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HOUSE BILL NO. 2393

Offered January 23, 1995

A BILL to amend and reenact §§ 2.1-715, 2.1-716 and 2.1-725 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 43 of Title 2.1 a section numbered 2.1-725.1, relating to the Virginia Human Rights Act .

Patrons—Howell, Baker, Croshaw, Davies, Diamonstein, Hargrove, Johnson, Mims, Newman and Shuler

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-715, 2.1-716 and 2.1-725 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 43 of Title 2.1 a section numbered 2.1-725.1 as follows:

§ 2.1-715. Declaration of intent and policy.

It is the intention of the General Assembly of Virginia that the prompt, fair and effective resolution of employment discrimination complaints can best be achieved through the investigation and conciliation processes of the Virginia Human Rights Council and corresponding federal civil rights agencies rather than through costly litigation; that such rights, procedures and limits as are provided by federal law or as are expressly defined in this chapter shall be the exclusive basis for causes of action for employment discrimination; and that public policies against employment discrimination shall not be the basis for civil causes of action under Virginia law, whether in tort or in contract or based on a claim of public policy exception to the doctrine that employment is presumed to be at-will.

It is the policy of the Commonwealth of Virginia:

1. To safeguard all individuals within the Commonwealth from unlawful discrimination because of race, color, religion, national origin, sex, age, marital status or disability, in places of public accommodation, including educational institutions and in real estate transactions; in employment; to preserve the public safety, health and general welfare; and to further the interests, rights and privileges of individuals within the Commonwealth; ~~and~~

2. To protect citizens of the Commonwealth against unfounded charges of unlawful discrimination; ~~and~~

3. To resolve complaints of unlawful employment discrimination through investigation and conciliation by the Virginia Human Rights Council and hearings pursuant to the Virginia Administrative Process Act rather than through litigation.

§ 2.1-716. Unlawful discriminatory practice defined.

A. Conduct which violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, national origin, sex, age, marital status or disability shall be an "unlawful discriminatory practice" for the purposes of this chapter.

B. In addition, it shall also be an "unlawful discriminatory practice" for any employer with more than five employees to discharge an employee on the basis of race, color, religion, national origin, sex, or age provided the employee is forty years old or older.

§ 2.1-725. Causes of action not created.

~~Nothing~~ Except as specifically stated in § 2.1-725.1, nothing in this chapter creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions. ~~Nor shall the policies or provisions of this chapter be construed to allow tort actions to be instituted instead of or in addition to the current statutory actions for unlawful discrimination. Nor shall the provisions of this chapter or the public policies reflected herein be construed to allow civil actions, whether in tort or contract or based on express or implied public policy, to be instituted instead of or in addition to the current statutory actions for unlawful discrimination. Causes of action based upon the public policies reflected in this chapter shall be exclusively limited to those actions, procedures and remedies, if any, expressly afforded by applicable state or federal civil rights statutes.~~

§ 2.1-725.1. Procedures and remedies for complaints of unlawful discriminatory practices as defined in § 2.1-716 B.

A. An employee must file a complaint of an alleged unlawful discriminatory practice as defined in § 2.1-716 B within 180 days of the alleged discrimination. The complaint shall be in writing and shall include sufficient information to put the Council and the employer on notice of the facts of the alleged discrimination and the relief sought by the employee. If the complainant is an employee of an employer with fifteen or more employees, the Council shall inform the employee that the procedures and remedies of this section are available only to complainants who choose to accept the remedies available under

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60 *this section as the exclusive remedies for the alleged discrimination in employment and to waive,*
61 *voluntarily and in writing, any claim to proceed under any other applicable federal or state law. If the*
62 *employee declines to execute the required waiver, the Council shall process the complaint as required*
63 *by applicable federal law.*

64 *B. When proceeding under this section, the Council shall take prompt action to resolve a properly*
65 *filed complaint through conciliation and mediation. The procedures of the Council shall be informal and*
66 *shall be designed to facilitate a mutually satisfactory resolution of the complaint. The procedures of the*
67 *Council shall permit both the employer and the employee to present to the Council any information that*
68 *would help the Council resolve the complaint. Neither party shall be required to be represented by an*
69 *attorney during the conciliation and mediation process.*

70 *C. If no mutually satisfactory resolution can be reached by the Council within ninety days, either*
71 *party may seek resolution of the dispute by petitioning the general district court where the act of*
72 *discrimination is alleged to have occurred. To facilitate a cost-effective resolution of the complaint,*
73 *notwithstanding any other provision of law, neither party must be represented by counsel and either*
74 *party may choose to represent himself, herself or itself in any proceedings before the district court.*

75 *D. The general district court shall have jurisdiction to award appropriate legal and equitable relief,*
76 *provided that the court may not (i) award back pay or front pay in excess of an amount equal to six*
77 *months' pay including wages, salary and benefits; (ii) order an employer to reinstate an employee who*
78 *has been terminated; (iii) award punitive or compensatory damages; and (iv) award attorneys fees to*
79 *either party.*

80 *E. The decision of the general district court may be appealed to the circuit court by either party only*
81 *on the basis that the district court's decision was based on fraudulent documentary or testimonial*
82 *evidence or that the decision was arbitrary and capricious and not based on the evidence before the*
83 *court. The circuit court may not grant relief other than that provided under subsection D of this section.*
84 *The decision of the circuit court shall be final and may not be appealed.*