer than 20 persons.

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

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

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

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

B. It is an unlawful employment practice for:

1. An employer to:

a. Fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to such individual's compensation, terms, conditions, or privileges of employment because of such individual's 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; or

b. Limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's 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.

2. An employment agency to:

a. Fail or refuse to refer for employment, or otherwise discriminate against, any individual because of such individual'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; or

b. Classify or refer for employment any individual on the basis of such individual's race, color,

60 religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical
61 conditions, age, status as a veteran, or national origin.

62 3. A labor organization to:

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

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

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

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

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

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

87 7. (i) An employer to discriminate against any employees or applicants for employment, (ii) an
88 employment agency or a joint apprenticeship committee controlling an apprenticeship or other training
89 program to discriminate against any individual, or (iii) a labor organization to discriminate against any
90 member thereof or applicant for membership because such individual has opposed any practice made an
91 unlawful employment practice by this chapter or because such individual has made a charge, testified,
92 assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

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

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

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

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

119 3. For an employer to apply different standards of compensation, or different terms, conditions, or
120 privileges of employment, pursuant to a bona fide seniority or merit system, or a system that measures
121 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.