

26105279D

SENATE BILL NO. 637

Offered January 14, 2026

Prefiled January 14, 2026

A BILL to amend and reenact §§ 2.2-3902, 2.2-3904, and 2.2-3905 of the Code of Virginia, relating to Virginia Human Rights Act; definition of "employer"; sovereign immunity.

Patrons—Ebbin and Boysko; Delegate: Laufer

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

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

§ 2.2-3902. Construction of chapter; other programs to aid persons with disabilities, minors, and the elderly; sovereign immunity.

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, or ethnic 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.

An act of unlawful discrimination in violation of this chapter shall constitute a waiver of sovereign immunity for all governmental entities, including the Commonwealth, its political subdivisions, and any agencies, departments, institutions, instrumentalities, officers, agents, representatives, or employees thereof in any state or federal court or tribunal.

§ 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, including educational institutions.

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

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

D. The provisions of this section shall not prohibit (i) discrimination against individuals who are less than

59 *younger than 18 years of age solely on the basis of such individual's age* or (ii) the provision of special  
 60 benefits, incentives, discounts, or promotions by public or private programs to assist persons who are 50  
 61 years of age or older.

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

64 **§ 2.2-3905. Nondiscrimination in employment; definitions; exceptions.**

65 A. As used in this section:

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

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

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

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

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

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

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

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

96 B. It is an unlawful discriminatory practice for:

97 1. An employer to:

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

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

107 2. An employment agency to:

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

111 b. Classify or refer for employment any individual on the basis of such individual's race, color, religion,  
 112 sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions,  
 113 age, military status, disability, or ethnic or national origin.

114 3. A labor organization to:

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

118 b. Limit, segregate, or classify its membership or applicants for membership, or classify or fail to or refuse  
 119 to refer for employment any individual, in any way that would deprive or tend to deprive such individual of  
 120 employment opportunities, or would limit such employment opportunities or otherwise adversely affect an

121 individual's status as an employee or as an applicant for employment, because of such individual's race, color,  
122 religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical  
123 conditions, age, military status, disability, or ethnic or national origin; or

124 c. Cause or attempt to cause an employer to discriminate against an individual in violation of subdivisions  
125 *subdivision a* or *b*.

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

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

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

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

145 8. An employer, labor organization, employment agency, or joint apprenticeship committee controlling an  
146 apprenticeship or other training program to print or publish, or cause to be printed or published, any notice or  
147 advertisement relating to (i) employment by such an employer, (ii) membership in or any classification or  
148 referral for employment by such a labor organization, (iii) any classification or referral for employment by  
149 such an employment agency, or (iv) admission to, or employment in, any program established to provide  
150 apprenticeship or other training by such a joint apprenticeship committee that indicates any preference,  
151 limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, gender  
152 identity, marital status, pregnancy, childbirth or related medical conditions, age, military status, disability, or  
153 ethnic or national origin, except that such a notice or advertisement may indicate a preference, limitation,  
154 specification, or discrimination based on religion, sex, age, or ethnic or national origin when religion, sex,  
155 age, or ethnic or national origin is a bona fide occupational qualification for employment.

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

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

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

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

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

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

182 6. For an employer to condition employment or premises access based upon citizenship where the

183 employer is subject to any requirement imposed in the interest of the national security of the United States  
184 under any security program in effect pursuant to or administered under any statute or regulation of the federal  
185 government or any executive order of the President of the United States.

186 D. Nothing in this chapter shall be construed to require any employer, employment agency, labor  
187 organization, or joint apprenticeship committee to grant preferential treatment to any individual or to any  
188 group because of such individual's or group's race, color, religion, sex, sexual orientation, gender identity,  
189 marital status, pregnancy, childbirth or related medical conditions, age, military status, disability, or ethnic or  
190 national origin on account of an imbalance that may exist with respect to the total number or percentage of  
191 persons of any race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy,  
192 childbirth or related medical conditions, age, military status, disability, or ethnic or national origin employed  
193 by any employer, referred or classified for employment by any employment agency or labor organization,  
194 admitted to membership or classified by any labor organization, or admitted to or employed in any  
195 apprenticeship or other training program, in comparison with the total number or percentage of persons of  
196 such race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or  
197 related medical conditions, age, military status, disability, or ethnic or national origin in any community.

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