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SENATE BILL NO. 258  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on General Laws  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Senator Pekarsky)

*A BILL to amend and reenact §§ 2.2-3900, 2.2-3901, 2.2-3902, 2.2-3904, 2.2-3905, and 2.2-3909 of the Code of Virginia, relating to Virginia Human Rights Act; menopause or perimenopause; discrimination prohibited; reasonable accommodations; report.*

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

**1. That §§ 2.2-3900, 2.2-3901, 2.2-3902, 2.2-3904, 2.2-3905, and 2.2-3909 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, ethnic or national origin, sex, pregnancy, *menopause or perimenopause*, 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, ethnic or national origin, sex, pregnancy, *menopause or perimenopause*, 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.

**§ 2.2-3901. Definitions.**

A. The terms "because of sex or gender" or "on the basis of sex or gender" or terms of similar import when used in reference to discrimination in the Code and acts of the General Assembly include because of or on the basis of pregnancy, *menopause or perimenopause*, childbirth, or related medical conditions, including lactation. Women affected by pregnancy, *menopause or perimenopause*, childbirth, or related medical conditions shall be treated the same for all purposes as persons not so affected but similar in their abilities or

32 disabilities.

33 B. The term "gender identity," when used in reference to discrimination in the Code and acts of the  
34 General Assembly, means the gender-related identity, appearance, or other gender-related characteristics of  
35 an individual, with or without regard to the individual's designated sex at birth.

36 C. The term "sexual orientation," when used in reference to discrimination in the Code and acts of the  
37 General Assembly, means a person's actual or perceived heterosexuality, bisexuality, or homosexuality.

38 D. The terms "because of race" or "on the basis of race" or terms of similar import when used in reference  
39 to discrimination in the Code and acts of the General Assembly include because of or on the basis of traits  
40 historically associated with race, including hair texture, hair type, and protective hairstyles such as braids,  
41 locks, and twists.

42 E. As used in this chapter, unless the context requires a different meaning:

43 "E.E.O.C." means the U.S. Equal Employment Opportunity Commission.

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

46 "Military status" means status as (i) a member of the uniformed forces, as defined in 10 U.S.C. §  
47 101(a)(5), of the United States or a reserve component thereof named under 10 U.S.C. § 10101, (ii) a veteran  
48 as defined in 38 U.S.C. § 101(2), or (iii) a dependent as defined in 50 U.S.C. § 3911(4) except that the  
49 support provided by the service member to the individual shall have been provided 180 days immediately  
50 preceding an alleged action that if proven true would constitute unlawful discrimination under this section  
51 instead of 180 days immediately preceding an application for relief under 50 U.S.C. Chapter 50.

52 "Religion" includes any outward expression of religious faith, including adherence to religious dressing  
53 and grooming practices and the carrying or display of religious items or symbols.

54 **§ 2.2-3902. Construction of chapter; other programs to aid persons with disabilities, minors, and the**  
55 **elderly.**

56 The provisions of this chapter shall be construed liberally for the accomplishment of its policies.

57 Conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of  
58 race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, *menopause or*  
59 *perimenopause*, childbirth or related medical conditions including lactation, age, military status, disability, or  
60 ethnic or national origin is an unlawful discriminatory practice under this chapter.

61 Nothing in this chapter shall prohibit or alter any program, service, facility, school, or privilege that is  
62 afforded, oriented, or restricted to a person because of disability or age from continuing to habilitate,  
63 rehabilitate, or accommodate that person.

64 In addition, nothing in this chapter shall be construed to affect any governmental program, law, or activity  
65 differentiating between persons on the basis of age over the age of 18 years (i) where the differentiation is  
66 reasonably necessary to normal operation or the activity is based upon reasonable factors other than age or  
67 (ii) where the program, law, or activity constitutes a legitimate exercise of powers of the Commonwealth for  
68 the general health, safety, and welfare of the population at large.

69 Complaints filed with the Office of Civil Rights of the Department of Law (the Office) in accordance with  
70 § 2.2-520 alleging unlawful discriminatory practice under a Virginia statute that is enforced by a Virginia  
71 agency shall be referred to that agency. The Office may investigate complaints alleging an unlawful  
72 discriminatory practice under a federal statute or regulation and attempt to resolve it through conciliation.  
73 Unsolved complaints shall thereafter be referred to the federal agency with jurisdiction over the complaint.  
74 Upon such referral, the Office shall have no further jurisdiction over the complaint. The Office shall have no  
75 jurisdiction over any complaint filed under a local ordinance adopted pursuant to § 15.2-965.

76 **§ 2.2-3904. Nondiscrimination in places of public accommodation; definitions.**

77 A. As used in this section:

78 "Age" means being an individual who is at least 18 years of age.

79 "Place of public accommodation" means all places or businesses offering or holding out to the general  
80 public goods, services, privileges, facilities, advantages, or accommodations.

