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SENATE BILL NO. 1052

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact § 2.2-3905 of the Code of Virginia, relating to Virginia Human Rights Act; definition of "employer."

Patron—Ebbin

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3905 of the Code of Virginia is amended and reenacted as follows:

§ 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 than five~~ more than five 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, ethnic or 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 without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer.

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

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

"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.

B. It is an unlawful discriminatory practice for:

1. An employer to:

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

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

2. An employment agency to:

a. Fail or refuse to refer for employment, or otherwise discriminate against, any individual 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 ethnic or national origin; or

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- 59 b. Classify or refer for employment any individual on the basis of such individual's race, color, religion,  
60 sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions,  
61 age, military status, disability, or ethnic or national origin.
- 62 3. A labor organization to:
- 63 a. Exclude or expel from its membership, or otherwise discriminate against, any individual because of  
64 such individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy,  
65 childbirth or related medical conditions, age, military status, disability, or ethnic or national origin;
- 66 b. Limit, segregate, or classify its membership or applicants for membership, or classify or fail to or refuse  
67 to refer for employment any individual, in any way that would deprive or tend to deprive such individual of  
68 employment opportunities, or would limit such employment opportunities or otherwise adversely affect an  
69 individual's status as an employee or as an applicant for employment, because of such individual's race, color,  
70 religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical  
71 conditions, age, military status, disability, or ethnic or national origin; or
- 72 c. Cause or attempt to cause an employer to discriminate against an individual in violation of subdivisions  
73 a or b.
- 74 4. An employer, labor organization, or joint apprenticeship committee to discriminate against any  
75 individual in any program to provide apprenticeship or other training program on the basis of such  
76 individual's race, color, religion, sex, sexual orientation, gender identity, pregnancy, childbirth or related  
77 medical conditions, age, military status, disability, or ethnic or national origin.
- 78 5. An employer, in connection with the selection or referral of applicants or candidates for employment or  
79 promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of  
80 employment-related tests on the basis of race, color, religion, sex, sexual orientation, gender identity, marital  
81 status, pregnancy, childbirth or related medical conditions, age, military status, disability, or ethnic or  
82 national origin.
- 83 6. Except as otherwise provided in this chapter, an employer to use race, color, religion, sex, sexual  
84 orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, age, military  
85 status, disability, or ethnic or national origin as a motivating factor for any employment practice, even though  
86 other factors also motivate the practice.
- 87 7. (i) An employer to discriminate against any employees or applicants for employment, (ii) an  
88 employment agency or a joint apprenticeship committee controlling an apprenticeship or other training  
89 program to discriminate against any individual, or (iii) a labor organization to discriminate against any  
90 member thereof or applicant for membership because such individual has opposed any practice made an  
91 unlawful discriminatory practice by this chapter or because such individual has made a charge, testified,  
92 assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.
- 93 8. An employer, labor organization, employment agency, or joint apprenticeship committee controlling an  
94 apprenticeship or other training program to print or publish, or cause to be printed or published, any notice or  
95 advertisement relating to (i) employment by such an employer, (ii) membership in or any classification or  
96 referral for employment by such a labor organization, (iii) any classification or referral for employment by  
97 such an employment agency, or (iv) admission to, or employment in, any program established to provide  
98 apprenticeship or other training by such a joint apprenticeship committee that indicates any preference,  
99 limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, gender  
100 identity, marital status, pregnancy, childbirth or related medical conditions, age, military status, disability, or  
101 ethnic or national origin, except that such a notice or advertisement may indicate a preference, limitation,  
102 specification, or discrimination based on religion, sex, age, or ethnic or national origin when religion, sex,  
103 age, or ethnic or national origin is a bona fide occupational qualification for employment.
- 104 C. Notwithstanding any other provision of this chapter, it is not an unlawful discriminatory practice:
- 105 1. For (i) an employer to hire and employ employees; (ii) an employment agency to classify, or refer for  
106 employment, any individual; (iii) a labor organization to classify its membership or to classify or refer for  
107 employment any individual; or (iv) an employer, labor organization, or joint apprenticeship committee to  
108 admit or employ any individual in any apprenticeship or other training program on the basis of such  
109 individual's religion, sex, or age in those certain instances where religion, sex, or age is a bona fide  
110 occupational qualification reasonably necessary to the normal operation of that particular employer,  
111 employment agency, labor organization, or joint apprenticeship committee;
- 112 2. For an elementary or secondary school or institution of higher education to hire and employ employees  
113 of a particular religion if such elementary or secondary school or institution of higher education is, in whole  
114 or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular  
115 religious corporation, association, or society or if the curriculum of such elementary or secondary school or  
116 institution of higher education is directed toward the propagation of a particular religion;
- 117 3. For an employer to apply different standards of compensation, or different terms, conditions, or  
118 privileges of employment, pursuant to a bona fide seniority or merit system, or a system that measures  
119 earnings by quantity or quality of production, or to employees who work in different locations, provided that

120 such differences are not the result of an intention to discriminate because of race, color, religion, sex, sexual  
121 orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, age, military  
122 status, disability, or ethnic or national origin;

123 4. For an employer to give and to act upon the results of any professionally developed ability test,  
124 provided that such test, its administration, or an action upon the results is not designed, intended, or used to  
125 discriminate because of race, color, religion, sex, sexual orientation, gender identity, marital status,  
126 pregnancy, childbirth or related medical conditions, age, military status, disability, or ethnic or national  
127 origin;

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

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

134 D. Nothing in this chapter shall be construed to require any employer, employment agency, labor  
135 organization, or joint apprenticeship committee to grant preferential treatment to any individual or to any  
136 group because of such individual's or group's race, color, religion, sex, sexual orientation, gender identity,  
137 marital status, pregnancy, childbirth or related medical conditions, age, military status, disability, or ethnic or  
138 national origin on account of an imbalance that may exist with respect to the total number or percentage of  
139 persons of any race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy,  
140 childbirth or related medical conditions, age, military status, disability, or ethnic or national origin employed  
141 by any employer, referred or classified for employment by any employment agency or labor organization,  
142 admitted to membership or classified by any labor organization, or admitted to or employed in any  
143 apprenticeship or other training program, in comparison with the total number or percentage of persons of  
144 such race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or  
145 related medical conditions, age, military status, disability, or ethnic or national origin in any community.

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