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SENATE BILL NO. 637

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 5, 2026)

(Patron Prior to Substitute—Senator Ebbin)

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

Be it enacted by the General Assembly of Virginia:

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

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

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

F. The provisions of this section shall be governed by the statute of limitations provisions in subsection E of § 2.2-3909.

§ 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* 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

60 work for an employer.

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

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

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

69 B. It is an unlawful discriminatory practice for:

70 1. An employer to:

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

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

80 2. An employment agency to:

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

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

87 3. A labor organization to:

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

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

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

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

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

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

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

118 8. An employer, labor organization, employment agency, or joint apprenticeship committee controlling an
119 apprenticeship or other training program to print or publish, or cause to be printed or published, any notice or
120 advertisement relating to (i) employment by such an employer, (ii) membership in or any classification or
121 referral for employment by such a labor organization, (iii) any classification or referral for employment by

122 such an employment agency, or (iv) admission to, or employment in, any program established to provide
 123 apprenticeship or other training by such a joint apprenticeship committee that indicates any preference,
 124 limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, gender
 125 identity, marital status, pregnancy, childbirth or related medical conditions, age, military status, disability, or
 126 ethnic or national origin, except that such a notice or advertisement may indicate a preference, limitation,
 127 specification, or discrimination based on religion, sex, age, or ethnic or national origin when religion, sex,
 128 age, or ethnic or national origin is a bona fide occupational qualification for employment.

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

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

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

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

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

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

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

159 D. Nothing in this chapter shall be construed to require any employer, employment agency, labor
 160 organization, or joint apprenticeship committee to grant preferential treatment to any individual or to any
 161 group because of such individual's or group's race, color, religion, sex, sexual orientation, gender identity,
 162 marital status, pregnancy, childbirth or related medical conditions, age, military status, disability, or ethnic or
 163 national origin on account of an imbalance that may exist with respect to the total number or percentage of
 164 persons of any race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy,
 165 childbirth or related medical conditions, age, military status, disability, or ethnic or national origin employed
 166 by any employer, referred to or classified for employment by any employment agency or labor organization,
 167 admitted to membership or classified by any labor organization, or admitted to or employed in any
 168 apprenticeship or other training program, in comparison with the total number or percentage of persons of
 169 such race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or
 170 related medical conditions, age, military status, disability, or ethnic or national origin in any community.

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

174 F. *The provisions of this section shall be governed by the statute of limitations provisions in subsection E*
 175 *of § 2.2-3909.*