81 B. It is an unlawful discriminatory practice for any person, including the owner, lessee, proprietor,  
82 manager, superintendent, agent, or employee of any place of public accommodation, to refuse, withhold  
83 from, or deny any individual, or to attempt to refuse, withhold from, or deny any individual, directly or  
84 indirectly, any of the accommodations, advantages, facilities, services, or privileges made available in any  
85 place of public accommodation, or to segregate or discriminate against any such person in the use thereof, or  
86 to publish, circulate, issue, display, post, or mail, either directly or indirectly, any communication, notice, or  
87 advertisement to the effect that any of the accommodations, advantages, facilities, privileges, or services of  
88 any such place shall be refused, withheld from, or denied to any individual on the basis of race, color,  
89 religion, ethnic or national origin, sex, pregnancy, *menopause or perimenopause*, childbirth or related  
90 medical conditions, age, sexual orientation, gender identity, marital status, disability, or military status.

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

94 D. The provisions of this section shall not prohibit (i) discrimination against individuals who are less than  
95 18 years of age or (ii) the provision of special benefits, incentives, discounts, or promotions by public or  
96 private programs to assist persons who are 50 years of age or older.

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

99 **§ 2.2-3905. Nondiscrimination in employment; definitions; exceptions.**

100 A. As used in this section:

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

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

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

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

120 "Employment agency" means any person, or an agent of such person, regularly undertaking with or

121 without compensation to procure employees for an employer or to procure for employees opportunities to  
122 work for an employer.

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

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

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

131 B. It is an unlawful discriminatory practice for:

132 1. An employer to:

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

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

143 2. An employment agency to:

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

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

151 3. A labor organization to:

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

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

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

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

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

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

178 7. (i) An employer to discriminate against any employees or applicants for employment, (ii) an  
179 employment agency or a joint apprenticeship committee controlling an apprenticeship or other training  
180 program to discriminate against any individual, or (iii) a labor organization to discriminate against any  
181 member thereof or applicant for membership because such individual has opposed any practice made an

182 unlawful discriminatory practice by this chapter or because such individual has made a charge, testified,  
183 assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

184 8. An employer, labor organization, employment agency, or joint apprenticeship committee controlling an  
185 apprenticeship or other training program to print or publish, or cause to be printed or published, any notice or  
186 advertisement relating to (i) employment by such an employer, (ii) membership in or any classification or  
187 referral for employment by such a labor organization, (iii) any classification or referral for employment by  
188 such an employment agency, or (iv) admission to, or employment in, any program established to provide  
189 apprenticeship or other training by such a joint apprenticeship committee that indicates any preference,  
190 limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, gender  
191 identity, marital status, pregnancy, *menopause or perimenopause*, childbirth or related medical conditions,  
192 age, military status, disability, or ethnic or national origin, except that such a notice or advertisement may  
193 indicate a preference, limitation, specification, or discrimination based on religion, sex, age, or ethnic or  
194 national origin when religion, sex, age, or ethnic or national origin is a bona fide occupational qualification  
195 for employment.

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

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

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

209 3. For an employer to apply different standards of compensation, or different terms, conditions, or  
210 privileges of employment, pursuant to a bona fide seniority or merit system, or a system that measures  
211 earnings by quantity or quality of production, or to employees who work in different locations, provided that

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

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

220 5. For an employer to provide reasonable accommodations related to disability, pregnancy, *menopause or*  
221 *perimenopause*, childbirth or related medical conditions, ~~and~~ or lactation, when such accommodations are  
222 requested by the employee; or

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

227 D. Nothing in this chapter shall be construed to require any employer, employment agency, labor  
228 organization, or joint apprenticeship committee to grant preferential treatment to any individual or to any  
229 group because of such individual's or group's race, color, religion, sex, sexual orientation, gender identity,  
230 marital status, pregnancy, *menopause or perimenopause*, childbirth or related medical conditions, age,  
231 military status, disability, or ethnic or national origin on account of an imbalance that may exist with respect  
232 to the total number or percentage of persons of any race, color, religion, sex, sexual orientation, gender  
233 identity, marital status, pregnancy, *menopause or perimenopause*, childbirth or related medical conditions,  
234 age, military status, disability, or ethnic or national origin employed by any employer, referred or classified  
235 for employment by any employment agency or labor organization, admitted to membership or classified by  
236 any labor organization, or admitted to or employed in any apprenticeship or other training program, in  
237 comparison with the total number or percentage of persons of such race, color, religion, sex, sexual  
238 orientation, gender identity, marital status, pregnancy, *menopause or perimenopause*, childbirth or related  
239 medical conditions, age, military status, disability, or ethnic or national origin in any community.

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

242 activities.

243 **§ 2.2-3909. Causes of action for failure to provide reasonable accommodation for known limitations**  
244 **related to pregnancy, menopause or perimenopause, childbirth, or related medical conditions.**

245 A. As used in this section:

246 "Employer" means any person, or agent of such person, employing five or more employees for each  
247 working day in each of 20 or more calendar weeks in the current or preceding calendar year.

248 "Lactation" means lactation as defined in § 2.2-3905.

