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HOUSE BILL NO. 753**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on General Laws
on February 10, 2022)

(Patron Prior to Substitute—Delegate Adams, L.R.)

*A BILL to amend and reenact §§ 2.2-3902 and 2.2-3905 of the Code of Virginia, relating to human rights; religious organizations; promotion of religious principles.***Be it enacted by the General Assembly of Virginia:****1. That §§ 2.2-3902 and 2.2-3905 of the Code of Virginia are amended and reenacted as follows:****§ 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.

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, military status, disability, 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.

Nothing in this chapter shall prohibit a religious corporation, 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 taking any action as is calculated by it to promote the religious principles for which it is established or maintained.

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 Office of Civil Rights of the Department of Law (the Office) 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 Office 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 Office shall have no further jurisdiction over the complaint. The Office shall have no jurisdiction over any complaint filed under a local ordinance adopted pursuant to § 15.2-965.

§ 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, (a) for purposes of unlawful discharge under subdivision B 1 on the basis of race, color, religion, national origin, military status, sex, sexual orientation, gender identity, marital status, disability, pregnancy, or childbirth or related medical conditions including lactation, "employer" means any person employing more than five persons or one or more domestic workers and (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

60 without compensation to procure employees for an employer or to procure for employees opportunities
61 to work for an employer.

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

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

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

70 B. It is an unlawful discriminatory practice for:

71 1. An employer to:

72 a. Fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to
73 such individual's compensation, terms, conditions, or privileges of employment because of such
74 individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy,
75 childbirth or related medical conditions including lactation, age, military status, disability, or national
76 origin; or

77 b. Limit, segregate, or classify employees or applicants for employment in any way that would
78 deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an
79 individual's status as an employee, because of such individual's race, color, religion, sex, sexual
80 orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions including
81 lactation, age, military status, disability, or national origin.

82 2. An employment agency to:

83 a. Fail or refuse to refer for employment, or otherwise discriminate against, any individual because of
84 such individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy,
85 childbirth or related medical conditions, age, military status, disability, or national origin; or

86 b. Classify or refer for employment any individual on the basis of such individual's race, color,
87 religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical
88 conditions, age, military status, disability, or national origin.

89 3. A labor organization to:

90 a. Exclude or expel from its membership, or otherwise discriminate against, any individual because
91 of such individual's race, color, religion, sex, sexual orientation, gender identity, marital status,
92 pregnancy, childbirth or related medical conditions, age, military status, disability, or national origin;

93 b. Limit, segregate, or classify its membership or applicants for membership, or classify or fail to or
94 refuse to refer for employment any individual, in any way that would deprive or tend to deprive such
95 individual of employment opportunities, or would limit such employment opportunities or otherwise
96 adversely affect an individual's status as an employee or as an applicant for employment, because of
97 such individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy,
98 childbirth or related medical conditions, age, military status, disability, or national origin; or

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

101 4. An employer, labor organization, or joint apprenticeship committee to discriminate against any
102 individual in any program to provide apprenticeship or other training program on the basis of such
103 individual's race, color, religion, sex, sexual orientation, gender identity, pregnancy, childbirth or related
104 medical conditions, age, military status, disability, or national origin.

105 5. An employer, in connection with the selection or referral of applicants or candidates for
106 employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the
107 results of employment-related tests on the basis of race, color, religion, sex, sexual orientation, gender
108 identity, marital status, pregnancy, childbirth or related medical conditions, age, military status,
109 disability, or national origin.

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

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

120 8. An employer, labor organization, employment agency, or joint apprenticeship committee
121 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, military status, disability, 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 discriminatory 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~~ a *preschool*, elementary, or secondary school or institution of higher education to hire and employ employees of a particular religion if such *preschool*, 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 *preschool*, 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, military status, disability, 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, military status, disability, or national origin;

5. For an employer to provide reasonable accommodations related to disability, 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, military status, disability, 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, military status, disability, 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, military status, disability, 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. *As used in this subsection, the term "religion" includes all aspects of religious observance and practice as well as belief.*