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HOUSE BILL NO. 954
Offered January 10, 2024
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A *BILL to amend and reenact §§ 2.2-3900, 2.2-3902, 2.2-3904, and 2.2-3905 of the Code of Virginia, relating to Virginia Human Rights Act; prohibits discrimination on the basis of citizenship or immigration status.*

Patron—Lopez

Referred to Committee on Housing/Consumer Protection

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3900, 2.2-3902, 2.2-3904, and 2.2-3905 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3900. Short title; declaration of policy.

A. This chapter shall be known and cited as the Virginia Human Rights Act.

B. It is the policy of the Commonwealth to:

1. Safeguard all individuals within the Commonwealth from unlawful discrimination because of race, color, religion, national origin, *citizenship or immigration status*, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, military status, or disability in places of public accommodation, including educational institutions and in real estate transactions;

2. Safeguard all individuals within the Commonwealth from unlawful discrimination in employment because of race, color, religion, national origin, *citizenship or immigration status*, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, disability, or military status;

3. Preserve the public safety, health, and general welfare;

4. Further the interests, rights, and privileges of individuals within the Commonwealth; and

5. Protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

§ 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, *citizenship or immigration status*, 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.

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

59 place of public accommodation, or to segregate or discriminate against any such person in the use thereof, or
 60 to publish, circulate, issue, display, post, or mail, either directly or indirectly, any communication, notice, or
 61 advertisement to the effect that any of the accommodations, advantages, facilities, privileges, or services of
 62 any such place shall be refused, withheld from, or denied to any individual on the basis of race, color,
 63 religion, national origin, *citizenship or immigration status*, sex, pregnancy, childbirth or related medical
 64 conditions, age, sexual orientation, gender identity, marital status, disability, or military status.

65 C. The provisions of this section shall not apply to a private club, a place of accommodation owned by or
 66 operated on behalf of a religious corporation, association, or society that is not in fact open to the public, or
 67 any other establishment that is not in fact open to the public.

68 D. The provisions of this section shall not prohibit (i) discrimination against individuals who are less than
 69 18 years of age or (ii) the provision of special benefits, incentives, discounts, or promotions by public or
 70 private programs to assist persons who are 50 years of age or older.

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

73 **§ 2.2-3905. Nondiscrimination in employment; definitions; exceptions.**

74 A. As used in this section:

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

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

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

86 "Employer" means a person employing (i) 15 or more employees for each working day in each of 20 or
 87 more calendar weeks in the current or preceding calendar year, and any agent of such a person or (ii) one or
 88 more domestic workers. However, (a) for purposes of unlawful discharge under subdivision B 1 on the basis
 89 of race, color, religion, national origin, *citizenship or immigration status*, military status, sex, sexual
 90 orientation, gender identity, marital status, disability, pregnancy, or childbirth or related medical conditions
 91 including lactation, "employer" means any person employing more than five persons or one or more domestic
 92 workers and (b) for purposes of unlawful discharge under subdivision B 1 on the basis of age, "employer"
 93 means any employer employing more than five but fewer than 20 persons.

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

97 "Joint apprenticeship committee" means the same as that term is defined in § 2.2-2043.

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

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

105 B. It is an unlawful discriminatory practice for:

106 1. An employer to:

107 a. Fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to such
 108 individual's compensation, terms, conditions, or privileges of employment because of such individual's race,
 109 color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related
 110 medical conditions including lactation, age, military status, disability, *citizenship or immigration status*, or
 111 national origin; or

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

117 2. An employment agency to:

118 a. Fail or refuse to refer for employment, or otherwise discriminate against, any individual because of
 119 such individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy,

120 childbirth or related medical conditions, age, military status, disability, *citizenship or immigration status*, or
121 national origin; or

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

125 3. A labor organization to:

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

130 b. Limit, segregate, or classify its membership or applicants for membership, or classify or fail to or refuse
131 to refer for employment any individual, in any way that would deprive or tend to deprive such individual of
132 employment opportunities, or would limit such employment opportunities or otherwise adversely affect an
133 individual's status as an employee or as an applicant for employment, because of such individual's race, color,
134 religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical
135 conditions, age, military status, disability, *citizenship or immigration status*, or national origin; or

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

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

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

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

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

157 8. An employer, labor organization, employment agency, or joint apprenticeship committee controlling an
158 apprenticeship or other training program to print or publish, or cause to be printed or published, any notice or
159 advertisement relating to (i) employment by such an employer, (ii) membership in or any classification or
160 referral for employment by such a labor organization, (iii) any classification or referral for employment by
161 such an employment agency, or (iv) admission to, or employment in, any program established to provide
162 apprenticeship or other training by such a joint apprenticeship committee that indicates any preference,
163 limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, gender
164 identity, marital status, pregnancy, childbirth or related medical conditions, age, military status, disability,
165 *citizenship or immigration status*, or national origin, except that such a notice or advertisement may indicate a
166 preference, limitation, specification, or discrimination based on religion, sex, age, *citizenship or immigration*
167 *status*, or national origin when religion, sex, age, *citizenship or immigration status*, or national origin is a
168 bona fide occupational qualification for employment.

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

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

177 2. For an elementary or secondary school or institution of higher education to hire and employ employees
178 of a particular religion if such elementary or secondary school or institution of higher education is, in whole
179 or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular
180 religious corporation, association, or society or if the curriculum of such elementary or secondary school or

181 institution of higher education is directed toward the propagation of a particular religion;

182 3. For an employer to apply different standards of compensation, or different terms, conditions, or
183 privileges of employment, pursuant to a bona fide seniority or merit system, or a system that measures
184 earnings by quantity or quality of production, or to employees who work in different locations, provided that
185 such differences are not the result of an intention to discriminate because of race, color, religion, sex, sexual
186 orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, age, military
187 status, disability, *citizenship or immigration status*, or national origin;

188 4. For an employer to give and to act upon the results of any professionally developed ability test,
189 provided that such test, its administration, or an action upon the results is not designed, intended, or used to
190 discriminate because of race, color, religion, sex, sexual orientation, gender identity, marital status,
191 pregnancy, childbirth or related medical conditions, age, military status, disability, *citizenship or immigration*
192 *status*, or national origin;

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

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

199 D. Nothing in this chapter shall be construed to require any employer, employment agency, labor
200 organization, or joint apprenticeship committee to grant preferential treatment to any individual or to any
201 group because of such individual's or group's race, color, religion, sex, sexual orientation, gender identity,
202 marital status, pregnancy, childbirth or related medical conditions, age, military status, disability, *citizenship*
203 *or immigration status*, or national origin on account of an imbalance that may exist with respect to the total
204 number or percentage of persons of any race, color, religion, sex, sexual orientation, gender identity, marital
205 status, pregnancy, childbirth or related medical conditions, age, military status, disability, *citizenship or*
206 *immigration status*, or national origin employed by any employer, referred or classified for employment by
207 any employment agency or labor organization, admitted to membership or classified by any labor
208 organization, or admitted to or employed in any apprenticeship or other training program, in comparison with
209 the total number or percentage of persons of such race, color, religion, sex, sexual orientation, gender
210 identity, marital status, pregnancy, childbirth or related medical conditions, age, military status, disability,
211 *citizenship or immigration status*, or national origin in any community.

212 E. The provisions of this section shall not apply to the employment of individuals of a particular religion
213 by a religious corporation, association, educational institution, or society to perform work associated with its
214 activities.