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SENATE BILL NO. 177

Offered January 12, 2022

Prefiled January 10, 2022

A BILL to amend and reenact §§ 2.2-3902, 2.2-3904, 2.2-3905, 2.2-3908, and 36-96.2 of the Code of Virginia, relating to human rights; religious organizations; promotion of religious principles.

 Patron—Peake

 Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3902, 2.2-3904, 2.2-3905, 2.2-3908, and 36-96.2 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.

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

A. As used in this section:

"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 military status.

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

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59 than 18 years of age or (ii) the provision of special benefits, incentives, discounts, or promotions by
60 public or private programs to assist persons who are 50 years of age or older.

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

63 **§ 2.2-3905. Nondiscrimination in employment; definitions; exceptions.**

64 A. As used in this section:

65 "Age" means being an individual who is at least 40 years of age.

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

76 "Employee" means an individual employed by an employer.

77 "Employer" means a person employing (i) 15 or more employees for each working day in each of 20
78 or more calendar weeks in the current or preceding calendar year, and any agent of such a person or (ii)
79 one or more domestic workers. However, (a) for purposes of unlawful discharge under subdivision B 1
80 on the basis of race, color, religion, national origin, military status, sex, sexual orientation, gender
81 identity, marital status, disability, pregnancy, or childbirth or related medical conditions including
82 lactation, "employer" means any person employing more than five persons or one or more domestic
83 workers and (b) for purposes of unlawful discharge under subdivision B 1 on the basis of age,
84 "employer" means any employer employing more than five but fewer than 20 persons.

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

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

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

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

96 B. It is an unlawful discriminatory practice for:

97 1. An employer to:

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

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

108 2. An employment agency to:

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

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

115 3. A labor organization to:

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

119 b. Limit, segregate, or classify its membership or applicants for membership, or classify or fail to or
120 refuse to refer for employment any individual, in any way that would deprive or tend to deprive such

individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect an individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, age, military status, disability, or national origin; or

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

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

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

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

7. (i) An employer to discriminate against any employees or applicants for employment, (ii) an employment agency or a joint apprenticeship committee controlling an apprenticeship or other training 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 discriminatory 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, 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 ~~an~~ *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

182 origin;

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

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

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

203 E. The provisions of this section shall not apply to the employment of individuals of a particular
204 religion by a religious corporation, association, educational institution, or society to perform work
205 associated with its activities. *As used in this subsection, the term "religion" includes all aspects of*
206 *religious observance and practice as well as belief.*

207 **§ 2.2-3908. Civil actions by private parties.**

208 A. An aggrieved person who has been provided a notice of his right to file a civil action pursuant to
209 § 2.2-3907 may commence a timely civil action in an appropriate general district or circuit court having
210 jurisdiction over the person who allegedly unlawfully discriminated against such person in violation of
211 this chapter.

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

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

220 **§ 36-96.2. Exemptions.**

221 A. Except as provided in subdivision A 3 of § 36-96.3 and subsections A, B, and C of § 36-96.6,
222 this chapter shall not apply to any single-family house sold or rented by an owner, provided that such
223 private individual does not own more than three single-family houses at any one time. In the case of the
224 sale of any single-family house by a private individual-owner not residing in the house at the time of
225 the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall
226 apply only with respect to one such sale within any 24-month period, provided that such bona fide
227 private individual owner does not own any interest in, nor is there owned or reserved on his behalf,
228 under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from
229 the sale or rental of, more than three such single-family houses at any one time. The sale or rental of
230 any such single-family house shall be exempt from the application of this chapter only if the house is
231 sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rental
232 services of any real estate broker, agent, salesperson, or of the facilities or the services of any person in
233 the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any
234 broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of
235 any advertisement or written notice in violation of this chapter. However, nothing herein shall prohibit
236 the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as
237 necessary to perfect or transfer the title. This exemption shall not apply to or inure to the benefit of any
238 licensee of the Real Estate Board or regulant of the Fair Housing Board, regardless of whether the
239 licensee is acting in his personal or professional capacity.

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

H. Nothing in this chapter shall prohibit a landlord from considering evidence of an applicant's status as a victim of family abuse, as defined in § 16.1-228, to mitigate any adverse effect of an otherwise qualified applicant's application pursuant to subsection D of § 55.1-1203.

I. Nothing in this chapter shall prohibit an owner or an owner's managing agent from denying or limiting the rental or occupancy of a rental dwelling unit to a person because of such person's source of funds, provided that such owner does not own more than four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing practice. However, if an owner, whether individually or through a business entity, owns more than a 10 percent interest in more than four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing practice, the exemption provided in this subsection shall not apply.

J. It shall not be unlawful under this chapter for an owner or an owner's managing agent to deny or limit a person's rental or occupancy of a rental dwelling unit based on the person's source of funds for that unit if such source is not approved within 15 days of the person's submission of the request for tenancy approval.