249 "Reasonable accommodation" ~~includes~~ *means employment and workplace accommodations, including*  
250 *more frequent or longer bathroom breaks, breaks to express breast milk, access to a private location other*  
251 *than a bathroom for the expression of breast milk, acquisition or modification of equipment or access to or*  
252 *modification of employee seating, a temporary transfer to a less strenuous or hazardous position, assistance*  
253 *with manual labor, job restructuring, a modified work schedule, light duty assignments, and leave to recover*  
254 *from childbirth.*

255 "Related medical conditions" includes lactation.

256 B. No employer shall:

257 1. Refuse to make reasonable accommodation to the known limitations of a person related to pregnancy,  
258 *menopause or perimenopause, childbirth, or related medical conditions, unless the employer can demonstrate*  
259 *that the accommodation would impose an undue hardship on the employer.*

260 a. In determining whether an accommodation would constitute an undue hardship on the employer, the  
261 following shall be considered:

262 (1) Hardship on the conduct of the employer's business, considering the nature of the employer's  
263 operation, including composition and structure of the employer's workforce *and the financial resources of the*  
264 *employer;*

265 (2) The size of the facility where employment occurs; and

266 (3) The *difficulty*, nature, and cost of the accommodations needed.

267 b. The fact that the employer provides or would be required to provide a similar accommodation to other  
268 classes of employees shall create a rebuttable presumption that the accommodation does not impose an undue  
269 hardship on the employer.

270 2. Take adverse action against an employee who requests or uses a reasonable accommodation pursuant to  
271 this section. As used in this subdivision, "adverse action" includes failure to reinstate any such employee to

272 her previous position or an equivalent position with equivalent pay, seniority, and other benefits when her  
273 need for a reasonable accommodation ceases.

274 3. Deny employment or promotion opportunities to an otherwise qualified applicant or employee because  
275 such employer will be required to make reasonable accommodation to the known limitations of such  
276 applicant or employee related to pregnancy, *menopause or perimenopause*, childbirth, or related medical  
277 conditions.

278 4. Require an employee to take leave if another reasonable accommodation can be provided to the known  
279 limitations related to the pregnancy, *menopause or perimenopause*, childbirth, or related medical conditions  
280 of such employee.

281 C. Each employer shall engage in a timely, good faith interactive process with an employee who has  
282 requested an accommodation pursuant to this section to determine if the requested accommodation is  
283 reasonable and, if such accommodation is determined not to be reasonable, discuss alternative  
284 accommodations that may be provided.

285 D. An employer shall post in a conspicuous location and include in any employee handbook information  
286 concerning an employee's rights to reasonable accommodation for known limitations related to pregnancy,  
287 *menopause or perimenopause*, childbirth, or related medical conditions. Such information shall also be  
288 directly provided to (i) new employees upon commencement of their employment and (ii) any employee  
289 within 10 days of such employee's providing notice to the employer that she is pregnant.

290 E. An employee or applicant who has been denied any of the rights afforded under subsection B may  
291 bring an action in a general district or circuit court having jurisdiction over the employer that allegedly denied  
292 such rights. Any such action shall be brought within two years from the date of the unlawful denial of rights,  
293 or, if the employee or applicant has filed a complaint with the Office of Civil Rights of the Department of  
294 Law or a local human rights or human relations agency or commission within two years of the unlawful  
295 denial of rights, such action shall be brought within 90 days from the date that the Office or a local human  
296 rights or human relations agency or commission has rendered a final disposition on the complaint.

297 If the court or jury finds that an unlawful denial of rights afforded under subsection B has occurred, the  
298 court or jury may award to the plaintiff, as the prevailing party, compensatory damages, back pay, and other  
299 equitable relief. The court may also award reasonable attorney fees and costs and may grant as relief any  
300 permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining  
301 the defendant from engaging in such practice, or order such affirmative action as may be appropriate.

302 F. The provisions of this section regarding the provision of reasonable accommodation for known  
303 limitations related to pregnancy, *menopause or perimenopause*, childbirth, and related medical conditions  
304 shall not be construed to affect any other provision of law relating to discrimination on the basis of sex or  
305 pregnancy.

306 **2. That the Commissioner of Labor and Industry, in consultation with the Commissioner of Health,**  
307 **shall conduct a study on menopause and perimenopause in the workforce, menopause-related and**  
308 **perimenopause-related accommodations in employment environments, and the scope of existing**  
309 **menopause-related and perimenopause-related policies, including health insurance coverage and**  
310 **therapeutic treatments for menopause-related and perimenopause-related symptoms, access to health**  
311 **care professionals for menopause-related and perimenopause-related matters, menopause and**  
312 **perimenopause awareness policies, and health care spending accounts that can be used for menopause-**  
313 **related and perimenopause-related benefits and services. In conducting such study, the Commissioners**  
314 **shall develop best practices for menopause-related and perimenopause-related accommodations in**  
315 **employment environments. No later than July 1, 2028, the Commissioners shall submit a report of**  
316 **their findings and recommendations to the Governor and the General Assembly and shall publish such**  
317 **report on the Department of Labor and Industry's website.**