

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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.

[H 1173]

Approved

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 disabilities.

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

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

D. The terms "because of race" or "on the basis of race" 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 traits historically associated with race, including hair texture, hair type, and protective hairstyles such as braids, locks, and twists.

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

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

"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.

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

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

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

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, *menopause or*

perimenopause, 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.

§ 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.

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, *menopause or perimenopause*, 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 18 years of 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.

§ 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 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, *menopause or perimenopause*, 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, *menopause or perimenopause*, 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, *menopause or perimenopause*, 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, *menopause or perimenopause*, childbirth or related medical conditions, age, military status, disability, or ethnic or national origin; or

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

3. A labor organization to:

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

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

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

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

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

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

7. (i) An employer to discriminate against any employees or applicants for employment, (ii) an employment agency or a joint apprenticeship committee controlling an apprenticeship or other training program to discriminate against any individual, or (iii) a labor organization to discriminate against any member thereof or applicant for membership because such individual has opposed any practice made an unlawful discriminatory practice by this chapter or because such individual has made a charge, testified,

assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

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

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

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

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

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

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

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

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

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

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

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

A. As used in this section:

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

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

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

"Related medical conditions" includes lactation.

B. No employer shall:

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

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

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

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

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

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

2. Take adverse action against an employee who requests or uses a reasonable accommodation pursuant to this section. As used in this subdivision, "adverse action" includes failure to reinstate any such employee to her previous position or an equivalent position with equivalent pay, seniority, and other benefits when her need for a reasonable accommodation ceases.

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

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

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

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

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

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

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

2. That the Commissioner of Labor and Industry, in consultation with the Commissioner of Health,

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