

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 2.2-3905 of the Code of Virginia, relating to Virginia Human Rights Act;*
 3 *definition of "employer."*

4 [S 1052]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

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

8 **§ 2.2-3905. Nondiscrimination in employment; definitions; exceptions.**

9 A. As used in this section:

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

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

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

21 "Employer" means a person employing (i) ~~15 or more~~ *than five* employees for each working day in each
 22 of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, or (ii)
 23 one or more domestic workers. ~~However, (a) for purposes of unlawful discharge under subdivision B 1 on the~~
 24 ~~basis of race, color, religion, ethnic or national origin, military status, sex, sexual orientation, gender identity,~~
 25 ~~marital status, disability, pregnancy, or childbirth or related medical conditions including lactation,~~
 26 ~~"employer" means any person employing more than five persons or one or more domestic workers and (b) for~~
 27 ~~purposes of unlawful discharge under subdivision B 1 on the basis of age, "employer" means any employer~~
 28 ~~employing more than five but fewer than 20 persons.~~

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

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

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

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

40 B. It is an unlawful discriminatory practice for:

41 1. An employer to:

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

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

51 2. An employment agency to:

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

55 b. Classify or refer for employment any individual on the basis of such individual's race, color, religion,
 56 sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions,

57 age, military status, disability, or ethnic or national origin.

58 3. A labor organization to:

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

62 b. Limit, segregate, or classify its membership or applicants for membership, or classify or fail to or refuse
63 to refer for employment any individual, in any way that would deprive or tend to deprive such individual of
64 employment opportunities, or would limit such employment opportunities or otherwise adversely affect an
65 individual's status as an employee or as an applicant for employment, because of such individual's race, color,
66 religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical
67 conditions, age, military status, disability, or ethnic or national origin; or

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

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

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

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

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

89 8. An employer, labor organization, employment agency, or joint apprenticeship committee controlling an
90 apprenticeship or other training program to print or publish, or cause to be printed or published, any notice or
91 advertisement relating to (i) employment by such an employer, (ii) membership in or any classification or
92 referral for employment by such a labor organization, (iii) any classification or referral for employment by
93 such an employment agency, or (iv) admission to, or employment in, any program established to provide
94 apprenticeship or other training by such a joint apprenticeship committee that indicates any preference,
95 limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, gender
96 identity, marital status, pregnancy, childbirth or related medical conditions, age, military status, disability, or
97 ethnic or national origin, except that such a notice or advertisement may indicate a preference, limitation,
98 specification, or discrimination based on religion, sex, age, or ethnic or national origin when religion, sex,
99 age, or ethnic or national origin is a bona fide occupational qualification for employment.

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

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

108 2. For an elementary or secondary school or institution of higher education to hire and employ employees
109 of a particular religion if such elementary or secondary school or institution of higher education is, in whole
110 or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular
111 religious corporation, association, or society or if the curriculum of such elementary or secondary school or
112 institution of higher education is directed toward the propagation of a particular religion;

113 3. For an employer to apply different standards of compensation, or different terms, conditions, or
114 privileges of employment, pursuant to a bona fide seniority or merit system, or a system that measures
115 earnings by quantity or quality of production, or to employees who work in different locations, provided that
116 such differences are not the result of an intention to discriminate because of race, color, religion, sex, sexual
117 orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, age, military

118 status, disability, or ethnic or national origin;

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

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

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

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

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