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HOUSE BILL NO. 782

Offered January 10, 2024

Prefiled January 9, 2024

A *BILL to amend and reenact §§ 2.2-3905, 2.2-3907, and 2.2-3908 of the Code of Virginia, relating to Virginia Human Rights Act; dual-filed civil actions.*

Patron—Herring

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3905, 2.2-3907, and 2.2-3908 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3901. Definitions.

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

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

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.

D. The terms "because of race" or "on the basis of race" or terms of similar import when used in reference to discrimination in the Code and acts of the General Assembly include because of or on the basis of traits historically associated with race, including hair texture, hair type, and protective hairstyles such as braids, locks, and twists.

E. As used in this chapter, unless the context requires a different meaning:

"Dual-filed" means the same as set forth in any work-sharing agreement, as permitted by 42 U.S.C. § 2000e-8(b), that the Office of Civil Rights of the Department of Law has with the E.E.O.C.

"E.E.O.C." means the U.S. Equal Employment Opportunity Commission.

"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.

"Military status" means status as (i) a member of the uniformed forces, as defined in 10 U.S.C. § 101(a)(5), of the United States or a reserve component thereof named under 10 U.S.C. § 10101, (ii) a veteran as defined in 38 U.S.C. § 101(2), or (iii) a dependent as defined in 50 U.S.C. § 3911(4) except that the support provided by the service member to the individual shall have been provided 180 days immediately preceding an alleged action that if proven true would constitute unlawful discrimination under this section instead of 180 days immediately preceding an application for relief under 50 U.S.C. Chapter 50.

"Religion" includes any outward expression of religious faith, including adherence to religious dressing and grooming practices and the carrying or display of religious items or symbols.

§ 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 Office of Civil Rights of the Department of Law (the Office). A complaint alleging a violation of this chapter or federal statutes governing discrimination in employment that also falls under the jurisdiction of this chapter shall be filed with the Office no later than 300 days from the day upon which the alleged discriminatory practice occurred. The Office 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 Office 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 Office 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

59 complaint is not timely filed with the appropriate general district or circuit court.

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

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

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

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

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

87 H. Upon receipt of a written request from the complainant, the Office shall promptly issue a notice
88 of the right to file a civil action to the complainant after (i) 180 days have passed from the date the
89 complaint was filed or (ii) the Office determines that it will be unable to complete its investigation
90 within 180 days from the date the complaint was filed.

91 *I. For any charge of discrimination that was dual-filed, the Office shall promptly issue a notice of*
92 *the right to file a civil action to the complainant upon request by the complainant or the respondent*
93 *after the E.E.O.C. has closed its file on such charge of discrimination.*

94 **§ 2.2-3908. Civil actions by private parties.**

95 A. An aggrieved person ~~who has been provided~~ *may commence a timely civil action in an*
96 *appropriate general district or circuit court having jurisdiction over the person who allegedly unlawfully*
97 *discriminated against such person in violation of this chapter. Any such civil action may only be filed, if*
98 *at all, within 90 days of the complainant's receipt of a notice of his right to file a civil action pursuant*
99 *to § 2.2-3907 may commence a timely civil action in an appropriate general district or circuit court*
100 *having jurisdiction over the person who allegedly unlawfully discriminated against such person in*
101 *violation of this chapter.*

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

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